

insurance day

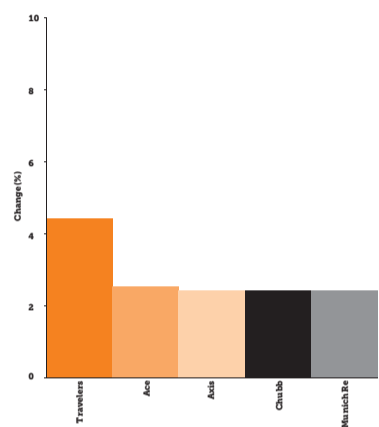
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China aims to ease insurance expertise immigration

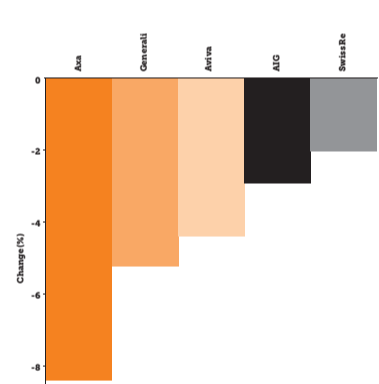


Financial World Today

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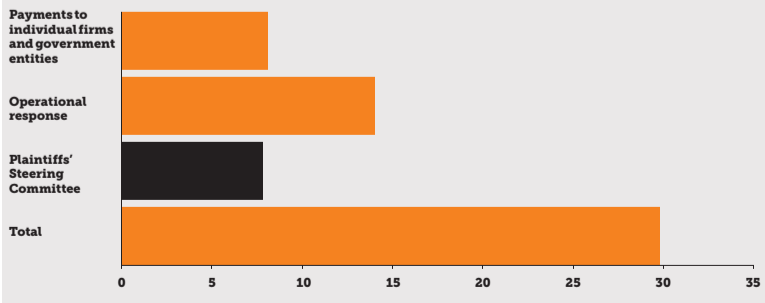
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Market news, data and insight all day, everyday

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

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Allianz: the German insurer, along with Ergo, is particularly concerned with trying to improve the image of the insurance industry



German insurers urge auditor oversight of sales methods

Herbert Fromme, Cologne
German correspondent

The German insurance industry is planning to ask auditors to check the sales methods of individual companies.

Auditors will be hired to check if companies adhere to the code of behaviour for the sale of insurance products, laid out by German insurance association GDV.

The new certification rule is part of the draft version of the code, to be implemented by November. A GDV spokeswoman confirmed the draft is being discussed with member companies at present. "We have not yet spoken to the auditors," she said. It is possible there could be another form of external checks.

The use of external controllers to assure correct sales methods means a revolution for the German industry, which has always fought against more regulation. However, market leaders Allianz and Ergo in particular are pushing for the existing code, which came into force at the beginning of 2011 and has proved toothless so far, to be strengthened.

The code includes rules covering the clear identification of intermediaries as brokers or agents, transparency of commission and costs, advisory and qualifications rules for the intermediaries and regulations for compliance.

Allianz and Ergo are seriously worried about the insurance industry's image problem. Contributing to this have been commission churning in private health and other lines, poaching and also scandals such as the one surrounding HMI



"I am concerned about the role of those issuing the certificate. What exactly should he certify? Has the company accepted the rules itself, or are its agents also sticking to them?"

Georg Zaum
Mecklenburgische
Versicherungsgruppe

agents' sex trip to Budapest. The EU is preparing to tighten regulations governing insurance intermediaries and the German minister for consumer protection, Ilse Aigner, also has the subject on her agenda.

The industry plans to counter this via the voluntary use of external controls. "Insurers that accept the code as binding for themselves allow annual certification to be made by an auditing company or an auditor," the draft says. "The subject matter of the certificate is the confirmation the insurer has transferred the regulations of the code into its own rules and has practised them." The association plans to publish the names of the insurer and the issuer of the certificate on its website.

Many insurers, especially smaller companies, have their doubts. "I am concerned about the role of those issuing the certificate," Georg Zaum, head of Mecklenburgische Versicherungsgruppe in Hanover, said. "What exactly should he certify? Has the company accepted the rules itself, or are its agents also sticking to them?" After all, there are insurers with thousands of agents. "How can an auditor check on them?" Other insurers fear more bureaucracy and higher costs.

