MARKET NEWS, DATA AND INSIGHT ALL DAY, EVERY DAY

THURSDAY 16 AUGUST 2012

ISSUE 3,669

insuranceday

www.insuranceday.com

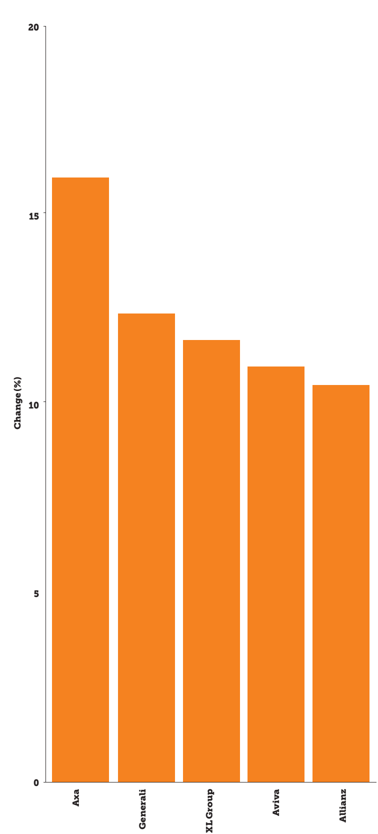
Hurricane Andrew: 20 years on

The 20th anniversary of the storm that changed the global reinsurance industry

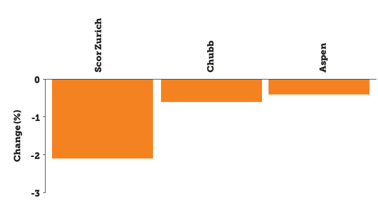
p4-5

Financial World

Graph: This week's winners...



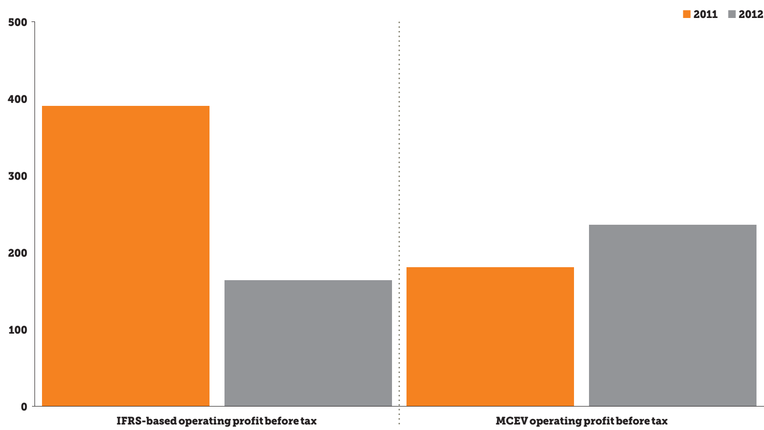
...and losers



Prospect of action by central banks boosts stocks p8-9

Resolution revamp

Graph: Resolution first-half financial highlights, 2011 versus 2012 (£m)



Source: Resolution announcement

Resolution to restructure with John Tiner heading for retirement p2

Law & Order

Insurers on alert as Libor scandal suits likely p10

World Loss Intelligence

Supreme Court rules on Stringfellow Acid Pits clean-up liability p6-7

NEWS

insuranceday
www.insuranceday.com

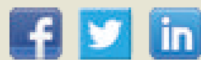
Market news, data and insight all day, everyday
Insurance Day is the world's only daily newspaper for the international insurance and reinsurance and risk industries. Its primary focus is on the London market and what affects it, concentrating on the key areas of catastrophe, property and marine, aviation and transportation. It is available in print, PDF, mobile and online versions and is read by more than 10,000 people in more than 70 countries worldwide.

First published in 1995, *Insurance Day* has become the favourite publication for the London market, which relies on its mix of news, analysis and data to keep in touch with this fast-moving and vitally important sector. Its experienced and highly skilled insurance writers are well known and respected in the market and their insight is both compelling and valuable.

Insurance Day also produces a number of must-attend annual events to complement its daily output. The London and Bermuda summits are exclusive networking conferences for senior executives; meanwhile, the London Market Awards recognise and celebrate the very best in the industry. The new Insurance Technology Congress provides a unique focus on how IT is helping to transform the London market.

For more detail on Insurance Day and how to subscribe or attend its events, go to info.insuranceday.com

Insurance Day, 119 Farringdon Road, London EC1R 3DA



Editor: Richard Banks
+44 (0)20 7017 4155
richard.banks@informa.com

Deputy editor: Scott Vincent
+44 (0)20 7017 4131
scott.vincent@informa.com

Senior reporter: Christopher Munro
+44 (0)20 7017 5796
christopher.munro@informa.com

Global markets editor: Graham Village
+44 (0)20 7017 4020
graham.village@informa.com

Global markets editor: Rasaad Jamie
+44 (0)20 7017 4103
rasaad.jamie@informa.com

Managing editor: Greg Dobie
+44 (0)20 7017 4145
greg.dobie@informa.com

Commercial director: Andréa Pratt +44 (0)20 7017 4708
Sales director: Andrew Stone +44 (0)20 7017 4027
Sponsorship manager: Josef Lanjri +44 (0)20 7017 6642
Senior account manager: Sirach Yeboah +44 (0)20 7017 7670
Marketing manager: Randeep Panesar +44 (0)20 7017 3809
Key accounts manager: Verity Blair +44 (0)20 7017 4998
Subscriptions account executive: Carl Josey +44 (0)20 7017 7952
Subscriptions sales executive: Adam Digby +44 (0)20 7017 7310
Head of production: Maria Stewart +44 (0)20 7017 5819
Advertising production assistant: Emma Wix +44 (0)20 7017 5196
Production editor: Toby Huntington +44 (0)20 7017 5705
Subeditor: Jessica Hills +44 (0)20 7017 5161
Subeditor: Ali Masud +44 (0)20 7017 5161
Production executive: Claire Banks +44 (0)20 7017 5821
Events manager: Natalia Kay +44 (0)20 7017 5173

Editorial fax: +44 (0)20 7017 4554
Display/classified advertising fax: +44 (0)20 7017 4554
Subscriptions fax: +44 (0)20 7017 4097

All staff email: firstname.lastname@informa.com

Insurance Day is an editorially independent newspaper and opinions expressed are not necessarily those of Informa UK Ltd. Informa UK Ltd does not guarantee the accuracy of the information contained in *Insurance Day*, nor does it accept responsibility for errors or omissions or their consequences.

ISSN 1461-5541. Registered as a newspaper at the Post Office. Published in London by Informa UK Ltd, Mortimer House, 37/41 Mortimer Street, London, W1T 3JH

Printed by Newsfax International, Unit 16, Bow Industrial Park, Carpenters Road, London E15 2DZ

© Informa UK Ltd 2012.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means electronic, mechanical, photographic, recorded or otherwise without the written permission of the publisher of *Insurance Day*.

Resolution to restructure with Tiner to retire

Change will comply with new UK rules on listed companies

Peter Birks
IIN24 editor

UK-based life assurance consolidator Resolution is to stop looking for new acquisitions, abandon plans to sell of operating businesses as independent entities and will restructure back into a single company, with John Tiner, the present head of the management company, heading into retirement.

Listed company Resolution, management firm Resolution Operations and life assurer operation Friends Life will be overhauled, with Andy Briggs becoming chief executive. Tim Tookey, who recently joined from Lloyds, will become chief financial officer. Mike Biggs will remain chairman, while Clive Cowdery will join the main board.

The company has scrapped its return target. The company's share price immediately rose more than 8%, erasing the fall since the company abandoned plans to return £250m ($392.3m) to shareholders by July 20.

Resolution, the second company to bear that name after Cowdery sold his first Resolution to Pearl in May 2008 but kept the rights to the name, was set up to repeat the trick performed with the first Resolution: to buy, merge, rationalise and sell life assurers. However, it found purchases harder to come by.

