MARKET NEWS, DATA AND INSIGHT ALL DAY, EVERY DAY

THURSDAY 16 FEBRUARY 2012

ISSUE 3,541

insuranceday

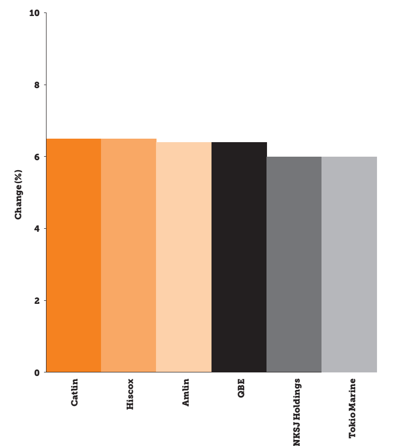
www.insuranceday.com

Market nervy over asbestos reserving developments

Adam Berry/Bloomberg News

p3

Financial World Today



Sector benefits from potential for recovery

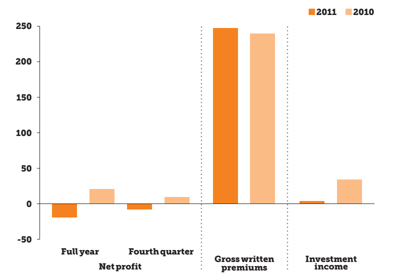
p8-9

Emerging markets

Argo targets growth in Brazil in 2012

p4

Earnings reporting



Arig back in the red after cat claims in 2011

p5

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: Graeme Cathie +44 (0)20 7017 4070
Senior account manager: Sarah Dean +44 (0)20 7017 4122
Marketing director: Grant Attwell +44 (0)20 7017 4132
Key accounts manager: Verity Blair +44 (0)20 7017 4998
Subscriptions: Lisa Gambino +44 (0)20 3377 3873
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*.

Perils estimates €267m Andrea loss

Second storm in cluster to trigger loss-reporting threshold

By Scott Vincent
Deputy editor

European loss aggregator Perils has estimated an insurance market loss of €267m ($351.7m) for windstorm Andrea, which affected Germany and other northern European countries on January 4 and 5.

This is within the range provided by an earlier estimate from Düsseldorf-based reinsurer Deutsche Rückversicherung, which said it expected a market loss of €200m to €400m.

Andrea was the last of eight storms in a windstorm cluster that hit northern Europe between mid-December and early January.

It is the second of the eight storms to trigger Perils' loss-reporting threshold of €200m.

Last month, Perils issued a €300m loss estimate for windstorm Joachim, which hit Europe between December 15 and 17 last year.

The majority of Andrea's losses occurred in Germany, with insurance claims also recorded in the UK, France, the Benelux states and Switzerland. Perils said it will update its Andrea market loss on April 4.

For Joachim, the majority of losses were recorded in France, with claims also occurring in Germany and Switzerland.

Windstorms Patrick and Ulli are not expected to trigger Perils' loss-reporting threshold, the loss aggregator said.

Danish insurer Tryg said it expected claims of more than DKr200m ($35.4m) during the fourth quarter as a result of windstorms Patrick, known locally as Dagmar, and Berit, which hit the region during December.

Berit caused claims in Denmark and Norway, while Patrick resulted in claims in Norway, Sweden and Finland.

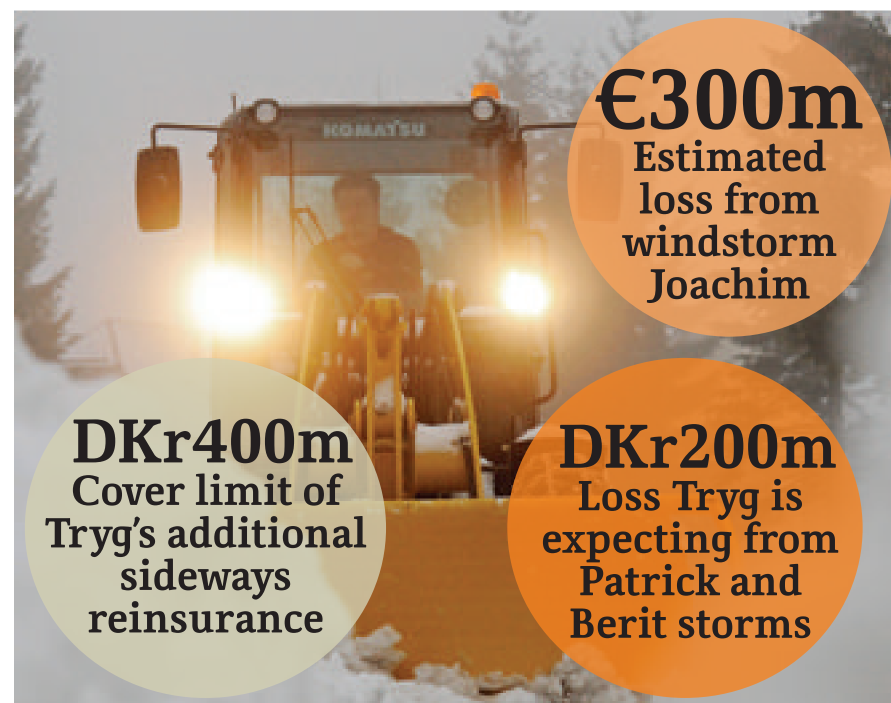
This contributed to a DKr500m bill for large claims and storms during Q4.

"We purchased additional sideways reinsurance for extreme events in the summer, covering a 12-month period. This was more or less triggered during the second half of 2011, meaning our protection for the first half of the year is greater than before," the Danish insurer's chief executive, Morten Hubbe, said.

The additional cover limits Tryg's expenses in the event of a large number of minor events resulting in claims.

The cover comes into force if Tryg incurs claims expenses of DKr400m for weather claims distributed across a number of events. As *Insurance Day* went to press, this cover was "very close" to coming into force.

> **"We purchased additional sideways reinsurance for extreme events in the summer, covering a 12-month period. This was more or less triggered during the second half of 2011, meaning our protection for the first half of the year is greater than before"**
>
> **Morten Hubbe**
> **Tryg**



Windstorm Joachim caused heavy snowfall in Germany, among other European countries
AP Photo/Jens Meyer

JLT grows Europe footprint with March tie-up

JLT's European footprint has grown following a tie-up with Spain's fourth-largest commercial broker March – Unipsa Correduria de Seguros SAU, *writes Christopher Munro*.

The deal sees JLT combine its existing Spanish retail operation JLT-SIACI Espana SL with that of March – Unipsa giving the London-based independent broker greater scope in the Spanish corporate sector.

In particular, JLT hopes to be able to take advantage of its partner's specialist capabilities in the construction, tourism and marine and cargo lines of business.

Following completion of the deal, JLT will hold a 25% stake in the newly formed March – JLT, which will also become part of the JLT Network. The total consideration for the acquisition is €16.8m which consists of both cash and JLT's existing Spanish operation.

The parent company of March – Unipsa is Banca March, which is Spain's leading privately-owned financial institution.