Alongside the certification, the new draft includes further stiffening of rules. The paragraph on compliance is new; here, the association says all insurers should have their own compliance regulations and should only work together with partners "that acknowledge these basics or have themselves set down comparable rules and practise them".

There should also be clear rules on gifts and invitations, as well as regulations governing the "suitability of advertising activities and company events, including incentive trips".

Insurers risk missing out on German energy overhaul business – Marsh



Anne-Christin Gröger,
Frankfurt
German correspondent

German insurers are in danger of missing the boat with regard to dramatic changes in the country's energy sector, Jochen Körner, Germany manager of broker Marsh, told journalists in Frankfurt.

"German insurers are not as ready for innovations when it comes to insuring wind parks as insurers from other countries, and they must take care know-how and capacity do not emigrate to the international market," he said.

Germany is due to end nuclear power production by 2022 and is seeking to replace it to a large extent with alternative energies, with the government keen on wind and solar energy, as well as biogas. Offshore wind parks in particular will provide a large proportion of

"Less experienced insurers from Japan are already in the starting gate and are eagerly looking to gain their first know-how in Germany"

Ralf Skowronnek
Marsh

Germany's energy, because there are few limitations to the number of turbines erected and the wind is stronger than on shore.

So far, though, only a few of the larger German insurers are active in insuring offshore wind power. As claims could reach high figures, insurance is done via consortia that share the risk between them.

Taking part in the consortium for the Meerwind project in the North Sea are Axa, HDI-Gerling and Allianz Global Corporate & Specialty. Danish insurer Codan is taking the lead role, though.

In general, German companies

keep to the sidelines with cover. They fear unknown territory and serial claims, for instance, through wear and tear on rotor blades. But investors are confronted with the problem no new project can start without insurance cover.

German insurers have to move because international competition is not sleeping, Marsh believes. "Less experienced insurers from Japan are already in the starting gate and are eagerly looking to gain their first know-how in Germany," Ralf Skowronnek, responsible for renewable energy cover at Marsh, said.

"They do not have a great deal of specialist knowledge, but they are happy to take part as smaller partners in German consortia to gain experience and later to take over the leads for consortia in their home markets."

Marsh is helping to insure more than a dozen offshore wind parks, which can produce around 5,000 megawatts. Altogether in Germany there are 22,297 parks installed onshore and offshore.

China moves to ease immigration rules to attract foreign insurance expertise

Insurance is one of the sectors for which China is looking to ease immigration and entry requirements as part of a drive to encourage foreign expertise into the country, writes Richard Banks.

During a speech on residence and employment rules for foreigners, China's vice-minister of public security, Yang Huanning, confirmed the authorities intended to make it easier to obtain a permanent residence card and were considering introducing visa-free systems and multiple-entry visas.

Last week, China's vice-premier, Wang Qishan (pictured), claimed the Chinese insurance sector needs to undergo accelerated but healthy reform and innovation.

Wang said the development of the industry is at an early stage and "explorative steps" need to be taken to improve its systems.

In particular, he said he feels greater effort needs to be made in the improvement of pension, medical and liability insurance. He feels the agricultural and ship-



ping industries, as well as smaller and technology-related companies, needed to receive better insurance services.

The number of international insurance players with a presence on the ground in China has been growing substantially in recent months. Catlin became the latest earlier this month, unveiling plans for a representative office in Beijing to build on its existing participation in Lloyd's Shanghai-headquartered Chinese operations.

Reports from the Xinhua News Agency indicate the National People's Congress (NPC) standing committee is debating the creation of a so-called "talent introduction" visa for individuals bringing expertise in specific sectors to the country.

As well as insurance, China is keen to attract individuals with expertise in the fields of medical services, education and taxation, according to Yin Weimin, minister of human resources and social security.

Mapfre extends its decade-long relationship with Iberia for further three years

Mapfre's decade-long relationship with Spanish airline Iberia will continue for at least another three years after the insurer took a prominent position on the company's insurance, which is now incorporated within a wider International Airlines Group (IAG) programme.