"An entirely conventional company will be the end result of this, although we would hope to be more value-focused than the life insurance sector has exhibited over the past decade"

Clive Cowdery
Resolution

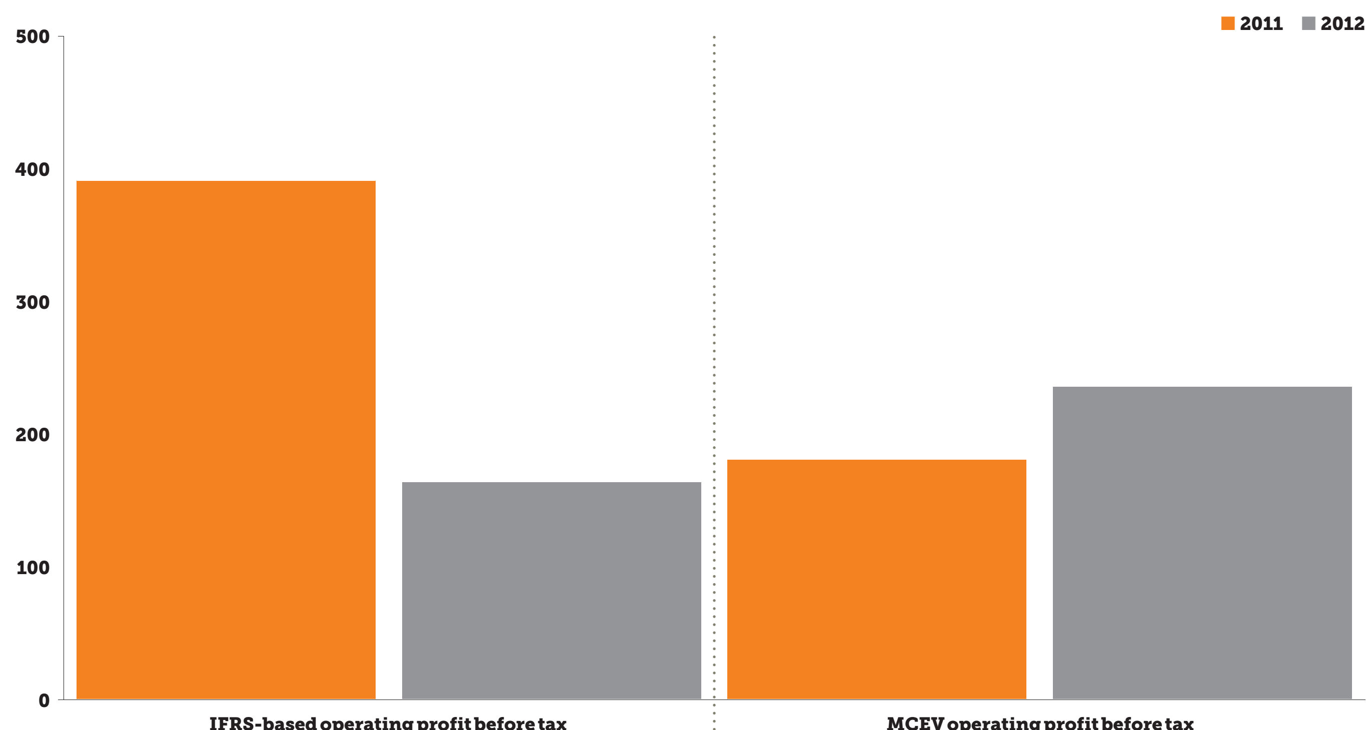
Resolution Operations charged Resolution fees for its services. That will stop. Resolution said: "The operating agreement under which Resolution Operations has provided mergers and acquisitions, strategic and oversight services and skills to the company will end at the latest on December 10, 2013, which is the earliest date on which the operating agreement could be ended in accordance with its original and current terms."

Resolution Operations will continue to seek acquisitions, but as a separate privately owned entity. The change will comply with new UK rules on listed companies managed by external unlisted businesses and will remove the threat owners of some tracker funds might have to sell Resolution stock.

Chief financial officer, Jim Newman, said the company plans to retain its Guernsey domicile. The boards of Friends Life, Resolution and Resolution Operations will be merged. Cowdery said: "An entirely conventional company will be the end result of this, although we would hope to be more value-focused than the life insurance sector has exhibited over the past decade."

The news came as Resolution reported a first-half gain of £163m, down from £390m in 1H 2011. The disappointing number reflected "lower expected investment returns on the in-force book, a disappointing performance in the international businesses partly offset by reduction in costs of new business." The interim dividend was raised by 5% to 7.05p a share.

Graph: Resolution first-half financial highlights, 2011 versus 2012 (£m)



Source: Resolution announcement

NEWS

Series of major losses needed to turn airline market

Christopher Munro
Senior reporter

Only a series of major losses will cause the global airline insurance market to harden sufficiently for premium volumes to rise, with the sector's recent impressive loss record continuing to allow rates to reduce, *writes Christopher Munro*.

Losses during the first seven months of the year are at their lowest in any of the past five years, with only $402m of claims having been registered in 2012 by the end of July. This is less than half that recorded in 2011, when the $833m of claims filed during the seven months to the end of July was once again one of the lowest seen in recent years.

Last year was the first time in five years the aviation market made a profit and as things stand the sector will once again make a return in 2012.

The present loss figure of $402m includes $141m of hull losses, with no major liability claims. A further $261m is added on owing to the attritional losses airlines have incurred, Willis said in the latest edition of its *Insight* publication.

"This excellent performance means it is now three years since the last major catastrophe.

"The Air France loss in June 2009 provided only a short blip in the downward trend of the market.

"It is therefore likely it will take a number of major losses to have any impact on market direction."

Attritional losses are playing an increasingly prominent role in the airline insurance market as improved safety precautions keep claims at historically low levels.

"[Attritional losses] are increasingly significant in relation to the much smaller overall total," Willis said.

According to Willis, premium volume has fallen 5% so far this year, while at the same time hull and liability exposure levels have continued to rise by single-digit percentages. "Capacity levels remain buoyant and the loss experience continues to be excellent.

"Overall market conditions therefore remain stable with the balance of power continuing to favour the buyers," the global broker said.

Versicherungskammer Bayern plans far-reaching overhaul

Germany's largest public-law insurer, Versicherungskammer Bayern (VKB), appears to be preparing for a huge restructuring, *writes Herbert Fromme, Cologne*.

Chief executive, Frank Walthes, who has held the post since February and came from Allianz, hopes this will help to counteract low profitability weaknesses in the core property/casualty (p/c) business. The renewal process will begin in the management board: VKB is setting up a central operation for all companies in the group – that is, also for the p/c, life and health insurers.

Robert Heene, until now responsible for private clients in p/c, will head operations and claims handling for the whole group. Franz Kühnel will remain head of sales. Rainer Fürhaupter will take over private clients from Heene and will thus be responsible for the all p/c. Claims handling for large losses in industry and the municipalities with their hospitals will also be part of his responsibilities.

VKB, with premiums of €6.6bn ($8.1bn), is the largest of the regionally active savings banks insurers, but was only moderately profitable in 2011 with a €91m profit. With this action, Walthes is reacting to growing difficulties in holding on to the client base.

> **"Our problem is quite clear: we have not been able to win those customers with just one policy in sufficient numbers for other offers"**
>
> **Frank Walthes**
> **VKB**

The company for a long time had a monopoly in buildings insurance in Bavaria. Even after this had been lifted, a market share of 80% remained – which has, however, melted down to only 70% at present. As well as Bavaria, VKB is active in Berlin and Brandenburg, and also in the Saarland and the Rheinland Palatinate.

The meltdown is not surprising, given VKB used to have a mono–poly. But it seems the company cannot put to use the present huge client base. "Our problem is quite clear: we have not been able to win those customers with just one policy in sufficient numbers for other offers," Walthes said.

Clients who have motor, life or health insurance with another company can in turn easily be approached by that company with regard to cover for buildings.

Germany's Direct Line embarks on Ford trial

Direct Line's German subsidiary has reached an agreement with the vehicle manufacturer Ford regarding test sales via Ford dealers, Germany head Uwe Schumacher said, *writes Herbert Fromme, Cologne*.

A pilot to find out whether the sale of Direct Line policies could function as a secondary brand for Ford will run for a couple of months, Schumacher told *Insurance Day*, adding Ford's existing relationship with Nürnberger Versicherung will remain in force.

For Direct Line, a deal with Ford would enhance its sales via dealers considerably. The company has been co-operating for years with Renault, Nissan, Dacia, Hyundai and Subaru. The manufacturers are an important distribution channel for the insurer; close on 20% of new business is generated in this way. The car manufacturers also profit because accident-damaged vehicles are directed to their workshops, and because they earn commission.

The German group is certainly an asset to parent group, RBS. At the end of 2011, the company had insured 439,000 motor vehicles, plus mopeds and other policies.