> **25%**
> **Stake JLT will hold in the newly formed March-JLT**

Market nervy over asbestos reserving developments

Industry on alert for 2011 as recent trends in the claims environment cause concern

By Graham Village
Global markets editor

Asbestos-related insurance claims have caused huge problems over the years for the US market, not to mention Lloyd's, so the industry will be scrutinising the major companies' 2011 filings for any sign this long-running scourge may be about to pick up momentum once again.

The peak of loss activity may be over but individual insurers and reinsurers could still be in for a nasty surprise from the tail of this chronic drag on company performance. Recent trends are worrying; Liberty Mutual completed a formal review of its reserves in the third quarter and added $338m gross, $295m net for prior-year asbestos-related claims as a result.

In a similar vein, Travelers added $175m after reinsurance to its asbestos reserves, up from a strengthening of $140m at the same stage of 2010. Travelers attributed the 2011 increase to higher estimates for projected settlement and defence costs related to a broad number of policyholders and higher projected payments on assumed reinsurance accounts. Recent settlements and defence cost trends were up a little on previous estimates, the company said, "owing to the impact of the current litigation environment". However, Travelers stressed its overall view of the asbestos claims environment had not changed significantly.

As the table shows, Travelers paid more in asbestos losses and ceded less of the cost to reinsurers during 2011. Good news for the company came in the form of a New York appeal court ruling last month upholding a $420.4m award in its favour against reinsurers, including affiliates of Munich Re, Ace and White Mountains. The dispute concerned reinsurance USF&G, subsequently a Travelers company, called upon after it faced heavy claims from Western Asbestos, active in the 1950s and 1960s. That the claims stretch back this far underlines the very long tail that applies to asbestos-related losses. Western Asbestos was later acquired by Western MacArthur. USF&G and other insurers settled with MacArthur in 2002 at a total cost of $975m and USF&G then billed its reinsurers for a portion of its loss. The appeal court found the reinsurers were liable for cover essentially because of the "follow-the-fortunes" clauses in the relevant contracts.

Overall, US asbestos losses appear to be on the rise after a steady period of reduction since the high mark of 2002. Late last year, actuarial consultant Towers Watson issued an analysis of the US industry's reserving as at the end of 2010 and found loss payments increased to $2.6bn from $2.4bn in 2009, while the industry recognised losses of $2.6bn compared with $1.9bn the year before. On a cumulative basis, the industry had incurred $71bn of asbestos losses up to the end of 2010, with $23bn still to be paid. On present trends, the industry is expected to exceed the $75bn ultimate cost estimate made by AM Best in a few years' time, according to Towers Watson. It expects the US industry will incur annual asbestos losses of $1.1bn to $1.3bn in 2011 and in excess of $1bn for several years to come.

More cheerfully, asbestos-related bankruptcies and related large insurance settlements have slowed to what Towers Watson called a trickle, so insurance payments should reduce significantly once the ongoing settlement agreements are completed. Yet the environment for litigation has deteriorated since 2008, acting as an offset to the long-term downward trend. It remains to be seen if this is merely a temporary blip.

Several large players have announced asbestos reserve strengthening over the past couple of years, indicating it would be unwise to consign the episode to the history books just yet. In addition to the Travelers and Liberty Mutual increases, Hartford, AIG and Munich Re America have all added significantly to their asbestos reserves over the past few years. AIG surprised the market with a $1.4bn strengthening in 2010.

Historically, reinsurers have been slower than the primary market to strengthen their asbestos reserves and as at the end of 2010 Towers Watson had identified a significant gap in relative reserve adequacy between the two communities. "If a fresh (albeit modest) round of reserve strengthening is under way... then it is possible reinsurers' reserve levels will again fall behind those of non-reinsurers before subsequently catching up," the firm said.

In terms of earnings drag, expressed as calendar-year incurred losses divided by calendar-year earned premiums, Swiss Re and Munich Re America have suffered more than the large primary players. For the 2006 to 2010 period, Munich Re America suffered a drag of 9.1% and Swiss Re 6.1% compared with an industry-wide level of 0.5%.

One company with a particular interest in how asbestos claims develop is Berkshire Hathaway, which provides long-tail reinsurance to several of the larger primary insurers. In April last year, Berkshire Hathaway subsidiary National Indemnity provided aggregate retroactive protection of $3.5bn for the asbestos liabilities of AIG subsidiary Chartis in return for a $1.65bn payment. National Indemnity took on responsibility for claims-handling, collection and collectability risk for third-party reinsurance related to the claims.

And in August 2010, National Indemnity and CNA Financial confirmed a deal by which the Berkshire Hathaway company provided CNA with $4bn of aggregate limit for net asbestos and environmental liabilities. CNA ceded about $1.6bn of liabilities and paid a premium of $2bn, and National Indemnity took the right to collect billed third-party reinsurance receivables with a net book value of about $200m.

At the end of the third quarter of 2011, Berkshire Hathaway disclosed estimated unpaid losses under its retroactive contracts – of the kind used in the CNA and AIG transactions – totalled about $19.6bn.

$71bn
Cumulative asbestos losses for industry up to end of 2010

$1.1bn to $1.3bn
Expected asbestos loss for industry in 2011

9.1%
Earnings drag suffered by Munich Re America

0.5%
Industry-wide earnings drag as result of asbestos losses

Table: Travelers' asbestos reserves, December 31 ($m)

	2010	2011
Beginning reserves		
Direct	3,097	2,941
Ceded	339	393
Net	2,758	2,548
Incurred losses and loss expenses		
Direct	262	195
Ceded	122	20
Losses paid		
Direct	418	356
Ceded	68	72
Ending reserves		
Direct	2,941	2,780
Ceded	393	341
Net	2,548	2,439

NEWS

Willis U-turn on employee benefit contingent fees

Broker says volte-face is 'necessary move' for it to remain competitive

By Greg Dobie, Sydney
Managing editor

Global broker Willis has said it will start accepting contingent commissions from employee benefits providers from April, with the broker claiming the move is necessary to maintain its competitive position.

The broker added as a result of this decision it has also launched a review of its corporate policies, public documents and compensation disclosure processes, sparking speculation this could ultimately pave the way for it once again to accept contingent commissions outside this line of business.

Willis is well known for having taken a strong stance against the use of contingent commissions as a form of payment in the retail sector since it voluntarily gave up accepting them seven years ago, in the wake of disgraced former New York attorney-general Eliot Spitzer's probe into insurance industry practices.

The broker said it had notified its employee benefits clients last July that in response to market pressures caused by healthcare reform, a significant number of employee benefits insurers were changing their broker compensation to tiers based on volume and continuing to pay brokers traditional contingent commissions. It said to remain competitive for its shareholders, it would begin accepting standard compensation based on volume, but would continue to resist traditional contingent commissions and bonus payments.

However, after "several months of review under changing market conditions", Willis said in a statement issued at the same time as it released its 2011 financials it "cannot be fully competitive on employee benefits business if it continues to refuse these legal forms of compensation".

"Consequently, Willis will begin to accept all forms of compensation from employee benefits providers effective April 1, 2012," it added. "This is a necessary move to ensure [Willis'] competitive position. As a result of this change in its employee benefits business, the company is also reviewing its corporate policies, public documents, and its compensation disclosure processes generally.