Under the terms of the contract, Mapfre will be the insurer for the Iberia consortium, which also includes regional carrier Air Nostrum and low-cost airlines Vueling and the newly formed Iberia Express. For the first time, South American airline LAN Chile will also buy its insurance coverage under the Iberia umbrella, albeit in this instance from Mapfre América.

The start of last year saw Iberia join forces with British Airways to form IAG, a Spanish-registered company listed on both the London and Spanish Stock Exchanges.

IAG's hull and liability insurance

programme, which also includes Brazilian airline group TAM and Aer Lingus, is brokered by Marsh and led by Chartis, *Insurance Day* sources said.

One of these sources explained why Iberia uses Mapfre as its insurer in the first instance: "Due

to the requirements to have insurance policies in local language and to offer local claims servicing, Iberia and LAN Group have used Mapfre to fulfil this important role."

Under the terms of this deal, Chartis sets policy terms and conditions and rates and manages claims for the directly insured airlines of the IAG programme. It will also provide claims co-operation on the reinsured Mapfre part of the programme.

It is understood both the Iberia and IAG policies inception earlier this month.



NEWS

Regulatory burden stifles Europe's credit crisis recovery – Atradius



Richard Banks
Editor

An increased regulatory cost burden on the banking sector has meant credit conditions in many major European markets have not improved since the 2008 financial crisis, stifling economic growth and raising fears of soaring numbers of insolvencies across Europe, according to credit insurer Atradius.

Its latest analysis,

warning the impact of the sovereign debt crisis has moved from the financial markets to firms and households, came just hours before the UK's Office of National Statistics confirmed the UK economy had returned to recession, shrinking 0.2% in the first three months of 2012.

Atradius acknowledges the European Central Bank's €1trn (\$1.321trn) injection has provided some economic stability across the eurozone, but claims continued sovereign debt uncertainty

means financial market tension remains high.

The report said: "A major issue is credit conditions in advanced markets have been tight and have shown hardly any improvement since the financial crisis in 2008. The banking sector continues to consolidate its debts and seeks additional capital to comply with new and stricter regulations. This has created a challenging environment for households and firms, especially in the eurozone and, to a lesser extent, in the US."

In fact, while Atradius is predicting an increase in insolvencies in most European markets, it believes the situation in the US will improve.

**€1trn
ECB's capital
injection intended
to provide
eurozone
stability**

**0.2%
Contraction in
the UK economy
for first quarter
of 2012**

"In the eurozone the sovereign debt crisis has moved from the financial markets to firms and households ... as consumer confidence is low, we see consumers unwilling to spend and banks unwilling to provide finance to firms in the eurozone. Rates of insolvencies are likely to go up in those markets"

John Lorie
Atradius

But there are other factors that could exacerbate the situation further, including the potential of rocketing oil prices as a result of Middle East unrest, which Atradius said would "increase retail prices and hurt consumer spending across the globe".

Atradius chief economist, John Lorie, said: "While the US is moving on relatively well, in the eurozone the sovereign debt crisis has moved from the financial markets to firms and households.

"As consumer confidence is low, we see consumers unwilling to spend and banks unwilling to provide finance to firms in the eurozone. Rates of insolvencies are likely to go up in those markets. In the US, on the other hand, rates are likely to improve."



Perth (left) and Sydney: Lockton is opening offices in the Australian cities, setting up a new broker, Lockton Australia Pty

Lockton launches Australian subsidiary

Privately held Missouri-based broker Lockton is to open two new offices in Perth and Sydney, establishing a new brokerage, Lockton Australia Pty, writes Peter Birks.

Lockton Australia will officially open on May 18, with Adam Rhodes as chief executive. He will report to Gerry Callaghan, executive chairman of Lockton's Asian operations.

Lockton chief executive and president, John Lumelleau, said: "Adding Lockton operations in Australia is another important step in expanding our expert local teams to serve clients across the world."

Rhodes was formerly with Australian Reliance Group (ARG) and will be joined by several other former principals at ARG.