On premium income of €162m ($199m), a small profit of €2.2m remained, well above the €700,000 profit of the year before.

The investment result dropped back because of writedowns from €13m to €7m.

Schumacher expects an initial public offering would give Direct Line insurers more freedom for expansion. He also did not rule out acquisitions in Germany, acknowledging the market was too fragmented and pushing towards consolidation.

Hurricane Andrew: the storm that manage risk

Today marks the 20th anniversary of the formation of hurricane Andrew, the storm that prompted widespread changes to the way the reinsurance sector functions

Scott Vincent
Deputy editor

August 16, 1992 saw the formation of the tropical depression that would evolve into hurricane Andrew, the first named storm of that year's Atlantic season. It later became one of only three category-five US landfalls during the 20th century. Andrew was to become the most damaging hurricane in the history of the insurance industry, retaining its record for 13 years until the arrival of hurricane Katrina in 2005.

Andrew was significant for more than just the size of the loss. In the aftermath of the storm many of the characteristics of modern catastrophe risk management were developed: the emergence of catastrophe-modelling tools, the beginnings of the rise to prominence of cat bonds and Bermuda's growth into a major international reinsurance hub. After Andrew, a more modern, technical reinsurance world began to emerge. The fallout from the storm caused a shake-up in the way catastrophe risks are managed in the industry.

The immediate aftermath

Having formed as a tropical depression on August 16, Andrew was named on August 17 and became a hurricane five days later. Rapid intensification saw the storm reach category-five status before making landfall in Florida on August 23. Following extensive damage in Florida, the storm entered the Gulf of Mexico before making its final landfall in Louisiana as a category-three hurricane.

The scale of damage from Andrew's category-five landfall in Florida made it the costliest hurricane on record for insurers. Losses at the time were more than $15bn and the storm led to the bankruptcy of 11 insurers. Rates rose 300% in the south of Florida and more than one million people found their policies were not renewed following the storm.

The modelled world

Andrew was the largest insured loss on record and the industry had to rethink the way it dealt with catastrophe risk. The subsequent years would see a more technical, modelled approach to managing risk emerge. A new culture evolved, in which capital would no longer be allowed to be committed to risk without a technical approach being taken to manage that risk.

Andrew has been cited as the birth of catastrophe models. Modelling tools are commonplace in the modern reinsurance world, but it was only after Andrew take-up began to soar and an evolution in reinsurance underwriting took place.

The use of cat modelling was still in its infancy, but Andrew woke the market up to the need to get technical. Substantial evolution has since taken place to models, particularly in light of lessons learned following major hurricane losses in 2004, 2005 and 2008. Catastrophe models have never been universally popular and are frequently a target for blame in the aftermath of a major event, but it can be argued the technical approach following Andrew has helped transform the way reinsurers manage their exposures in the subsequent years.

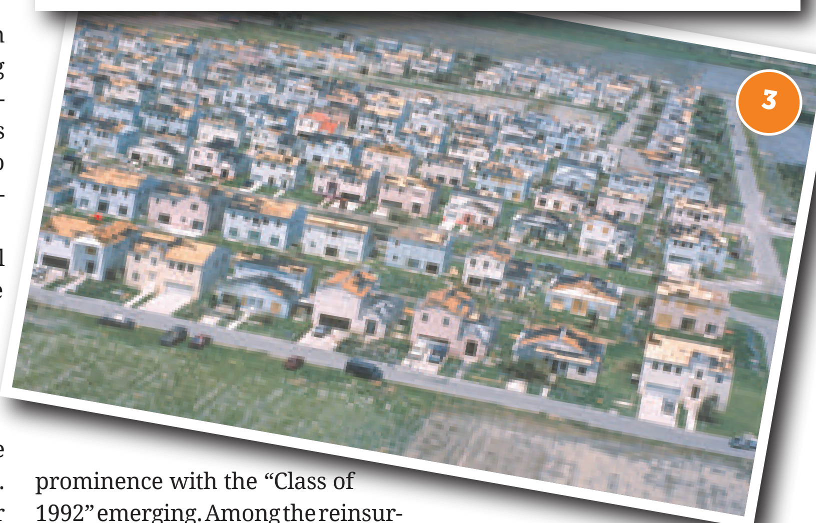
Bermuda's rise to prominence

The new generation of technical reinsurers that emerged following the storm needed a home and they turned to Bermuda, which had existed as an insurance market since the early 1960s when the first captive insurers arrived on the mid-Atlantic island. During the 1980s, familiar names such as Ace and Exel – later to rebrand as XL – emerged, but following Andrew the number of reinsurers on the island rapidly escalated.

The Bermudian market shot to prominence with the "Class of 1992" emerging. Among the reinsurers to launch were RenaissanceRe and PartnerRe, still part of the Bermudian reinsurance landscape today. Other Class of 1992 members were absorbed by their Bermudian colleagues – Mid Ocean and Global Capital became part of XL, while Ace acquired Tempest Re and CAT Ltd. IPC Holdings was a significant name in Bermuda's cat market until acquired by Validus in 2009.

Bermuda has subsequently retained its prominent position in the global reinsurance market, with similar floods of capital into the mid-Atlantic island following later major loss years such as 2001 and 2005. The island has benefited from its zero corporation tax regime and traditional London entities have also capitalised on this by redomiciling to Bermuda.

While the island had an insurance market before hurricane Andrew, it was Andrew that set Bermuda on the course that has seen it become such a prominent hub in the reinsurance world.



Map: Hurricane Andrew's path

Growth of the ILS market

The hard market that followed hurricane Andrew saw the inception of the insurance-linked securities (ILS) sector.

Catastrophe bonds allowed risk to be securitised and parcelled out to the capital markets. Some perceived these tools to be the revolution that would negate the need for a reinsurance sector, but the cat bond market was slow to develop.

Issuance volume really took off with cat bonds structured in the aftermath of the 2005 hurricane season. The ILS market is continuing to grow this year and now compliments the reinsurance sector it was once tipped to replace.

Political debate in Florida

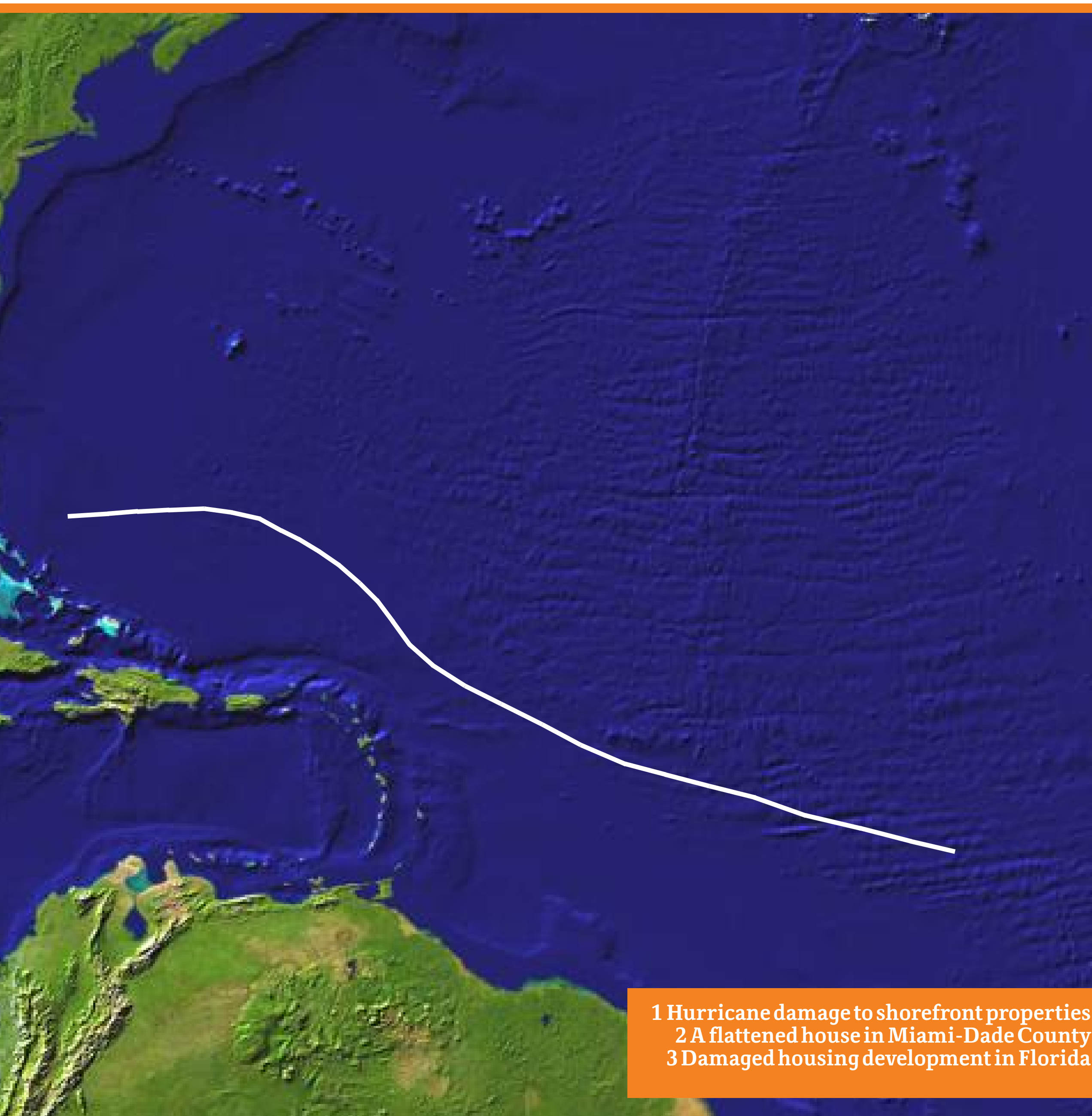
In Florida, where the bulk of Andrew's losses were recorded, the storm triggered a political debate regarding insurance that has re-emerged in the aftermath of each subsequent major loss in the state.