"Willis will work closely with clients and carriers alike to implement these changes and will continue to always act with integrity and in its clients' best interests," it concluded.

Willis use of the word "legal" in its defence of accepting contingent commissions evokes memories of rival Aon's statement when it announced it would once again accept contingent commissions from markets "where it is both appropriate and legally permissible to do so" in 2010, after the ban on the payments being accepted by the three largest brokers was overturned. However, at the time Willis was quick to chastise its rival. In a statement, Willis said: "With Aon retreating to a troublesome and ambiguous position on contingent commissions, Willis now stands as the world's only insurance broker to refuse to accept contingents in its retail business.

"Aon's overdue and muted announcement, floated in midsummer, should come as a wake-up call to all risk managers and buyers of insurance to re-evaluate whether their broker really works for them, or the insurance carrier," it continued. "Offering opaque statements about doing what is 'legally permissible', another competitor has opted to put contingents before principle. Willis puts clients before contingents.

"Willis' stand is unwavering on the matter of contingent commissions," the statement concluded.

The broker also has a website – www.clientsbeforecontingents.com – devoted to this issue. It features a Q&A section, which asks whether Willis takes contingent commissions in any other areas of its business. "Despite Willis' objections, many insurance carriers have imposed volume-based compensation in certain parts of the US employee benefits business," the website states.

"To continue to serve its clients in this business, Willis has no viable option but to accept this compensation, which it fully discloses, in medical lines only.

"Contingent commission agreements Willis inherited with the acquisition of Hilb Rogal & Hobbs expire in 2011. Willis may also accept contingent compensation when it serves as an intermediary to another insurance producer."

Plumeri promises better performance in 2012

Willis Group chief executive, Joe Plumeri, described 2011 as a "transitional" year for the broker, adding all staff believe the company can do better than it has done over the past 12 months, as it saw its net income slump more than 50% year on year to $218m, *writes Greg Dobie, Sydney*.

Total reported revenues for the year were $3.45bn, compared with $3.33bn the previous year, with total commissions and fees equalling $3.42bn, again up 4% compared with 2010.

Organic growth in commissions and fees was 2% on 2010. This growth reflected net new business won of 4%, Willis added.

Plumeri's view of the broker's annual numbers, which were hit by $180m in charges relating to its previously announced "operational review", contrast sharply with that of the boss of one of Willis' "Big Three" broking rivals, Marsh & McLennan Companies' Brian Duperreault, who, just 24 hours earlier, hailed Marsh's 2011 performance as "excellent", after the insurance broking unit posted revenues of more than $5.2bn, growth of 10% compared with the previous year – 4% on an organic basis (*Insuranceday.com*, Feb 14).

"We're obviously not satisfied with results that show low organic growth and declining adjusted operating margins... By any measure, we expect our results in 2012 to be significantly better than 2011"

Joe Plumeri Willis

"We're obviously not satisfied with results that show low organic growth and declining adjusted operating margins [22.5% in 2011 versus 23% in 2010]," Plumeri said. "We've made many hard-edged decisions in 2011 as we initiated and completed a far-reaching operational review. A year ago, we told investors we would review all our businesses to better align our resources with our growth strategies and that's exactly what we did.

"That review is expected to save us, prospectively, approximately $135m annually and we will use those savings to continue to invest in growth initiatives that position Willis to compete and win in the months and years ahead.

"By any measure, we expect our results in 2012 to be significantly better than 2011," he added.

The broker said the $180m in annual charges relating to its operational review had increased from the previously estimated $160m owing to increased head count and facility consolidation in response to continued economic pressures.

A pre-tax charge of close to $50m of this total appeared in the broker's fourth-quarter financials ensuring net income during this period also fell by 60% to $39m from $98m the previous year.

Total reported revenues for the quarter were also down at $825m compared with $833m the year before. Commissions and fees were $816m, down from $823m.

Fourth-quarter financials also included $36m-worth of severance and other costs associated with Willis' operational review.

Marsh tops 'Big Three' margin and organic growth poll

Marsh & McLennan Companies (MMC) has stretched its revenue lead over the third of the so-called "Big Three" brokers, Willis, as well as closing the gap on the market leader, Aon, *writes Richard Banks*.

With all three broking giants having now reported 2012 revenue, Aon remains in the number-one position. Together, the three produced commission and fee revenue totalling $16.5bn, of which Aon accounted for 41.2%, MMC 38.2% and Willis 20.6%.

One year ago, the ratios, based on total revenue of $15.5bn, were Aon 41.3%, MMC 37.4% and Willis 21.3%.

The change is underpinned by the impressive organic growth achieved by MMC's broking operations, incorporating both Marsh and Guy Carpenter, over the year: 5%, versus 2% each from Aon and Willis.

Table: 'Big Three' brokers by revenue and margin

	Aon	MMC	Willis
Commission 2011 ($bn)	6.8	6.3	3.4
Commission 2010 ($bn)	6.4	5.8	3.3
Organic growth 2011	2%	5%	2%
Reinsurance revenue 2011 ($bn)	1.5	1.0	1.1*
Reinsurance revenue 2010 ($bn)	1.4	0.98	0.99*
Reinsurance organic growth	n/a	5%	7%*
Reported operating margin	19.3%	19.5%	17.1%
Adjusted operating margin	19.9%	19.2%	22.5%

*Willis Global, comprising reinsurance, London market wholesale and capital markets
Source: Company announcements

And MMC also topped the operating margin table achieving 19.5%, slightly ahead of Aon's 19.3% and well up on Willis' 17.1% – a disappointing performance for Willis, which has traditionally prided itself on improving its margin year on year.

The battle in the reinsurance sector is heating up, too, as MMC's Guy Carpenter broke through the $1bn revenue mark for the first time on the back of 5% organic growth. Aon, with its Aon Benfield operation, easily hangs on to the top spot, with nearly half as much revenue again as Guy Carpenter, but flat organic growth performance means there is no room for complacency.

Willis does not specifically break out its reinsurance operations, but its global segment, which comprises reinsurance, London market wholesale and capital markets, reported organic revenue growth of 7%, down on last year's 12%, contributing to segment revenue of $1.1bn for the year.

Argo targets growth in Brazil in 2012

Chief executive says the country 'represents the best opportunity'

By Scott Vincent
Deputy editor

Argo Group has targeted $30m to $50m of written premium through its new Brazilian operation in 2012, having highlighted the South American country as a market that presents Argo with the greatest opportunities of all developing economies.

The reinsurance group, which recently received regulatory approval to operate as an admitted insurer in Brazil, said it hopes to offer professional liability, surety, cargo and marine and "potentially a few other classes of business" through its Brazilian office in São Paulo.

Mark Watson, Argo's chief executive, said: "There are certain economies in the world that will grow faster than the markets we are already in. Of the emerging markets and developing economies, for us Brazil represents the best opportunity.

"We are selling products there we are already familiar with, in a market culture we are familiar with. And it's easier to be a new market participant in a growth market than a shrinking market."