Meanwhile, Lockton and ARG

have restructured their relationship and business, with the two companies operating separately in future. Lockton said: "This restructure provides the ability to focus on the individual needs of a diverse client base and reflects the rapid growth achieved over recent years."

ARG chief executive, Andrew Donnelly, said: "this restructure will enable us to continue to develop the Australian Reliance brand."

"Adding Lockton operations in Australia is another important step in expanding our expert local teams to serve clients across the world"

John Lumelleau
Lockton

Ace's first-quarter performance 'best in more than a decade'

A more-than 15% reduction in reinsurance business written by Ace in the first quarter was more than outweighed by growth in US, international and life business, as the Swiss-based giant benefited from low catastrophe activity to report a nearly four-fold increase in net profit for the quarter, writes Richard Banks.

The biggest influence on the improved bottom line was the considerably lower catastrophe loss bill: just \$19m, compared with \$489m a year ago.

Net profit for the quarter grew to \$973m from \$250m a year ago. The performance represented by far its

best first-quarter profit performance of the last 10 years, eclipsing even 2010's \$755m and 2007's \$701m.

Ace's reinsurance and overseas general segments, which had reported 100%-plus combined ratios and underwriting losses a year ago, swung back into the black with net profits for the quarter of \$155m and \$234m respectively and underwriting profits of \$73m and \$122m.

And group chief executive, Evan Greenberg, was buoyant on the direction of pricing across the book, claiming: "Insurance rates were in line with or marginally better than our expectations. In fact, this was the strongest quarter yet

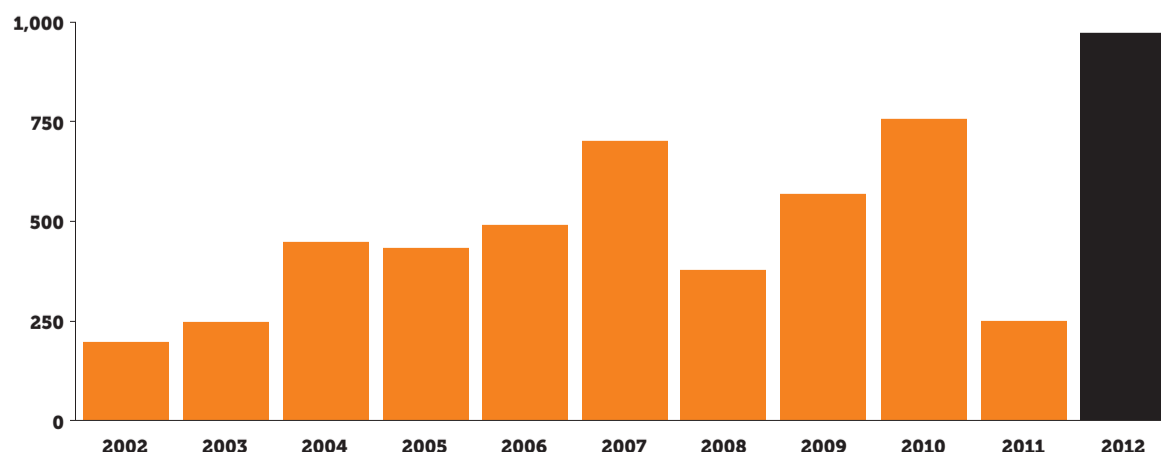
for rate increases, which were more broad-based."

In North America, Ace's largest segment, Greenberg said the group had benefited from "improved pricing in many of property-related classes and modestly improved pricing in certain casualty classes".

There was a 4% increase in gross premium written by Ace's overseas general business, which is now almost the same size as the North America division.

Life premiums grew 14.3% year on year, breaking through the half-billion dollar mark and making up more than 10% of gross written premium in the first quarter.

Graph: Ace first-quarter net earnings (\$m)



Source: Ace announcements

WORLDWIDE REINSURANCE AWARDS

Future Industry Leader open for entries

The Future Industry Leader category at this year's 19th annual Worldwide Reinsurance Awards seeks to honour the person who, through knowledge and influence, has marked themselves out as a potential leading light of the sector in the years to come



Greg Dobie, Sydney
Managing editor

The reinsurance market has underpinned trade and industry for hundreds of years, thanks to the strong and inspirational leadership of individuals, but the Future Industry Leader category, which is now open for entries, seeks out the figures who will set the scene for the coming hundreds of years.