Widespread cover withdrawals and rate increases of close to 300% left many Floridians without cover in the aftermath of the storm. Insurance became a major political issue in the state.

The availability and affordability of insurance in Florida became a political issue once again in 2004, when the state was struck by four hurricanes: Charley, Frances, Ivan and Jeanne. Hurricanes Dennis, Katrina and Wilma struck Florida in 2005, causing an estimated $12bn in insured losses.

In each case, the industry response to a major loss has become a political issue because it left homeowners or businesses unable to find affordable cover. Florida has provided the clearest examples of insurance representing a systemic

changed the way reinsurers



1 Hurricane damage to shorefront properties
2 A flattened house in Miami-Dade County
3 Damaged housing development in Florida

LLOYD'S LIST
INTERNATIONAL

Insurance experts fear worst to come as 150 mph Andrew heads for Alabama and Texas

Killer hurricane hits Florida

US companies wait for claims

Banks fail to

Rudder clue

Hurricane Andrew in figures

$15.5bn Insurance payouts at time from Andrew

$57bn AIR estimated cost of Andrew event today

1m+ People were evacuated as storm neared

44 Deaths in Florida as a result of storm

730,000 Number of properties destroyed

Cat 5 Last category-five landfalling US hurricane

risk to society during the past 20 years and it was following Andrew that the troubles began.

Twenty years later…

The reinsurance world of today is very different from the market that existed before the catastrophic storm of 1992. The response to Andrew set a course for the industry to follow and the modern, technical reinsurer has benefited from the lessons of 20 years ago.

The subsequent years have not seen a storm of Andrew's ferocity hit the US; the only category-five Atlantic landfalls since occurred in Mexico and Nicaragua in 2007.

Andrew was eventually surpassed as the costliest Atlantic hurricane on record in 2005, when hurricane Katrina rewrote the record books. Hurricane Ike also topped Andrew's loss when it struck Texas in 2008. Both these storms provided their own lessons for the industry and helped catastrophe risk management to continue to evolve. ■

Table: Costliest hurricanes by insured losses, 1980 to 2011

Period	Event	Affected area	Overall losses ($m*)	Insured losses ($m*)	Fatalities
Aug 25 to Aug 30, 2005	Hurricane Katrina, storm surge	US: Louisiana (New Orleans, Slidell); Mississippi (Biloxi, Pascagoula, Waveland, Gulfport)	125,000	62,200	1,322
Sep 6 to Sep 14, 2008	Hurricane Ike	US, Cuba, Haiti, Dominican Republic, Turks and Caicos Islands, Bahamas	38,300	18,500	170
Aug 23 to Aug 27, 1992	Hurricane Andrew	US: Florida (Homestead); Louisiana; Bahamas	26,500	17,000	62
Sep 7 to Sep 21, 2004	Hurricane Ivan	US, Caribbean, Mexico, Colombia, Venezuela	23,000	13,800	125
Oct 19 to Oct 24, 2005	Hurricane Wilma	US, Bahamas, Cuba, Haiti, Jamaica, Mexico	22,000	12,500	42
Sep 20 to Sep 24, 2005	Hurricane Rita, storm surge	US: Florida (Keys); Louisiana (Lake Charles, Holly Beach, Cameron, New Orleans); Mississippi; Texas	16,000	12,100	10
Aug 11 to Aug 18, 2004	Hurricane Charley	US, Cuba, Jamaica, Cayman Islands	18,000	8,000	36
Aug 22 to Sep 9, 2011	Hurricane Irene, storm surge, floods	US, Canada, Caribbean	7,400	5,600	55
Sep 1 to Sep 9, 2004	Hurricane Frances	US, Bahamas, Canada, Turks and Caicos Islands, Cayman Islands	12,000	5,500	50
Sep 14 to Sep 22, 1989	Hurricane Hugo	US, Canada, Caribbean	9,600	5,100	116

*Original values
Source: Munich Re Geo Risks NatCatService

WORLD LOSS INTELLIGENCE/LIABILITY

Settlement: Manhattan appeals court revives Gen Re settlement

$500m Amount AIG boosted reserves and cash by in sham deal

NEW YORK: The US Second Circuit Court of Appeals in Manhattan has revived the $72m settlement General Reinsurance Corp reached with investors in 2009 over the company's participation in a sham reinsurance deal in 2000 and 2001 that enabled AIG artificially to boost reserves and cash by $500m.

The appellate court reversed a decision by US district judge Deborah Batts to deny class certification to investors, which had blocked the settlement, and returned the matter to her court to weigh the fairness of the deal. Investors, led by three Ohio pension funds, sued after regulators alleged the reinsurance deal entailed no transfer of risk and should have been accounted for as a loan.

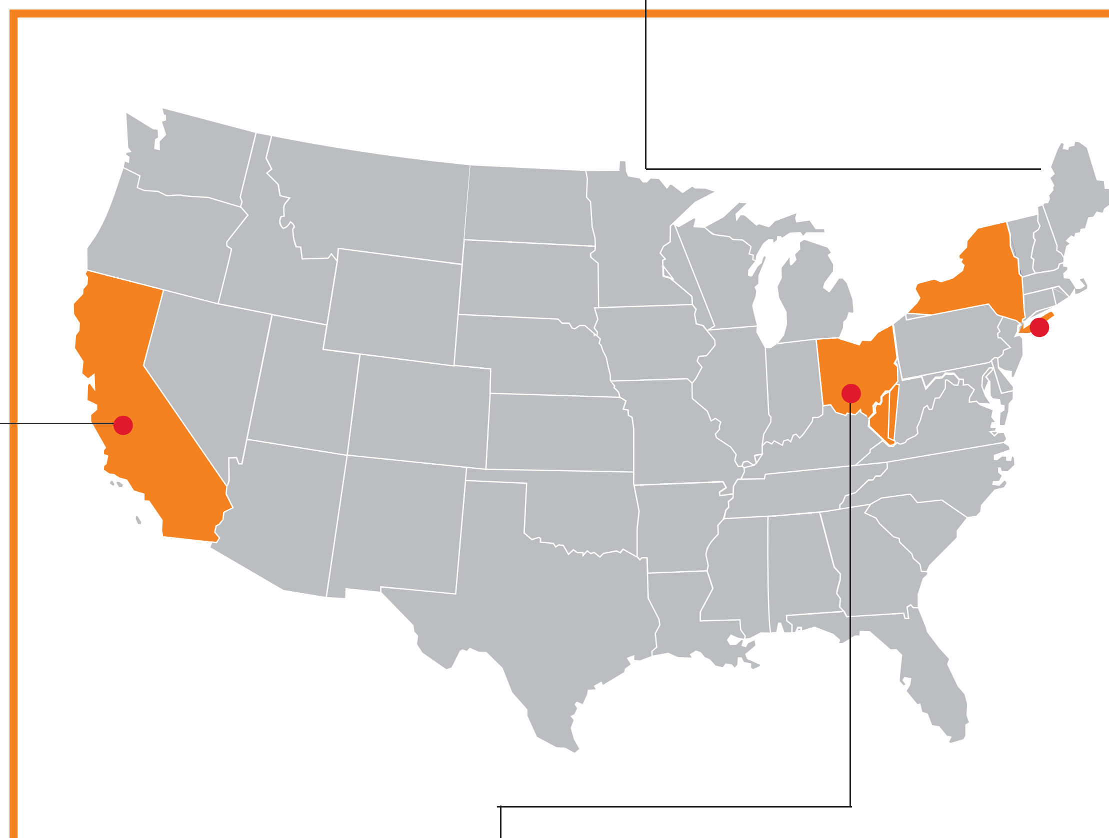
Money-laundering investigation: Standard Chartered fined $340m

NEW YORK: The state's superintendent of financial services has revealed Standard Chartered Bank will face a civil penalty of $340m to settle claims it hid transactions with Iran.

