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Equally Insured? Lasting Insurance Industry Reform Came Only With a Rethinking of Race

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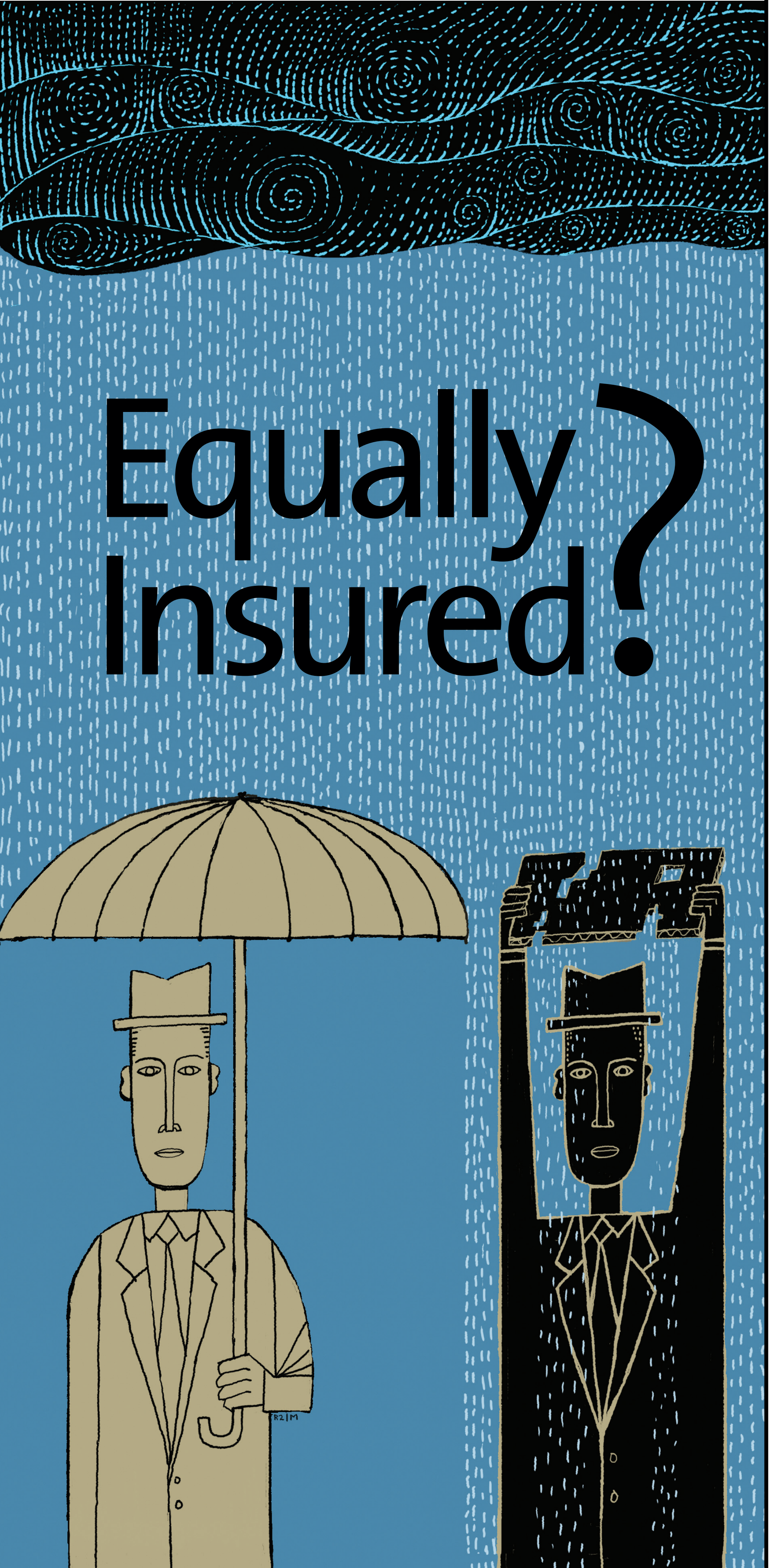
Equally Insured?