Across the world, a new generation of reinsurers, brokers, lawyers, actuaries and professional service providers is emerging with new ideas and skills to build the industry of the future and ensure it continues to provide the same protection against emerging exposures and risks of doing business in the 21st and 22nd centuries.

The winner of this year's award will need to be able to demonstrate a number of attributes including leadership skills and a proven track record of innovation.

In addition, they will be recognised and respected within their industry sector and will have also attained and used a depth of technical knowledge.

Last year saw Guy Carpenter's global head of business intelligence, David Flandro, honoured as a rising star, with the Worldwide Reinsurance Awards judging panel of industry chief executives and senior management acknowledging his excellence in all four of these areas.

The reinsurance broker's president and chief executive, Alex Moczarski, paying tribute to Flandro, said: "Being singled out as a Future Industry Leader has become a distinct mark of achievement in the reinsurance industry. We congratulate [Flandro] on this honour and commend him for his dedication to providing the insight and analysis that are so highly valued by our clients and colleagues."

Flandro joined an illustrious list of recent previous winners, which includes Arch Re's chief underwriting officer, Maamoun Rajeh, and 2008 winner, XL Re's Gino



David Flandro (centre) receives his Future Industry Leader award at the 2011 Worldwide Reinsurance Awards



Smith. Earlier this month, Smith was promoted to the role of regional chief underwriter in Latin America for XL Group (*InsuranceDay.com*, Apr 12).

This year's entry deadline is Friday May 18. Fortunately, entering the Worldwide Reinsurance Awards has never been easier.

Using the criteria for the Future Industry Leader award, explain in 500 words or fewer why you should win a Worldwide Reinsurance Award. An individual in this category can either be nominated or nominate themselves. Then complete the online entry form and submit your entry at www.reinsuranceawards.com.

Supplementary information will be accepted if it supports points made in the entry.

"Being singled out as a Future Industry Leader has become a distinct mark of achievement in the industry. We congratulate [Flandro] on this honour and commend him for his dedication to providing the insight and analysis that are so highly valued by our clients and colleagues"

Alex Moczarski
Guy Carpenter

The 19th Worldwide Reinsurance Awards ceremony will once again be held at The Dorchester hotel in London, on a date that is already marked in most insurance and reinsurance industry practitioners' calendars – September 5, the Wednesday before the start of the Monte Carlo Rendez-Vous.

For sponsorship opportunities and table sales contact +44 (0)207 017 4027. For further information on the Reinsurance Company of the Year category or any other awards-related matters contact +44 (0)207 017 5173.



WORLD LOSS INTELLIGENCE/LIABILITY

Asbestos: Honeywell's insurance recoveries fall by one-fifth despite liabilities rising \$10m

US: Asbestos-related insurance recoveries banked by US electronics giant Honeywell fell nearly one-fifth year on year in the first quarter, despite its liabilities increasing \$10m since the beginning of 2012.

The \$608m insurance payment in the first three months of 2012 was down 18% compared with the same period last year and 4% on the fourth quarter of last year.

However, New Jersey-based Honeywell has increased its estimate of its asbestos exposures by \$10m since the start of the year to slightly more than \$1.5bn, but still close to \$47m less than this time last year.

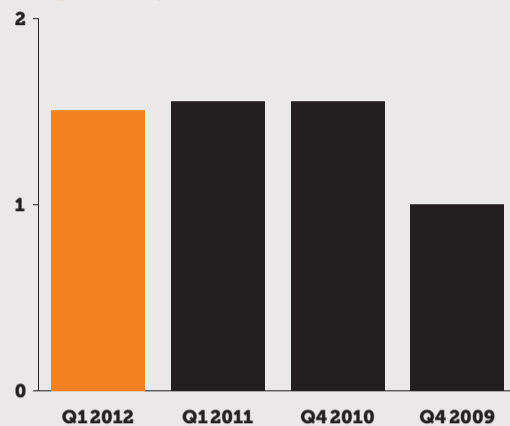
According to the company, its asbestos-related liabilities amounted to \$1.509bn at March 31, up from \$1.499bn at the end of 2011. Honeywell's asbestos-related liabilities at the end of the first quarter last year were \$1.556bn.