In addition, the bank will have to install personnel permanently within its New York branch to oversee and audit any offshore money-laundering due diligence and monitoring undertaken by the bank. Standard Chartered issued a statement saying a formal agreement containing the detailed terms of the settlement is expected to be concluded shortly.

AP Photo/Sang Tan

$340m Amount the bank has been fined



Court ruling: Insurers lose pollution case

CALIFORNIA: The state's Supreme Court has unanimously ruled insurers for the state are liable for tens of millions of dollars for the clean-up of the Stringfellow Acid Pits (*pictured*), a 17-acre industrial waste site in Riverside county, east of Los Angeles.

The court found consecutive insurance policies written by a number of carriers required the insurers to pay up to policy limits for the clean-up of contamination that eventually polluted groundwater.

The state's high court rejected insurers' argument they were liable for only a share of damages that occurred while a policy was in effect. "In cases such as this, it is impossible to prove precisely what property damage occurred during any specific policy period," Justice Ming Chin wrote. "The fact all policies were covering the risk at some point during the property loss is enough to trigger the insurers' indemnity obligation."

The state operated the Stringfellow site from 1956 to 1972; it was later declared a federal Superfund site. California has already collected $120m from other carriers. Attorney Roger Simpson, who represented the state, said insurers in the case may be liable for up to $60m in costs.

> **"The fact all policies were covering the risk at some point during the property loss is enough to trigger the insurers' indemnity obligation"**
>
> **Justice Ming Chin**

Wikipedia/USGS

Lawsuit: CNA units file suit over asbestos claims

ILLINOIS: Continental Insurance and Columbia Casualty, excess insurance units of Chicago-based commercial lines group CNA Financial, have filed a lawsuit in an Illinois county court against Hennessy Industries and 16 primary insurers, asserting they are not liable for pre-1981 asbestos claims because their insured, Ammco Tools, has not shown its primary cover had been exhausted.

Continental is seeking to recover the $3m it has already paid out on behalf of Ammco. Hennessy is the successor-in-interest to Ammco.

16 Primary insurers named in Continental's lawsuit

$3m The amount paid to Ammco Continental is seeking to recover

IN TOMORROW'S WORL[D] LIVES & LIV[…]

Y & SETTLEMENTS

Compensation: Ex-border chief awarded compensation for constructive dismissal

UK: The former chief of the UK Border Force has been awarded a six-figure sum of compensation on the grounds of constructive dismissal.

Robert Brodie Clark took the government department to an employment tribunal after accusing UK home secretary, Theresa May, of undermining his authority for the "political convenience" of the Conservative-Liberal Democrat alliance.

He was suspended from his role, which paid a salary of £135,000 ($211,607) annually, in November last year amid a disagreement over the proposed relaxation of security checks on passengers.

His damages settlement was agreed in March this year, but neither side disclosed the sum he had received. However, the UK Border Agency's annual accounts have now revealed he was granted £225,000 "without an admission of liability or wrongdoing from either side."

Brodie Clark had accused Theresa May (inset) of undermining his authority

£225,000 Damages settlement Brodie Clark was granted

£135,000 Salary he was paid as head of border agency

£419,000 Amount awarded to coal-worker

Compensation: Injured UK worker awarded £419,000

UK: A coal-worker who was badly injured in a car crash at work has received more than £419,000 ($656,911) in compensation.

He suffers from constant pain in his right shoulder and arm since the accident, when a work colleague crashed the van they were travelling in into a tree. He needed three operations on his shoulder and a further three operations to fit a spinal cord stimulator in an effort to control his pain.

He and a colleague were travelling to a job, when his colleague swerved to avoid wildlife in the road and crashed into the tree.

The man was wearing a seat belt and a hard hat but the impact of the accident initially left him with pain and restricted movement in his neck and right shoulder.

The coal-worker was told by paramedics at the scene he was likely to be suffering from whiplash.

He underwent investigative surgery but as a result developed septic arthritis which worsened the problems with his shoulder. Further procedures to surgically manipulate his shoulder failed and he was diagnosed with chronic pain syndrome.

The worker had to take six months off work and eventually returned on light duties for a month before being made redundant. His employer admitted liability and settled the claim out of court.

LD LOSS INTELLIGENCE:
VELIHOODS

Sector stocks boosted by prospect of action by central banks

Stocks of major European insurers, under intense pressure only a few weeks earlier, post double-digit gains

Headquarters of the Federal Reserve

Rasaad Jamie
Global markets editor

Insurance and reinsurance stocks, on something of a rebound in recent weeks, further improved their performance for the week ending August 9. Notably, quite a few of the big European insurance groups (including Allianz, Axa, Aviva and Generali, all of which had been under intense pressure only a few weeks earlier) posted double-digit gains for the period. For example, the share price of Generali, which (along with Italy's sovereign credit rating) came under particular pressure from the financial markets in recent months, rose 12.4% during the week under review. Axa, seen as similarly exposed to the sovereign debt issue, rose 16% over the same period.

Second-quarter earnings

Sector stocks are clearly benefiting from their reporting of much-improved second-quarter results. Munich Re, for example, bolstered by a €1.6bn ($1.96bn) net gain during the first half of this year, is now indicating it is likely to exceed its original earnings guidance of €2.5bn for 2012, albeit only "slightly". This is broadly in line with the slight boost given to stocks in most other sectors by second-quarter earnings reports. According to an Standard & Poor's IQ report, of the 407 companies in the S&P 500 that reported their second-quarter earnings by the beginning of the week under review, 65% had beaten analysts' expectations and 40% reported double-digit growth in earnings compared with the same period in 2011.

But another development during the week – the increasing sense of expectation by the financial markets the European Central Bank (ECB), the US Federal Reserve Bank and the People's Bank of China will act soon will soon institute measures to stimulate their respective economies – proved significantly more of a boost.

Ironically, only a week or so earlier, the market's response to the same sentiment had been pretty much the opposite when the president of the ECB, Mario Draghi,