São Paulo: Argo's new Brazil office is based in the city

"There are certain economies in the world that will grow faster than the markets we are already in. Of the emerging markets and developing economies, for us Brazil represents the best opportunity"

**Mark Watson
Argo Group**

Watson said competition for opportunities in Brazil is less intense than in some of the markets Argo has traditionally operated in.

"When you look at some of the markets we compete in, particularly the US and Lloyd's, we are competing with 20 or 30 underwriters for every risk," he said.

"If you look at our international operations, they are very different from the US. In the US, we tend to write very small accounts and sometimes medium-sized risks, where premiums measure in thousands of dollars, or sometimes tens of thousands of dollars.

"In Bermuda, we participate on very large risks, whether general liability or property, where its as much about capacity as underwriting expertise. There are hundreds of millions of dollars, if not billions of dollars, of limit.

"There are not that many companies licensed to write in that marketplace and there are even fewer in Brazil, which is not quite as sophisticated as some of the markets we trade in, so we hope to bring some of our international expertise."

This week has also seen Argo reveal it has successfully established an office in Malta to write continental European business.

Watson said Argo would "not be looking for a lot" of business through this office in 2012.

"We will write millions of dollars of premium for professional liability in Europe, given where the market is right now. We will not be writing tens of millions or hundreds of millions of dollars of premium."

For the fourth quarter of 2011, Argo produced a net profit of $1.4m, having suffered $27.5m of losses related to the Thai flooding. For the full year, Argo generated a net loss of $82.4m on the back of catastrophe losses of $207.8m.

Arig back in the red after cat claims in 2011

A $20m combined hit from its exposure to the earthquakes in Japan and Christchurch, as well as flooding in Thailand, pushed Bahrain-based insurer Arab Insurance Group (Arig) into the red last year, *writes Greg Dobie, Sydney*.

Arig reported a net loss of $19.1m for 2011, compared with a $20.8m profit the previous year, with its net result for the fourth quarter of last year alone equalling a loss of $7.6m, also down from a $9.2m fourth-quarter profit in 2010.

Asia-Pacific cat losses saw Arig's combined ratio for the non-life portfolio deteriorate further to 108.6% from 104.1% the previous year.

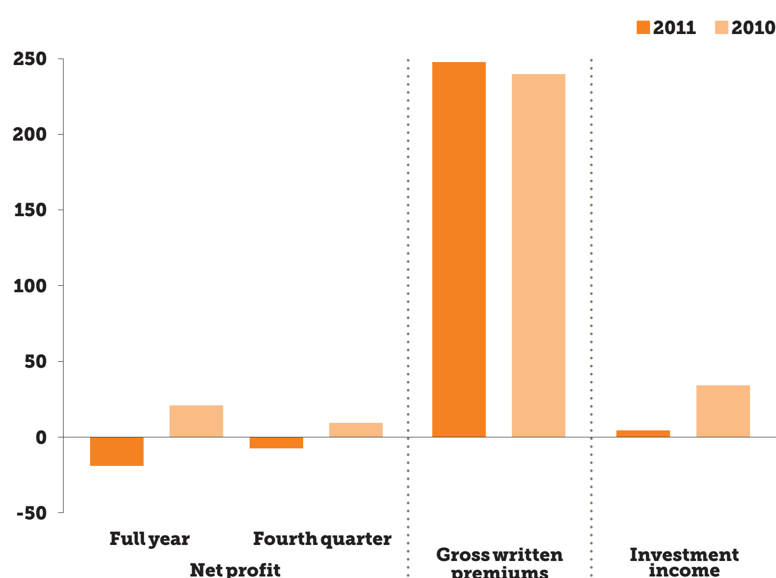
The Japan, New Zealand and Thai losses accounted for the insurer's loss ratio rising 10.8%.

Investment income offered no relief. With yields from fixed-term deposits at historical lows and financial markets under pressure throughout last year, Arig said its income from this area was $4m last year, representing a return of less than 1%. For 2010, it received investment income of $34m.

Gross premiums written increased 3.3% overall to $247.5m for the year, mainly from new business written through Arig's corporate membership at Lloyd's.

Arig joined the ever-expanding list of carriers in recent weeks to have stressed their capital position remains strong in the wake of heavy losses. Shareholders' equity stood at $222.4m at the end of 2011, versus $260.1m at the end of 2010.

Graph: Arig fourth-quarter and full-year financials ($m)



Source: Arig announcements

Arch to 'wait and see' on capital deployment

Arch Capital is continuing to monitor capital-deployment opportunities and holding back from returning capital to shareholders, with Dinos Iordanou, Arch's chairman, president and chief executive, describing himself as a "patient optimist" when considering deals for 2012, *writes Scott Vincent*.

Iordanou said the group managed to complete one deal during the fourth quarter of last year – an undisclosed UK motor partnership – but said other potential deals remain in the pipeline, including a "new initiative in the mortgage space" and an "opportunity in the life/accident and health reinsurance sector".

We anticipate our [Thai] losses will come from insurance and reinsurance written for large risks on a global basis"

**Dinos Iordanou
Arch Capital**

Iordanou said: "We will take a 'wait and see' attitude towards share repurchases until we have more clarity."

During the fourth quarter of 2011, Arch recorded a net profit of $136.8m, on the back of catastrophe losses of $70.8m. This included $60.6m of losses for flooding in Thailand – Iordanou said this was at the conservative end of Arch's previously announced range for the event, but he warned of the potential uncertainties caused by business interruption and contingent business interruption.

"We never wrote excess-of-loss catastrophe business out of that territory. We anticipate our losses will come from insurance and reinsurance written for large risks on a global basis," he said.

For the full year, Arch recorded a net profit of $410.5m. During 2010, Arch recorded a profit of $816.7m.

WORLD LOSS INTELLIGENCE/LIABILITY &

Lawsuit: Chubb files lawsuit against actress for alleged negligence

AP Photo/ Evan Agostini

NEW YORK: New Jersey-based property/casualty insurer Chubb Corp has filed a lawsuit in a New York Supreme Court in Manhattan against actress Marisa Tomei (*pictured*), seeking $128,755 in damages for her alleged negligence in causing water damage to her apartment building in Greenwich Village. The suit was filed on behalf of tenants below Tomei, including film director John Waters and Bank of New York Mellon.

MF Global ban cover costs

MANHATTAN: US b seeing the bankrupt Court, is to take a clo and officers' (D&O) should go to the costs ers of MF Global who

Judge Glenn yester consultancy firms to Freeh and James Gidc dealer unit. He also e professionals" involv D&O cover , which w court heard.

However, it is not tomer groups' lawyer was looking to be cov decide whether it was the issues the objector

$565,000
Fine Chesapeake must pay for a series of environmental violations

$190,000
Fine Chesapeake already paid for losing control of a wellhead in April 2011

Chesapeake fine: natural gas and oil producer charged $565,000

PENNSYLVANIA: Natural gas and oil producer Chesapeake Energy has been fined $565,000 by state of Pennsylvania officials for a series of environmental violations, including losing control of a wellhead for four days last April.

The company was fined $190,000 for that particular violation, which saw hydraulic fracturing fluids enter a local water system. Inspectors discovered high levels of dissolved solids, chlorides and barium in a nearby stream, reports claim.