At the end of 2010, Honeywell's asbestos liabilities had reached \$1.557bn, itself an increase from the \$1bn recorded at the end of 2009.

It is now nine years since specialist London market reinsurer Equitas paid Honeywell some \$472m to settle all its pre-1992 insurance claims against reinsured Lloyd's names in a deal described at the time as a "comprehensive policy buyback settlement".

The deal essentially resolved all potential claims from the manufacturing giant against Lloyd's names that are reinsured into Equitas, including any asbestos claims related to North American Refractories Company, which Honeywell sold in 1986, and its brake pad subsidiary Bendix.

Graph: Honeywell asbestos liabilities (\$bn)



Legal case: Worboys' victims sue

UK: Eight victims of licensed London taxi driver Paul Worboys have sued his motor insurer, asserting the black cab in part of his offences.

Worboys was jailed indefinitely in 2009 after then sexually assaulting 12 women. The eight black cab to entice, imprison and assault his victims.

Edwin Glasgow QC told a High Court hearing cases is whether personal injuries caused by a black cab during the course of a journey, were 'caused by a road' for the purposes of compulsory insurance under the Road Traffic Act 1988 [RTA].

At the sentencing in 2009, Justice Penry-Davey said black cabs in London have a worldwide reputation for being reliable but for their professional trustworthiness and a powerful interest in sexual matters, you saw a black cab.

Glasgow said the taxi was not just a place where a black cab, it was a "symbol of security". The insurer, in its capacity, accepts it insured Worboys under the RTA and should pay damages.

Macondo: BP reaches definitive agreement with PSC over \$7.8bn payment

LOUISIANA: BP has reached "definitive and fully documented" agreements with the Plaintiffs' Steering Committee (PSC) that will resolve the majority of private economic loss and medical claims arising from 2010's Macondo disaster in the Gulf of Mexico.

Both BP and the PSC said the settlement agreements "are a fair, reasonable and adequate resolution" of the claims that have been filed.

The cost of the settlement will mean BP's balance sheet takes a \$7.8bn hit, with the sum expected to be paid out of the \$20bn trust the British oil giant established in the aftermath of the April 20, 2010 fire and subsequent sinking of Transocean's *Deepwater Horizon* mobile offshore drilling unit.

Bob Dudley, BP Group's chief executive, said: "This settlement demonstrates BP's continued progress in resolving significant issues related to the *Deepwater Horizon* accident.

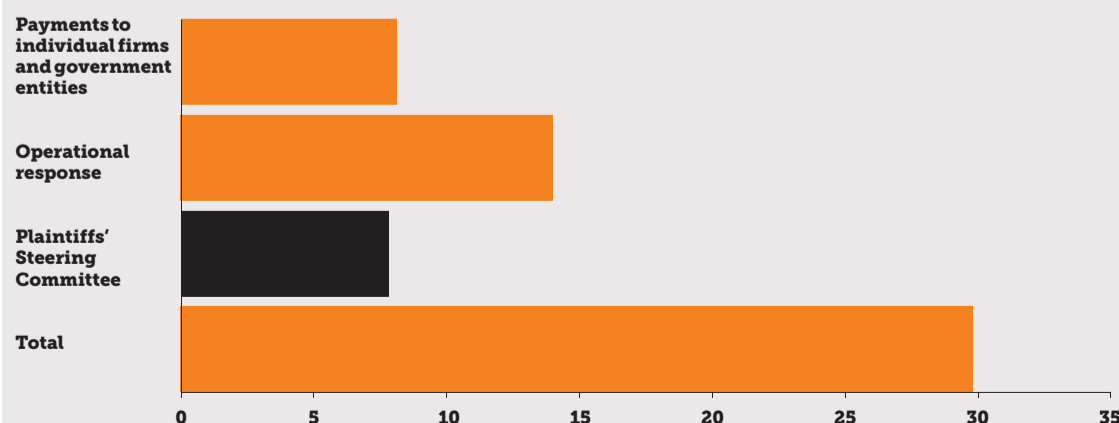
"BP made a commitment to help economic and environmental restoration efforts in the Gulf Coast and this settlement provides the framework for us to continue delivering on that promise, offering those affected full and fair compensation, without waiting for the outcome of a lengthy trial process."