65% Of the S&P500 firms to file Q2 figures beat expectations

40% Posted double-digit earnings growth

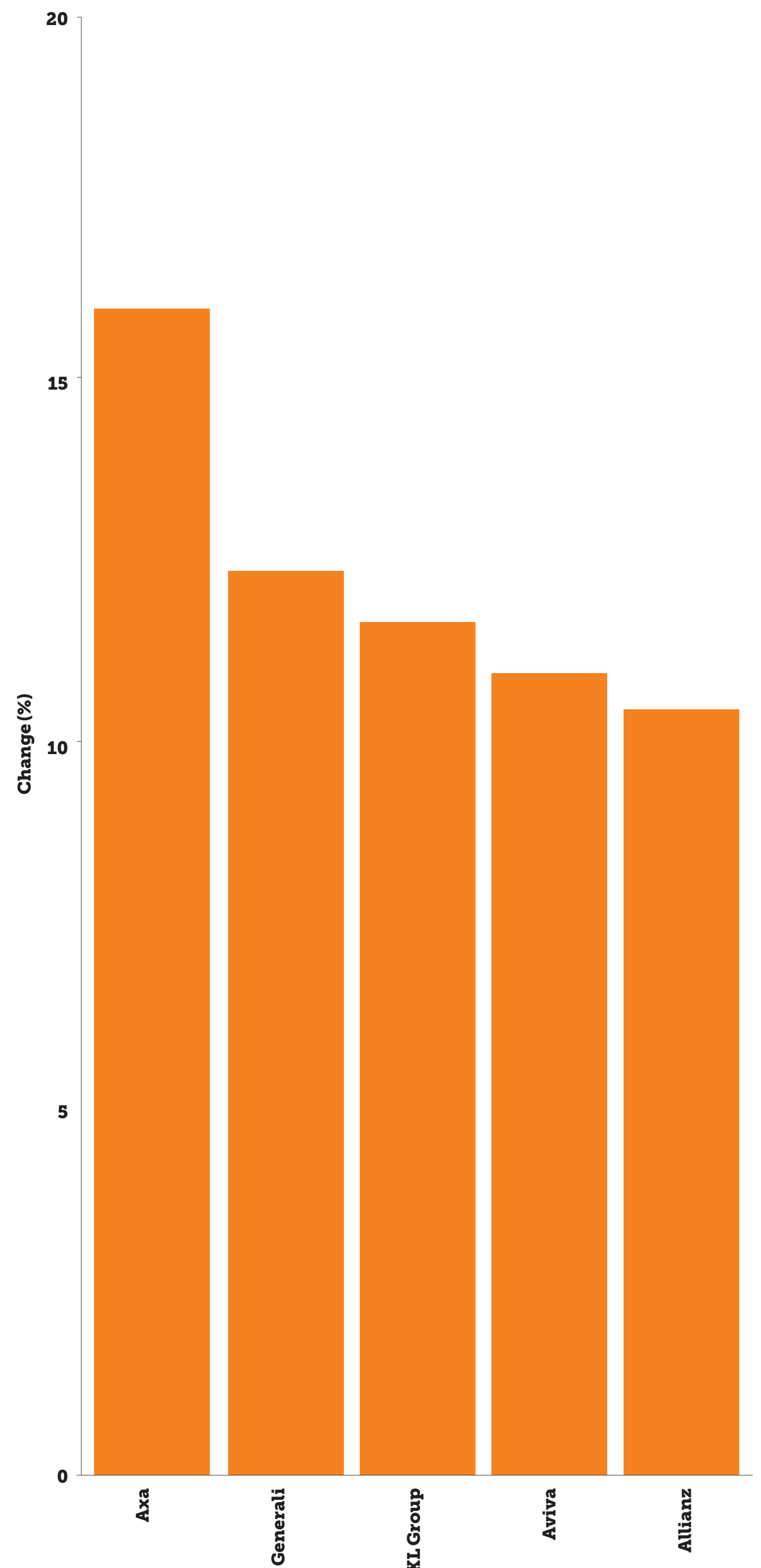
Table: Share prices as at close August 9, 2012

Company/group	Currency
Ace	US dollar
AIG	US dollar
Alleghany Corporation	US dollar
Allianz	Euro
Allstate	US dollar
Alterra	US dollar
Amlin	Pence
Arch Capital	US dollar
Aspen	US dollar
Aviva	Pence
Axa	Euro
Axis Capital	US dollar
Berkshire Hathaway (A)	US dollar
Catlin	Pence
Chubb	US dollar
CNA Financial	US dollar
Endurance Specialty	US dollar
Everest Re	US dollar
Generali	Euro
Hannover Re	Euro
Hiscox	Pence
Insurance Australia Group	Australian dollar
Korean Re	South Korean won
Montpelier Re	US dollar
MS&AD Insurance Group	Yen
Munich Re	Euro
NKSJ Holdings	Yen
PartnerRe	US dollar
Platinum	US dollar
QBE Insurance Group	Australian dollar
RenaissanceRe	US dollar
RSA	Pence
Scor Paris	Euro
Scor Zurich	Swiss franc
Swiss Re	Swiss franc
Travelers Companies	US dollar
Tokio Marine Holdings	Yen
XL Group	US dollar
Zurich Insurance Group	Swiss franc

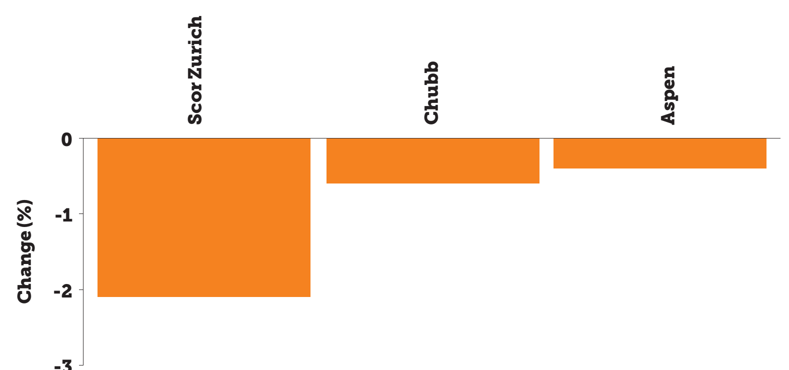
Source: Insurance Day

Dec 31, 2011	Aug 2, 2012	Aug 9, 2012	Change from Aug 2 (%)	Capitalisation ($m)
70.12	72.56	73.12	0.8	24,765
23.20	30.84	32.51	5.4	58,323
285.29	340.05	341.38	0.4	5,779
73.43	78.18	86.35	10.5	48,248
27.41	36.53	38.05	4.2	18,696
23.63	22.99	23.46	2.0	2,358
313.90	370.00	382.00	3.2	2,962
37.23	39.22	39.32	0.3	5,326
26.50	29.21	29.09	(0.4)	2,080
300.80	285.20	316.70	11.0	13,890
10.05	9.70	11.25	16.0	31,672
31.96	32.54	33.93	4.3	4,391
114,755.00	126,290.00	126,800.00	0.4	118,051
398.70	424.00	444.70	4.9	2,496
69.22	72.75	72.34	(0.6)	19,528
26.75	25.91	26.26	1.4	7,074
38.25	35.98	36.13	0.4	1,568
84.09	102.79	103.51	0.7	5,460
11.63	9.61	10.80	12.4	20,546
38.30	47.87	49.50	3.4	7,339
373.50	442.90	450.60	1.7	2,680
2.98	3.74	3.76	0.5	8,230
15,000.00	10,200.00	10,850.00	6.4	1,098
17.75	20.67	20.99	1.5	1,215
1,426.00	1,257.00	1,292.00	2.8	6,925
94.59	113.33	118.45	4.5	28,745
1,510.00	1,482.00	1,525.00	2.9	30,653
64.21	72.88	74.00	1.5	4,777
34.11	38.10	39.35	3.3	1,307
12.95	14.18	14.47	2.0	15,760
74.37	72.55	74.43	2.6	3,853
105.20	109.90	113.20	3.0	6,104
18.06	19.09	19.50	2.1	4,415
21.50	23.60	23.10	(2.1)	4,439
47.87	60.35	60.50	0.2	22,957
59.17	62.87	63.89	1.6	24,621
1,705.00	1,803.00	1,827.00	1.3	18,308
19.77	20.68	23.10	11.7	7,200
212.50	215.70	226.00	4.8	34,096

Graph: This week's winners...



...and losers



first said the ECB would do everything in its power including another round of purchasing sovereign bonds (by implication, Spanish and Italian, given the pressure these countries were under) to defend the euro but then did not announce any concrete measures towards this end over the following days.

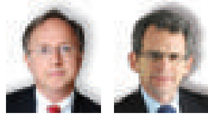
Reassessment

But never underestimate the markets' ability to reassess and to reinterpret. This process was helped by a statement by Spain's prime minister, Mariano Rajoy, which seemed to suggest he had been on the verge of seeking a sovereign bailout but changed his mind when the ECB made its announcement. The markets' interpretation of this was Rajoy was privy to information and reassurances they were not. Interests rates on Spanish 10-year bonds, which had shot up to well above the critical 7% mark after it seemed to the bond markets the ECB had no intention of doing anything despite Draghi's statement, dropped immediately.