The company, which prides itself on being the second-largest producer of natural gas in the US, as well as the most active driller in the country, also incurred other fines for allowing dirt to enter local streams and other violations relating to erosion and sediment being discharged into water ways.

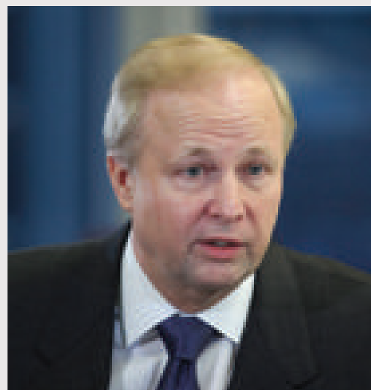
Deepwater Horizon: Judge dismisses lawsuit about BP's ability to respond to spill

HOUSTON: US district judge Keith Ellison has dismissed a large part of a lawsuit that accused BP and its top management of defrauding investors about its ability to respond to an oil spill, both before and after the Gulf of Mexico disaster 21 months ago.

The court dismissed claims by buyers of BP ordinary shares in the wake of a 2010 US Supreme Court ruling that limited the ability to make fraud accusations by US buyers of foreign securities. Also dismissed were claims made against BP chief executive, Robert Dudley, and other executives by buyers of BP's American depositary shares (ADS).

However, Ellison let stand accusations by ADS holders that violations of US securities law may have been committed by BP, former chief executive Anthony Hayward and former chief operating officer for exploration and production Douglas Suttles.

The court said ADS holders "sufficiently pleaded facts to demonstrate BP misrepresented the size of the spill it was prepared to respond to in the Gulf and misrepresented the company's general response capabilities".



Claims against BP chief executive, Robert Dudley, (far left) were dismissed but accusations against former boss Tony Hayward (centre) and former chief operating officer Douglas Suttles (left) have been upheld

TOMORROW IN WORLD LIVES & LIV

& SETTLEMENTS

nkruptcy: Judge to decide whether D&O policy can

ankruptcy judge Martin Glenn, who is over-
cy proceedings of MF Global in a Manhattan
oser look at the details of $190m in directors'
liability cover before deciding whether it
s of defending the ex-executives or to custom-
have lost money from their accounts.
rday authorised the hiring of several law and
assist MF Global's bankruptcy trustee Louis
dens, who is bankruptcy trustee for the broker-
expressed concern about the "proliferation of
ved in the case. MFG Assurance provided the
as prepaid and covered May 2011 to 2012, the

clear who is actually covered. One of the cus-
rs said his clients merely wanted to know who
ered, how much they wanted and who would
s a valid expense. Judge Glenn agreed "many of
rs have raised require greater scrutiny".

Stephen Yang/ Bloomberg

Contempt of court: IBRC initiates action against Quinn

IRELAND: The Irish Bank Resolution Corporation (IBRC, formerly Anglo Irish Bank) has initiated contempt of court proceedings against Sean Quinn, his son Sean Quinn Jr, and his nephew Peter Darragh Quinn. Sean Quinn was the former head of Quinn Insurance Group, which went into administration in March 2010 and was subsequently bought by a joint venture of IBRC and US-based insurer Liberty Mutual. The three are alleged to have breached an injunction barring them from moving certain assets, reported the *Irish Times*. The Quinns said they rejected the allegations absolutely.

The case is due to be heard by Justice Frank Clarke on Friday. Clarke J issued the initial injunction in July 2011. The bank has claimed the Quinns were trying to shift a foreign property portfolio worth up to €500m ($657.2m) out of the reach of the bank, which claims a legitimate charge on the portfolio. A conspiracy case, in which six other members of the Quinn family are also named as defendants, is also being held by Clarke J, and is awaiting a ruling from the European Court of Justice (ECJ) on a matter of jurisdiction. The injunction is intended to keep matters in place until the ECJ makes its ruling.

€500m
Size of the foreign property portfolio the Quinns were allegedly trying to shift out of bank's reach

Appeal: Ageas to appeal €280,000 fine for insufficient disclosures

Jock Fistick/ Bloomberg

BELGIUM: Insurer Ageas said at the weekend it would be appealing against a €280,000 ($371,300) fine levied on Ageas NV by the Dutch Authority for Financial Markets (AFM) for what the regulator deemed to be insufficient disclosures by Dutch-Belgian financial services group Fortis, which was the predecessor of Ageas. AFM decided in August 2010 Fortis had not given investors sufficient information in September 2007.

The Rotterdam District Court has upheld the AFM decision. Ageas said "it regrets this judgment and will file an appeal against the decision with the competent court in the Netherlands". In September 2007, Fortis predicted "another sound set of results" in a trading update and said its full-year profit would reach the consensus estimate of €4.2bn. It also said it did not see any negative consequences from the unfolding sub-prime mortgage crisis. However, in March 2008, Fortis took a €1.5bn write-down in the sub-prime sector, and maintained a gain of €3.99bn only through the sale of a part-share in Spain-based CaiFor for €947m.

By June, the interim dividend was cancelled and an effort was under way to raise €8bn in additional equity. The AFM investigation began the following month. Meanwhile, Ageas is reported by UK newspaper *The Independent* to have issued a writ in the English High Court against motor repairer KwikFit over the £215m ($340m) purchase of KwikFit Insurance Services (KFIS) in 2010.

Ageas is understood to be claiming liabilities not disclosed at the time and that have subsequently emerged. When the deal took place KwikFit was owned by private equity group PAI Partners. Since then it has been sold to the Itochu Corporation, and PAI told *The Independent* all potential liabilities had been transferred with the sale.

Report by Peter Birks

D LOSS INTELLIGENCE:
VELIHOODS

FINANCIAL WORLD TODAY

Sector benefits from strong potential for recovery

Despite the sharp rally in sector stocks over the past six weeks, insurance and reinsurance company valuations are for the most part way below what they were at the end of 2010

By Rasaad Jamie
Global markets editor

Insurance and reinsurance stocks continued to record gains despite the ongoing challenging environment for the sector. This was particularly the case during the week ended February 9, which saw a large number of companies reporting their pro-forma results for the fourth quarter and full-year 2011.

Virtually all companies reported either a significantly reduced net profit or a loss for last year. In this regard, the vast majority of Bermuda-based catastrophe specialists reporting during the week (including PartnerRe, Aspen, Platinum Underwriters, RenaissanceRe, Everest Re, Endurance Specialty, Montpelier Re and XL Capital) posted net losses as a result of a combination of the unprecedented run of catastrophe events and significantly lower investment returns owing to capital markets volatility.

Optimism

The sector's buoyant stock market performance over the past few weeks is to some extent the result of the fact investors have priced in the losses suffered by companies on both the insurance and investment front last year.

In addition, sector stocks are also benefiting from a more positive operating environment for the broader financial services industry created by, first, the perception the EU is finally addressing the eurozone debt crisis in earnest; second, by the recent programmes of quantitative easing implemented by a number of governments, as well as regionally by the European Central Bank or, as most notably in the case of the US, the promise of a third round of quantitative easing, should there be the need for it; and third, by the consistent flow of recent data that suggests the US economic recovery is gaining strong momentum.