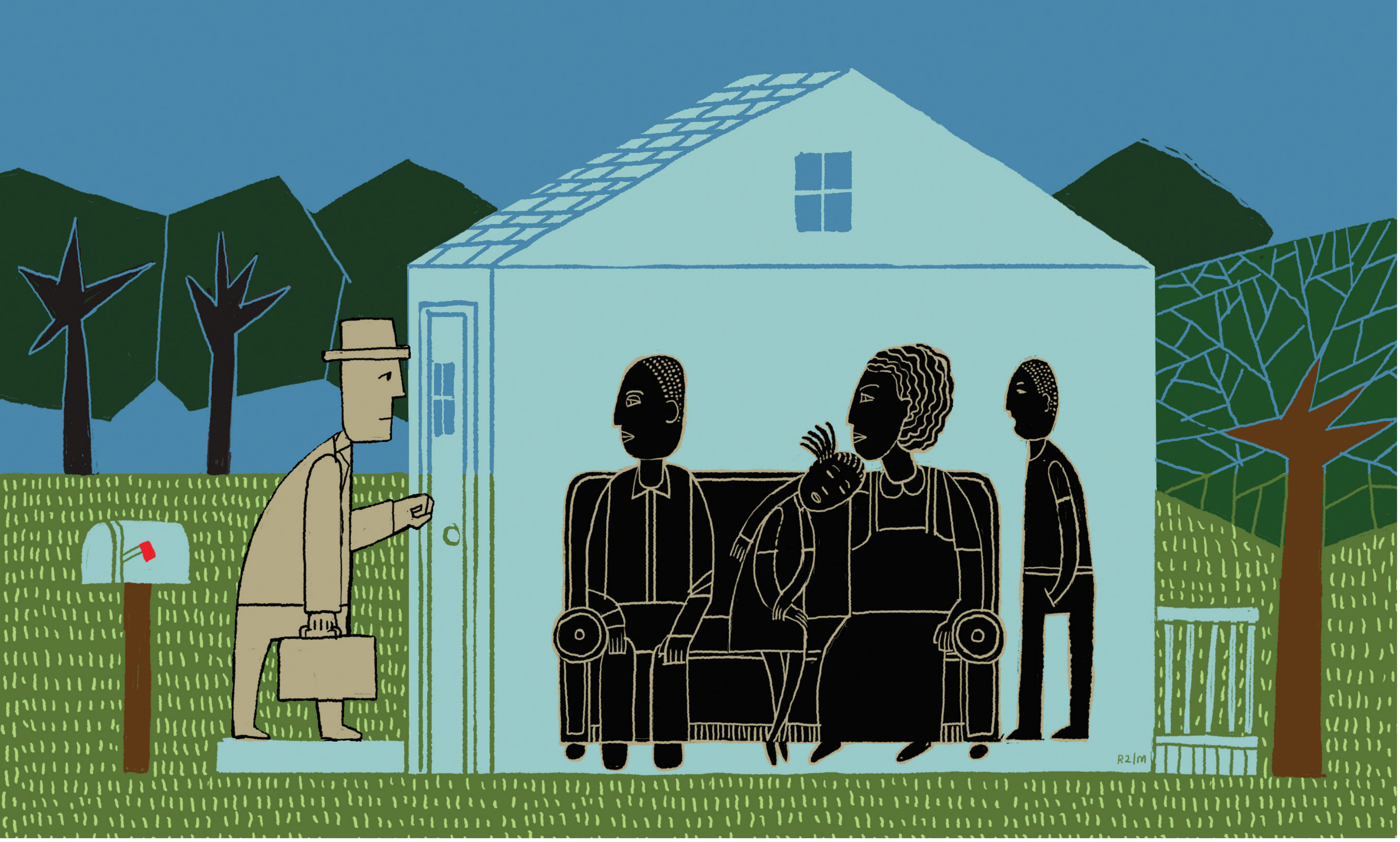
ILLUSTRATIONS BY ROBERT MEGANCK

Lasting insurance industry reform came only with a rethinking of race

By Mary L. Heen

Earlier this decade, some of America's best-known life insurance companies quietly settled multimillion-dollar civil rights lawsuits challenging race-based life insurance rates and benefits. As a result, those companies closed a chapter of American economic history that began after the Civil War with the door-to-door marketing of small individual life insurance policies to poor workers, including former slaves, and their families. The closing of this chapter in history also marked the end of a form of Jim Crow race discrimination largely invisible to the American public.

Although the settlements provided partial recompense to black Americans harmed by the continuing effects of discriminatory policies sold during the Jim Crow era, the litigation itself did not accomplish a broader shift in commercial practice. The industry's biggest companies eliminated race-based practices for most new policies issued after the beginning of the modern civil rights era. By the early 1960s, industry professional organizations had developed and approved race-integrated mortality tables as an industry-wide standard. Thus, by the time the civil rights movement had achieved landmark legal and legislative changes in education, public accommodations, employment, housing, and voting rights, the biggest players in the life insurance industry had already



"voluntarily" discontinued their most visible race-based practices for all newly issued policies. How did that transformation happen?

My recent research traces the evolution of explicit race-based insurance practices over a century as the life insurance industry responded to changes in the social, economic, and legal status of black Americans. The role of law in that story, from the Civil War to the beginning of this century, illustrates the complex interaction between civil rights reform and private commercial markets. Despite early laws prohibiting race-based life insurance rates, they persisted in various forms for more than a century due to the strength of the underlying racial ideologies, the rhetorical power of actuarial language, and the structure and regulation of insurance markets. I argue that life insurance companies reinforced prevailing American assumptions about race by adopting explicit race-based pricing categories after Reconstruction, and later, by abandoning them for new policies sold after World War II and during the second Reconstruction. Civil rights law thus served primarily as prologue, by provoking company adaptation, and as epilogue, by providing retrospective relief, to the central story of that transformation.