European stock markets, which were significantly more encouraged by Draghi than the bond markets, reached a four-month high during the week under review. The markets' expectation the ECB will embark on another sovereign bond-purchasing spree was further encouraged by a report by the ECB during the week suggesting the eurozone economy is likely to contract more sharply this year than in previous estimates. The markets also fixed on a statement by the People's Bank of China in which it said it is minded to institute measures to help investment sentiment in Asia. This latter development was further reinforced by disappointing economic data from China, which suggested consumer inflation was at a 30-month low as industrial output grew at its slowest pace in three years. As far as the markets were concerned, China was left with no choice but to stimulate its domestic economy, which had been losing momentum since the beginning of last year. ■

Libor scandal presents exposure

Shareholder lawsuit against Barclays could become template for other legal actions



Mark Leimkuhler and Joseph Ruby, partners
Lewis Baach PLLC, Washington DC

The Libor scandal has already spawned lawsuits against leading banks and their officers and directors, with more certain to follow. Liability estimates range as high as $40bn. Banks and their insurers are assessing whether coverage exists and insurers also may be scrutinising the accuracy and completeness of banks' underwriting submissions.

The scandal

The scandal over Libor is potentially far-reaching because Libor is the benchmark used to set interest rates in many derivative contracts, adjustable mortgages and other loans. Libor is an average of daily submissions by leading "panel" banks, but the submissions are supposed to be estimates of each bank's borrowing costs, not actual charged rates.

Thus, banks not acting in good faith were in a position to manipulate rate submissions to affect profits on their derivative contracts. Barclays, which has settled with regulators, has publicly admitted it attempted to fix Libor.

Deutsche Bank and UBS have reportedly admitted involvement to regulators. They and other banks, including Citibank, Bank of America, JP Morgan Chase, Royal Bank of Scotland and HSBC, are under investigation and defending private lawsuits.

Two types of manipulation occurred. From 2005 to 2008, Barclays and other banks tried to manipulate Libor on specific dates. Although any one bank's submission could move Libor only slightly, small moves could affect profitability on large, highly leveraged transactions whose rates were linked to Libor as of a given date. Barclays has also admitted its traders sought favours from other banks to coordinate efforts to move Libor up or down on certain dates.

The second type of manipulation occurred during the financial crisis in 2008 and 2009. As the crisis deepened, it appears bank managers feared their publicly available Libor submissions might reveal financial weakness. Some banks may have made submissions well below actual borrowing costs for long periods.

There is circumstantial and statistical evidence Libor submissions from many banks were artificially low during this period. Barclays has alleged a Bank of England (BoE) official pressured it to suppress Libor submissions (a charge the BoE denies). There may also have been collusive rate-setting – which Barclays has denied – and other banks may have independently suppressed their submissions.

Claims against banks

Government investigations of banks continue and are likely to result in serious charges and substantial fines on top of the banks' own legal fees. If the Barclays settlement provides any guidance, regulatory settlements will require other banks to admit wrongdoing, which is likely to generate many new lawsuits.

The first private lawsuits emerging from the Libor scandal allege contributor banks colluded to suppress Libor rates in violation of US anti-trust laws, allowing them to pay artificially low interest rates to plaintiffs.

One early action, brought by Charles Schwab last year, alleges an anti-trust and fraud conspiracy among panel banks to suppress Libor to lower payments on investments sold to Schwab affiliates. This suit has been consolidated with others alleging anti-trust and other claims.

Another early suit, brought by the City of Baltimore and a Connecticut pension fund for firefighters and police, alleges they were cheated out of millions in interest rate swaps because the income streams paid by panel banks were based on suppressed Libor rates.

Other plaintiffs have alleged violation of anti-fraud provisions of US commodities exchange laws. Last month, a shareholder class action was filed against Barclays, its former chairman and its former chief executive alleging the defendants participated in Libor manipulation that inflated the value of Barclays shares in violation of US securities laws (Barclays shares have fallen in value by one-third since April).

Barclays: the bank has admitted it attempted to fix Libor

Small community banks also claim losses. Two smaller banks, one in Wisconsin and one in New York, have filed class actions claiming millions in lost interest on loans tied to Libor. The Wisconsin bank alleges larger banks intended to harm small banks, which depend on income from mortgages and other loans linked to Libor.

Insurance issues

Most lawsuits name only banks as defendants, not officers and directors, and do not allege securities law violations. These actions are unlikely to implicate directors' and officers' (D&O) coverage. But the shareholder suit against Barclays and its former chairman and chief executive may do so and could be a template for lawsuits against other banks and managers as their culpability is confirmed.

Such complaints are likely to allege fraud or other intentional conduct, which is generally excluded. However, in many policies the exclusion is not triggered without a final adjudication of intentional conduct. Insureds may demand insurers front defence costs and liability, if established by settlement rather than final adjudication, might be covered also.

> **Admissions of wrongdoing may affect coverage under any kind of policy. The Department of Justice's non-prosecution agreement with Barclays, for example, required Barclays to admit Libor manipulation by its personnel. Other banks may be forced to admit wrongdoing in regulatory settlements**

Admissions of wrongdoing may affect coverage under any kind of policy. The Department of Justice's non-prosecution agreement with Barclays, for example, required Barclays to admit Libor manipulation by its personnel. Other banks may be forced to admit wrongdoing in regulatory settlements.

D&O policies vary in their exclusions for intentional acts and the precise nature of the admission may determine if the exclusion applies. Further, insurers may argue admissions compromise the defence of claims and thus breach the duties of assistance and cooperation owed to insurers.

Some panel banks may carry errors and omissions coverage, which could be implicated by Libor-related litigation. Bankers' professional liability coverage, for instance, insures against liabilities arising from professional services banks provide to clients.

The UK's Financial Services Authority has asserted Barclays enters into swaps with clients to facilitate transactions for them. Any alleged client losses from such transactions might trigger professional liability coverage.

The alleged Libor manipulation began at least seven years ago and the potential exists for insurers to seek rescission based on misrepresentations or nondisclosures during policy placement.

The shareholder suit against Barclays, for instance, alleges Barclays' Security and Exchange Commission filings "falsely and misleadingly represented... it was compliant with all applicable securities laws and regulations". However, some D&O policies sharply limit rescission rights.

Moreover, an insurer seeking rescission must often "tender" premiums to its insured with interest or deposit them with the court. Finally, the right to rescind may be waived if not exercised within a reasonable time.

With the notoriety surrounding Barclays' admitted wrongdoing, its insurers might already be deemed on notice of a potential basis for rescission. If other banks admit wrongdoing, their insurers likewise may have to move quickly to evaluate whether they were misled by false or incomplete underwriting submissions and act within a reasonable time if they decide to seek rescission.

While Libor-related complaints continue to be filed, new plaintiffs will have to wait their turn. The judge handling the consolidated actions announced last week she is staying any new Libor-related lawsuits until she rules on motions to dismiss the pending cases. ■

Is Jackson the new Woolf?

Nik Rochez, partner
Hill Dickinson

As someone with some "history" in civil litigation, I was asked recently by a junior (OK, younger) colleague whether I thought the UK's Woolf Reforms of the 1990s had "worked".

Are the Jackson Reforms (hailed as the biggest shake-up in civil litigation since Woolf) necessary because Woolf "went wrong"? Will they "work" or will they flounder? Why are we where we are? Is the world a better place since Woolf?

Instinctively, on the last point, my answer is "of course". We have a clearly structured approach to litigation – defined pre-action conduct, case management, a culture of striving to understand the detail of a dispute at an earlier stage and therefore earlier settlements. Although I still miss the trial-by-ambush approach, all of this must be applauded.

But still we have, from an insurer's perspective certainly, a very expensive system. Costs can (and do) outstrip damages. Front-loading is great, but sometimes provides an opportunity to spend money quickly without necessarily the incentive then to compromise. Sometimes, pre-Woolf, the passage of time was a great healer.

Revisiting the Woolf proposals, it is striking how similar some were to what Lord Justice Jackson and the Ministry of Justice (MoJ) are aiming for now. Woolf's aim was to make civil litigation "more affordable, more predictable and more proportionate".

The world is a different place. When Woolf started his review 17 years ago, my mobile phone resembled a brick. To speak to a judge, I went to court. Today, I rely on an iPad and conduct detailed court hearings over the telephone. My point? We are practicing in very different times and things have developed in a way perhaps no-one would have predicted.

Does this mean Woolf did not work? Not quite.

The world is a different place. When Woolf started his review 17 years ago, my mobile phone resembled a brick. To speak to a judge, I went to court. Today, I rely on an iPad and conduct detailed court hearings over the telephone. My point? We are practicing in very different times and things have developed in a way perhaps no-one would have predicted.

Access to justice has been enhanced not only through conditional fee arrangements and after-the-event insurance (which Woolf did expect), but through technology too – the role of "claims farmers" has evolved, as has their use of data sources, social and digital media to attract claims. Woolf saw legal aid funding of pre-litigation steps and alternative dispute resolution as an important ingredient in the reforms.