6%

Increase in the MSCI Index in January – the best performance by global stocks during the first month of any year since 1994

Things were to change later, but during the week under review, insurance and reinsurance stocks most definitely benefited from the sense the fall in financial services sector stocks (which, along with commodity sector stocks, were the worst hit last year) had bottomed out and pricing levels are likely to look very cheap when the eurozone debt crisis is finally stabilised at some point during this year.

This belief persisted in the markets despite the less than confidence inspiring picture of long, drawn-out negotiations and the numerous lapsed deadlines for the Greek coalition parties to reach agreement among themselves and then finally agreement with the so-called troika of regional and international institutions embodied by the European Commission, the European Central Bank and the International Monetary Fund.

Favourable

Despite the very strong rally in sector stocks over the past six weeks, insurance and reinsurance company valuations are for the most part way below what they were at the end of 2010 and the potential for significant recovery in the valuation of the sector is looking more favourable than it has in a long while, although not everybody was this optimistic.

XL Capital, for example, included a $429m elimination of goodwill charge in its $474.8m net loss result for last year. The charge, according to the company's chief executive, Mike McGavick, was in part to reflect the "the persistent low market valuations in the insurance industry".

Ironically, XL stock has held up much better than many of its peers over the course of 2011 and is only slightly down on its valuation of $21.82 at December 31, 2010. XL's non-cash loss of goodwill charge also reflected the cost of exiting loss-making underwriting activities, including those in non-catastrophe related areas.

Global economic outlook

By the end of the period under review, Asian and European stocks benefited in particular from the more confident global economic outlook in 2012, which is to a large degree fuelled by the widespread optimism about the increased pace of the US economic recovery. For example, the MSCI Index, which tracks stock market performance in a total of 45 developed and emerging economies, rose nearly 6% in January. This represented the best performance during the

Table: Share prices as at close February 9, 2012

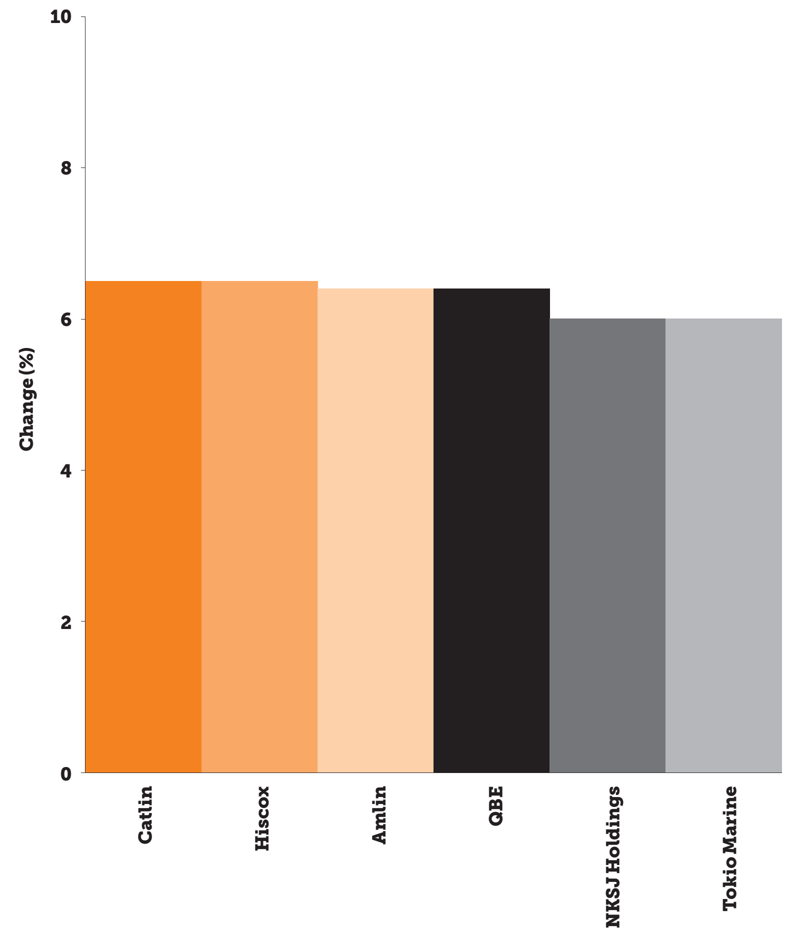
Company/group	Currency
Ace	US dollar
AIG	US dollar
Allianz	Euro
Allstate	US dollar
Alterra	US dollar
Amlin	Pence
Arch Capital	US dollar
Aspen	US dollar
Aviva	Pence
Axa	Euro
Axis Capital	US dollar
Berkshire Hathaway (A)	US dollar
Catlin	Pence
Chubb	US dollar
CNA Financial	US dollar
Endurance Specialty	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
The Travelers Companies	US dollar
Tokio Marine Holdings	Yen
Transatlantic Holdings	US dollar
XL Capital	US dollar
Zurich Financial Services	Swiss franc

Source: Insurance Day

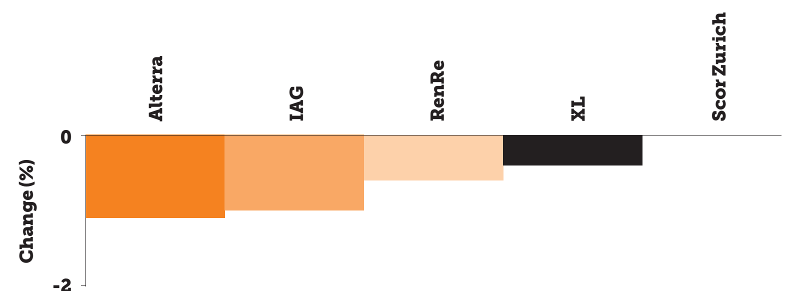
McGavick: 'persistent low market valuations' partly behind XL's elimination of goodwill charge

Dec 31, 2011	Feb 2, 2012	Feb 9, 2012	Change from Feb 2 (%)	Capitalisation ($m)
70.12	72.48	73.57	1.5	24,808
23.20	26.31	27.35	4.0	51,944
73.43	86.70	88.35	1.9	53,382
27.41	30.29	30.91	2.0	15,620
23.63	24.61	24.33	(1.1)	2,538
313.90	338.10	359.80	6.4	2,825
37.23	36.86	37.81	2.6	5,074
26.50	27.37	28.52	4.2	2,014
300.80	363.60	370.00	1.8	16,428
10.05	12.48	12.66	1.4	38,541
31.96	31.48	32.91	4.5	4,298
114,755.00	118,120.00	118,855.02	0.6	111,605
398.70	421.50	449.00	6.5	2,552
69.22	67.81	68.89	1.6	19,156
26.75	28.42	28.74	1.1	7,739
38.25	38.30	40.27	5.1	1,632
84.09	87.61	88.77	1.3	4,768
11.63	12.06	12.17	0.9	25,036
38.30	40.84	41.69	2.1	6,684
373.50	384.90	410.10	6.5	2,469
2.98	2.92	2.89	(1.0)	6,456
15,000.00	13,850.00	14,300.00	3.2	1,456
17.75	17.91	18.20	1.6	1,121
1,426.00	1,622.00	1,697.00	4.6	9,207
94.59	103.00	108.00	4.9	28,342
1,510.00	1,696.00	1,798.00	6.0	36,584
64.21	67.22	67.89	1.0	4,600
34.11	34.96	36.42	4.2	1,360
12.95	11.43	12.16	6.4	13,517
74.37	74.68	74.24	(0.6)	3,845
105.20	109.70	112.00	2.1	6,114
18.06	19.50	19.80	1.5	4,847
21.50	22.70	22.70	0.0	4,677
47.87	51.80	53.20	2.7	21,642
59.17	59.39	59.89	0.8	24,721
1,705.00	1,973.00	2,091.00	6.0	21,210
54.73	57.00	58.38	2.4	3,599
19.77	21.10	21.01	(0.4)	6,734
212.50	223.10	231.40	3.7	37,202

Graph: This week's winners...