Like Jim Crow state-sanctioned race segregation, which according to *Plessy v. Ferguson* prevented "an enforced co-mingling of the two races," the insurance industry justified Jim Crow race-based practices by reference to racial "difference." After Reconstruction, life insurance companies began insuring emancipated slaves at two-thirds the benefits provided to white policyholders. Although the values echoed slavery era racial hierarchies, the companies explained the change by reference to the "excessive mortality" and "innate" racial traits of former slaves as a "dying" race. Race-categorized mortality differentials quantified those differences and classified policyholders as "standard" and "substandard" risks. Race-based pricing structures thus underscored the then-dominant ideological assumptions about "biological" racial superiority and inferiority.

Beginning in the 1880s, several Northern states passed laws prohibiting differentials in life insurance premiums or benefits solely on the basis of race. Some companies responded by adopting other types of less visible discriminatory practices. Others pulled their business from those states or thereafter declined to solicit black business anywhere. The resulting market segmentation led to racial segregation of insurance markets and the development of black-owned insurance companies, mirroring patterns of race separation, subordination, and segregation found more generally in America during the Jim Crow era.

When Jim Crow segregation came under attack in the second Reconstruction following World War II, the underlying justifications for race-based pricing were finally discredited. By the mid-20th century, the assumptions of scientific racism and the eugenics movement, which had been under attack by public intellectuals in America and Great Britain since the 1930s and 1940s, were finally disavowed. The repudiation of scientific racism after the defeat of the Nazi regime led to a fundamental rethinking of race. Cultural and environmental understandings replaced "natural" and "biological" explanations of race.

After the civil rights movement successfully attacked Jim Crow for its role in creating and maintaining unequal social and environmental conditions, the insurance industry could no longer sustain higher rates or coverage restrictions for black Americans based on "substandard" mortality categorized by race. Beginning in the late 1940s, under increasing pressure from civil rights groups, the big companies began equalizing rates for newly issued policies despite continuing race-correlated mortality differentials. Later, the industry achieved a form of collective action in the early 1960s, with the development of race-integrated tables by industry professional groups, approved for state regulatory purposes by the National Association of Insurance Commissioners.

As history shows, given the structure and state regulation of life insurance markets, lasting reform could not be accomplished state-by-state or market-by-market. Oliver Wendell Holmes observed in "The Path of the Law," published shortly after the United States Supreme Court decided *Plessy v. Ferguson*, "We do not realize how large a part of our law is open to reconsideration upon a slight change in the habit of the public mind." The same could be said of commercial practice. Prospective change in life insurance industry race-based practices followed only after a fundamental rethinking of race. ■

This article was adapted from Professor Heen's publication Ending Jim Crow Life Insurance Rates*, 4 Northwestern Journal of Law & Social Policy 309 (2009), available electronically at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491264.*

Richmond played important role in reform

During my research, I discovered that Richmond played an important role in the development of black insurance enterprises during the Jim Crow era. As the race-based policies of white insurance companies in the late 19th century evolved, black fraternal and benevolent societies added insurance features to their benefit programs. One of the largest and most successful black benevolent organizations, the Grand Fountain, United Order of the True Reformers, was formed in 1881, and headquartered in Richmond. The True Reformers, described by Booker T. Washington as "one of the first large secret orders formed by Negroes," and by W.E.B. Du Bois as "probably the most remarkable Negro organization in the country," established an extensive insurance program.

Under the leadership of a former slave named William Washington Browne, and his successor, W.L. Taylor, the True Reformers grew into a national organization with membership found in 20 states. The organization established its own bank, the True Reformers' Savings Bank of Richmond, the first black-owned, black-operated bank to be chartered in the United States. It also operated its own newspaper, *The Reformer*, retail stores, an old folks home, and a 150-room hotel.


VIRGINIA HISTORICAL SOCIETY

William Washington Browne

Recognizing the difficulties blacks encountered with white insurance companies, Browne sought to provide insurance coverage to members. Utilizing mainstream financial practices in insurance and other businesses, he initiated several important innovations.

The True Reformers became the first black benevolent society to disburse insurance benefits through a national office. It also, in 1885, instituted a sliding scale for insurance policies dependent upon the age and premium paid by the policyholder.

The legacy of the True Reformers survived through the influence of many of its former employees, including Maggie Walker, who founded businesses and insurance enterprises in Richmond, and John Merrick and A.M. Moore, who went on to found North Carolina Mutual Life Insurance Company, one of the oldest and most successful black-owned life insurance companies.