So, no, to say Woolf did not work would be unfair. But lessons can be learned and predictions made by looking at how the effect of those reforms developed in a changing world. Whether the Jackson LJ and MoJ reforms "work" will depend, I think, on the appetite among the legal and insurance professions to make them achieve their aims. ■

Indemnity – because you're worth it

Thomas Blackburn,
national advocacy manager
Just Costs Solicitors

The UK case of *F&C Alternative Investments v Barthelemy & another* [2012] might, on the face of it, seem unremarkable.

It was an appeal against Justice Sales' judgment on two aspects of his costs decision: first, the claimant does pay the defendant's costs on the indemnity basis after January 16, 2010; second, the claimant does pay 3%, then 10%, then 40%, then 22% interest a year on those costs (different rates applying to different periods).

The appeal succeeded in its entirety. The main point is not the eye-watering rates of interest that were awarded as they were overturned and 3% above the Bank of England base rate was inserted instead.

The fascinating aspect is how the parties got caught up in the frenzy of indemnity basis costs.

For all those non-costs aficionados, costs are usually assessed on the standard basis, where any doubt the costs master (or assessing judge) has will go in favour of the paying party.

Under the indemnity basis this doubt goes in favour of the receiving party.

Parties think (erroneously as it turns out) an indemnity costs order is a blank cheque. It is not.

Master Gordon-Saker (who sits in the senior court's costs office and is tipped by many to become the senior costs judge once the excellent master Hurst retires shortly) is known for many first-rate judgments on difficult issues.

He is also known to state on many an occasion "costs masters very rarely have doubts".

And there we have it. Only when there is doubt does the standard/indemnity basis come into play. However, those six costs masters who make up the senior courts costs office, very rarely have doubt when assessing a party's costs.

A lot of money is wasted chasing expensive indemnity basis costs orders and yet most of the time it makes very little (if any) difference. One has to wonder if it is worth it. ■

The Lord Chancellor's discount rate consultation

Following our article (*Insuranceday.com*, Jul 19) considering the impact of revisions to the present discount rate applied to lump sum injury awards, the Ministry of Justice has published its consultation paper, Damages Act 1996: The discount rate – how should it be set? The consultation closes on October 23.

As discussed in this column, it is expected the Lord Chancellor will cut the discount rate from its existing level of 2.5%. A best estimate is either zero or 1%, with the consequence of increased awards to claimants. This would affect reserves, reinsurance recoveries and possibly premiums.

The purpose of the paper is to canvass views, not on the level of the discount rate itself, but on the methodology by which the discount rate is set. Two options are proposed; a methodology based on index-linked government stock (ILGS) and a mixed portolio methodology.

In considering these options, the Lord Chancellor will be looking for the methodology that produces the most accurate discount rate.

Consultees are also invited as to propose an alternative approach. The aim is for the chosen methodology to produce a discount rate that will be applicable for the foreseeable future; that may necessitate a single discount rate, or two or more rates.

The paper indicates the purest solution would be individual discount rates in individual cases based on the yields available on the day of settlement or the damages award. However, to encourage settlement and simplify litigation, a general discount rate is needed.

The consequences for defendants and their insurers in paying awards are not a matter to be taken into account in deciding the discount rate and its methodology. However, the impact of the choice of methodology on small businesses will be relevant. It may be the consequent increase in premiums as a result of higher damages awards is best argued in terms of its effect on small businesses.

The paper provides the insurance industry the opportunity to champion a methodology not based on ILGS but on a mixed portfolio reflecting the reality of claimants' actual investment strategies, thus minimising any decrease in the discount rate and the consequent impact on the value of awards. In our view, a mixed portfolio is the most appropriate basis for setting the discount rate both in terms of risk and return.

The paper provides the insurance industry the opportunity to champion a methodology not based on ILGS but on a mixed portfolio reflecting the reality of claimants' actual investment strategies, thus minimising any decrease in the discount rate and the consequent impact on the value of awards. In our view, a mixed portfolio is the most appropriate basis for setting the discount rate both in terms of risk and return.

In responding to the consultation, insurers should consider the prospect of settlement of cases on a periodical payment basis, given the lack of risk to claimants in terms of investment, mortality and inflation, and the risks associated for insurers with periodical payments may be outweighed by the costs associated with a lower discount rate.

In the meantime, claims teams should identify all cases that can reasonably be compromised now on a 2.5% basis and seek to do so.

We anticipate a reluctance on the part of claimant advisers to settle now, given the prospect of a lower discount rate and the 10% uplift on general damages due to take effect next April. Conditional settlements based on future adjustment to the discount rate should be avoided.

We will continue to update you on developments in relation to this consultation. ■

Peter Walmsley and James Dadge are partners at Clyde & Co

insuranceday
www.insuranceday.com

Young Broker of the Year award now open for entries

The London Market Awards wants to hear from the broking leaders of the future, so get your entries in now

Greg Dobie
Managing editor

Brokers remain essential to the continued success of the London subscription market. However, the reality is the space in which they operate is also changing fast – from a transaction basis to a fee-earning consulting role.

Demands placed on brokers to deliver real value for their customers are therefore greater than ever. Prospects for a hardening market present even more challenges for the broking community.

Only the brightest, most innovative and transparent brokers will survive and prosper in today's world. The London Market Awards' Young Broker of the Year category aims to identify, recognise and develop the next generation of broking leaders, who will help set the risk agenda for the 21st century.

Insurance Day is now seeking entries for this award, which was won last year by Miller Insurance Services' Michael Lambert, an accomplished broker who has strived tirelessly to promote the London market, as well as playing a central role in championing the role of younger participants.

This category is one of the most difficult from which to choose a winner, largely owing to the fundamental changes the broking function is presently going through.

The London Market Awards' independent judging panel of industry chief executives and members of senior management are anxious each year to identify a figure who has the qualities to shape the industry for the future.

Last year, in Lambert they found exactly that figure. Specialising in non-marine treaty reinsurance with particular experience in the casualty and personal accident classes, Lambert works predominantly on London excess-of-loss contracts, after joining Miller through the company's graduate training scheme.

As well as proven skills of innovation, solving complex problems and being able to lead and work as a team player, what made Lambert stand out in this category last year was his campaigning on behalf of the future broking community.

But who will follow in Lambert's footsteps this time around?

Specifically, the winner of the 2012 Young Broker of the Year award will be presented to an individual broker under the age of 35 who has demonstrated an ability to innovate, solve complex problems and lead and work as a team player; either through a specific project or a series of projects that can be measured by the judges.

Competition is expected to be particularly fierce in this category with entries expected from companies around the market, so interested parties or nominators should allow themselves sufficient time to create a compelling awards entry.

It could make all the difference to achieving success in a category where emerging triumphant will truly mark the individual out as a leading industry innovator amongst his or her peers, not forgetting their competitors.

This year's award entry deadline is Friday, September 7. Fortunately, entering the London Market Awards has never been easier.

Using the criteria for the Young Broker of the Year award, explain in 500 words or fewer why the individual should win a London Market Award. The qualifying period for all categories is from January 2011 to August 2012.

Then complete the online entry form and submit your entry at *www.insurancedayawards.com*.

Insurance Day welcomes entries from companies or individuals operating in the London market. Nominations may also come from other companies or individuals who feel a particular person should be considered.

The 12th *Insurance Day* London Market Awards ceremony will be held at the prestigious Lancaster hotel in London on Thursday November 29.

For sponsorship opportunities and table sales contact +44 (0)20 7017 4027. For further information on the Young Broker of the Year category or any other awards-related matters contact +44 (0)20 7017 5173.

A full list of all awards categories can also be found at *www.insurancedayawards.com*.

Criteria for the award

This award will be given to an individual broker under the age of 35 who has demonstrated ability to:
- Innovate;
- Solve complex problems; and
- Lead and work as a team player.

This award will be given to an individual who has met these criteria through work carried out for a specific project or a series of projects that can be measured by the judges.

Roll of honour

2011	Michael Lambert, Miller Insurance Services
2010	Patrick Ellis, Cooper Gay
2009	Tim Allen, Marsh
2008	Jonathan Spry, Guy Carpenter
2007	Man Cheung, Marsh

Richard Lambert (left) collects his Young Broker of the Year award at the 2011 London Market Awards