...and losers



first month of any year since 1994. According to data compiled by Bloomberg, the MSCI has risen by more than 9% this year, more or less wiping out the losses it had suffered in 2011.

In regional terms, this was reflected in Europe by the performance of the Stox Europe 600 Index, which rose 7.6% during the first six weeks of this year.

In Asia, this optimism was most notably mirrored in the performance of the export-focused South Korean stock market, which has risen nearly 10% so far this year and which, during the week under review, broke the psychologically important 2,000-point mark for the first time in six months. ■

Subrogation in Switzerland – still as perforated as a Swiss cheese?

By Lars Gerspacher, partner
gbf Attorneys-at-Law, Zurich

Around the world, it seems to be clear once a property insurer indemnifies the assured, the insurer steps into the assured's shoes to seek recovery for its loss from those parties that caused the loss and are liable to the assured. In short, this is the principle of subrogation.

The situation in Switzerland, however, is different. The whole jurisprudence in this respect originates from an old judgment of the highest court in Switzerland, the so-called *Gini/Durlemann* case of 1954.

In this case, the claimant insurance company insured a cottage of one Peroni against fire. Peroni instructed Gini to paint his cottage, but the actual work was performed by Durlemann, one of Gini's employees. Before Durlemann painted the cottage, he tried to remove the old coating by heating it with a blowlamp.

Unfortunately, inside the cottage there were easily flammable wood shavings, which Durlemann forgot to remove. The wood shavings caught fire and the cottage burnt down.

The claimant indemnified Peroni for the loss and then pursued its recourse claims against Gini, based on the contract for work and labour with Peroni.

Supreme Court decision

What did the Supreme Court decide? Surprisingly, it held the employer, Gini, not liable on the following grounds:

- The Swiss Insurance Contract Act comprises only one provision on subrogation: art 72;
- Article 72 solely deals with recourse claims against third parties liable in tort. For contractually liable parties there is no similar provision, hence the court had to apply general contract law; and
- Article 51 of the Swiss Code of Obligations provides if several persons are liable to the aggrieved party for the same damage based on different legal grounds, these persons shall be jointly and severally liable to the aggrieved party.

For the internal recourse among the liable parties, the damage shall then be primarily compensated by the person who caused it by negligence, then by the party liable in contract (without fault) and in the last instance by a person whose liability is based on causality only (ie, without a contract and without negligence). For instance, if a contractually liable party, party A, indemnifies the aggrieved party and if there is also a party B who actually caused the loss through negligence, party A would be able to hold itself harmless from the negligent party B, but not vice versa.

The Supreme Court further argued any recourse claim of an insurer against the contractual third party of the assured is a question of internal recourse between two contractually liable parties. Neither Gini as the contracting party with Peroni nor the insurer acted negligently. Their liability was, hence, based on contract only (without any fault). In terms of internal recourse, both parties were on the same level and such issue was not solved by art 51.

The Supreme Court held the insurer shall only be entitled to hold itself harmless from Gini if it can prove his employee Durlemann caused the loss through gross negligence, at least.

One argument for that outcome was if an assured seeks coverage from its insurer, the insurer can reduce the indemnity or deny it in full when the assured itself caused the damage by gross negligence or with intent. As a result, when the insurer assesses premium for its policy it assumes damages caused through negligence (but not gross negligence) are covered. If the insurer is unable to prove gross negligence, which can quite often be tricky, it does not step into the assured's shoes.

The *Gini/Durlemann* case does not only apply to national disputes. In international matters, Switzerland follows the so-called "principle of cumulation" based on art 144 of the Swiss Federal Act on International Private Law. This means if either the insurance policy or the contract based on which the insurer seeks indemnity are subject to Swiss law, the Swiss restrictive rights of recourse apply.

Light at the end of the tunnel?

Although the judgment was heavily criticised, the doctrine has remained good law for more than 60 years. Recently, it was thought there was a turning point for the *Gini/Durlemann* jurisprudence. In a case brought before the Supreme Court of Switzerland, reported at BGE 126 III 521, an employee was injured in a car accident and unable to work for a certain period of time.

Based on employment contract law, the employer remained obliged to pay the employee's salary. The employer initiated recourse proceedings for its loss against the liability insurer of the driver who caused the accident.

The Supreme Court approved the recourse action and held an employer is, when it continues to pay salary, not a liable party in the sense of art 51. The employer is rather a party performing its contractual obligation and, hence, entitled to hold itself harmless from any third party that caused the loss (even without negligence).

If anyone thought this could now be used as new authority in insurance related matters (since the insurer is not a liable party either, but one that performs a contractual duty), they would be disappointed by the very recent judgment of the Supreme Court of June 7 (case 4A_576/2010).

The Supreme Court made it clear in this matter the above judgment does not apply to insurance-related cases and referred again to the *Gini/Durlemann* judgment. Contrary to the position regarding employers, it held insurers still fall under art 51 and the *Gini/Durlemann* judgment remains good law.

The only light at the end of the tunnel is the new Insurance Contract Act in Switzerland, which is about to revise the existing Swiss Insurance Contract Law. The latest draft has not yet been passed by the Swiss parliament, but there is one new provision in the draft act that will, if passed, introduce a clear rule of subrogation and eliminate the old *Gini/Durlemann* ruling completely.

Since it is likely this provision will not be amended by parliament, we can expect the old *Gini/Durlemann* ruling will be eliminated when the new act comes into force (probably within the next three years). Contractual parties of the assured will then no longer be better protected than in other countries. ■

The only light at the end of the tunnel is the new Insurance Contract Act in Switzerland, which is about to revise the existing Swiss Insurance Contract Law. The latest draft has not yet been passed by the Swiss parliament, but there is one new provision in the draft act that will, if passed, introduce a clear rule of subrogation and eliminate the old *Gini/Durlemann* ruling completely

Supreme Court of Switzerland: recently held that insurers still fall under art 51 and the Gini/Durlemann case remains good law
Roland Zumbuehl

US bank regulator continues pursuit of D&O insurance assets

By Mark Leimkuhler, partner
Lewis Baach, Washington DC

The US Federal Deposit Insurance Corporation (FDIC) continues to pursue lawsuits against executives of failed banks, targeting recoveries under directors' and officers' (D&O) policies.

The most recent lawsuit, filed in January against officers and directors of R-G Premier Bank of Puerto Rico, also names the bank's D&O insurer, XL Specialty Insurance.

The FDIC's R-G lawsuit asserts former directors and officers gave a loan officer virtually absolute control over commercial lending, allowed him to "recklessly pursue" commercial loan growth, and approved "obviously risky and deficiently underwritten loans". The FDIC alleges XL issued $35m in D&O insurance providing coverage for the asserted wrongdoing.

The lawsuit may signal a trend at the FDIC to sue D&O insurers of failed banks directly. Last August, the agency's lawsuit against former directors and officers of Silverton Bank also named Silverton's D&O carriers: Federal Insurance Company and Westchester Fire Insurance Company.

The FDIC has authorised D&O litigation in connection with 44 failed banks against 391 individuals, with claimed damages exceeding $7.7bn. Lawsuits filed to date involve only 18 banks and 161 individuals, so the volume of lawsuits could still grow dramatically.

These lawsuits may bring about a replay of the D&O coverage disputes relating to the US savings and loan crisis of the 1980s. Then, a key issue was whether the "insured versus insured" exclusion in many D&O policies precluded coverage for claims the FDIC brought as receiver of failed financial institutions.

The FDIC argued the exclusion was intended to bar coverage for collusive suits, not claims where the agency was genuinely adverse to the defendants. It appears the FDIC will reprise that argument in the latest round of litigation.

The FDIC further asserts the exclusion is inapplicable because its claims are based on its statutory authority and not just "on behalf of" a failed bank. It is also expected to rely on "carvebacks" added to many D&O policies after the earlier coverage disputes, which purport to restore coverage for claims by receivers.

Another central coverage issue involves the "regulatory exclusion" in some D&O policies, which precludes claims by the FDIC and other regulators. This exclusion appeared in many bank D&O policies after the wave of savings and loans-related D&O suits, but reportedly had become less prevalent before the latest crisis. The FDIC previously argued for a "public policy" exception to this exclusion, but courts have generally rejected that position. ■

UK government delays compensation reform

The UK government has pushed back implementation of Lord Justice Jackson's reforms and the referral fee ban to April 2013.

The announcement came as the House of Lords began scrutinising the second part of the Legal Aid, Sentencing and Punishment of Offenders Bill, according to lawyers at Hogan Lovells LLP.

It had originally been scheduled to take effect this October, but speculation had been growing the timetable was too tight.

Seamus Smyth, president of the London Solicitors Litigation Association, said: "The Jackson consultation process took a long time and highlighted a great deal of disagreement. "Implementing his proposals, even as a whole, would have taken time and would not have been easy, but tackling them piecemeal was bound to generate more disagreement and take even longer. It is no surprise the timetable is being stretched. Let's hope the detail and drafting quality of the outcome justifies the wait."

Kennedys Law LLP has been urging the government not to let the delayed timetable become an opportunity for those who oppose their introduction to water down the package.

The delay in implementation to April 2013 should be seen as an opportunity to ensure the implementation of the reform proposals, including changes made to the Civil Procedure Rules, are correct and to ensure a well-balanced interlocking package of reform.

Tracy Head, partner in Kennedys liability division, said: "Kennedys has been working with the Civil Justice Group to try to ensure Jackson's recommendations are implemented as an interlocking package as intended."

She added the delay will give the government adequate time to take into account any possible changes to the road traffic accident personal injury claims portal arising from the impending response to the Solving Disputes in the County Courts consultation.

Laurence Besemer, chief executive of the Forum of Insurance Lawyers, said: "There is no need for a Plan B – Plan A will deliver a sustainable and balanced civil justice system and the government should stick the course on these reforms.

"There are no divisions in the defendant camp and our position is clear: the Jackson reforms, provided they are brought in as a package and at the same time, as Jackson LJ intended, will deliver access to justice for those who want it and bring proportionality and balance back into the system, to the benefit of wider society. There is simply no credible evidence of risk to innocent victims." ■

European Commission's Test-Achats guidance muddies the waters

With insurers across Europe considering how they will change their pricing models following the ruling in Test-Achats last year, the European Commission's guidelines on the application of the ruling were eagerly anticipated. Unfortunately, while the guidelines provide some helpful clarity, they also create significant confusion for UK insurers in one vital area.

The Test-Achats ruling means gender-neutral pricing must be adopted for all new insurance contracts from December 21, 2012. While what constitutes a "new contract" appears at first sight to be a straightforward concept, the position is not always clear: mid-term changes and tacit renewals, for example, create particular difficulties. In this key area, understanding of which is essential for the practical application of the ruling, the commission position contradicts that taken by HM Treasury in its consultation paper.

It is not yet clear whether the contradictory approaches of the commission and the Treasury will result in a tug of war between them… it is hoped the Treasury will provide clarification in its follow-up to its consultation

The Treasury is of the view that what constitutes a new contract is a matter of national contract law. However, the commission considers it should be regarded as an "autonomous concept of European law". Does it matter which way the coin falls on this issue? The answer is unequivocally yes: national law and European law may produce different answers to the same question. The commission's approach is designed to avoid differing interpretations based on national law by imposing an overriding set of rules.

Where a contract is concluded for the first time or renewed by agreement there is no conflict between the Treasury and the commission. However, tacit renewals are not considered by the commission to give rise to a new contract, whereas English law would regard them as creating one. There is also a difference in how mid-term adjustments would be treated.

The commission believes amendments to existing contracts creates new contracts, except where the contract has set out predefined parameters for amendments. Under English law, some mid-term adjustments will constitute a new contract and others will not, depending on the contract wording and the nature of the amendment.

The commission's guidance is helpful in clarifying insurers can continue to offer gender specific products, or options within products where conditions affect only or predominantly one gender (eg, breast cancer).

This is consistent with the position under the Equality Act 2010. It also acknowledges circumstances where an insurer will need to take account of gender in assessing risk factors because of physiological differences – for example, in the context of life and health underwriting, safe alcohol consumption is set at different levels for men and women because they process alcohol differently.

It is expected the Test-Achats ruling will result in higher premiums. However, the commission expects the industry to be innovative and offer attractive unisex products without unjustified price increases.

It is not yet clear whether the contradictory approaches of the commission and the Treasury will result in a tug of war between them; given the limited time before insurers have to apply gender neutral pricing, it is hoped the Treasury will provide clarification in its follow-up to its consultation to enable the industry to prepare for December 21 with some certainty as to the legal position.

However, if the contradiction remains, the question can only be definitively resolved by a further European Court of Justice ruling. ■

Geraldine Quirk is a partner and Samantha Jones is an associate at Clyde & Co

15-16 May

insuranceday summitlondon

Grange Tower Bridge Hotel, London

register your interest at
www.insurancedaysummit.com/london

12-13 June

insuranceday summitbermuda

The Fairmont Hamilton Princess, Bermuda

register your interest at
www.insurancedaysummit.com/bermuda

If you would like to be involved in either the London or Bermuda Summits 2012 or for further information
Contact +44 (0) 207 017 4070 or email IDsummitlondon@informa.com