Despite reaching agreement, the American Shrimp Processors Association has asked US district judge Carl Barbier in New Orleans to delay preliminary approval on the grounds the proposed distribution of \$2.3bn for seafood claims favours boat captains and shrimp harvesters at the expense of shrimp docks and processors.

The latest settlement further increases the amount BP has been forced to pay following the disaster. It has already spent more than \$22bn in meeting its commitments in the Gulf, with some \$8.1bn paid to individuals, businesses and government entities, with a further \$14bn on operational response.

Meanwhile, former BP engineer Kurt Mix has been arrested and accused of deleting text messages that showed BP had severely understated the volume of oil that was gushing into Gulf waters. His arrest marks the first criminal charge made in connection with the spill.

Graph: BP's Deepwater Horizon-related payouts (\$bn)



Y & SETTLEMENTS

Insurers over criminal's use of black cab

Driver John Worboys are suing him and which he was driving was an integral

ter being found guilty of drugging and eight plaintiffs claim Worboys used his victims.

ring: "The fundamental issue in these a taxi driver's assaults on a passenger, by or arose out of the use of a vehicle on nce as required by the Road Traffic Act

Davey said: "Drivers of licensed black not only for the reliability of their driv- s. As somebody with an enduring and an opportunity through cab driving." where the attacks took place but, as a insurer, which has been granted anony- TA but contests the women's claims for

London black cab: Worboys' victims claim his cab was an integral part of his attacks



Settlement: Patient handed £6m after being prescribed wrong medication

UK: A mental health patient who was left brain damaged after being prescribed the wrong medication regime has been awarded slightly more than £6m (\$9.7m) in medical negligence compensation.

Mistakes made in administering his medication resulted in him becoming unconscious for a period of 18 hours. He was left profoundly brain damaged after the incident and now has limited use of his limbs and difficulty communicating, which has made him almost entirely dependent on the assistance of others.

The trust admitted liability for the incident. The amount of damages awarded could exceed £6m and consists of a £2.1m lump sum, followed by annual payments of £205,000.



Legal case: Man left paralysed after 2008 terrorist attacks sues hotel chain



AP Photo/David Guttenfelder, file

INDIA: A British man left paralysed after the Mumbai terrorist attacks in November 2008 has begun legal action against a luxury international hotel chain at the centre of the incident.

The man claims the chain did little to provide security for residents of the hotel attacked by Islamic extremists.

While attempting to escape from the terrorists as they went through the Taj Mahal Palace Hotel, shooting residents and setting fires, he fell nearly 50 ft, breaking his back, pelvis and one leg and fracturing both his left wrist and right elbow. He is now confined to a wheelchair and will need life-long medical care.

Last week, lawyers from Leigh Day & Co served legal proceedings against the owners of the hotel at their five-star London hotel.

His legal team allege a warning of an attack on the hotel had been received before the atrocity and more should have been done to protect the safety of hotel guests. Guests were also not given any advice as to the hotel's emergency procedures and evacuation routes.

D&O: Tata takes out \$160m coverage

INDIA: Steel manufacturer Tata Steel has for the first time taken out a \$160m directors' and officers' (D&O) liability insurance policy, which will protect the company's senior management protection against the costs of any potential liability cases.

According to local reports, the coverage is being led by Raheja QBE General Insurance, with HDFC Chubb and Iffco Tokyo taking smaller shares on the slip.

Raheja QBE took the lead position despite competition from Tata Group's own general insurer, Tata AIG General Insurance.

The policy incepted at the start of April and carries through to the end of March next year. It covers Tata's operations in India, as well as those of its European-based division Corus.

Following the fallout from the Satyam scandal, more Indian companies are considering taking out D&O coverage despite the traditionally less litigious environment in the country.



Spanish bailout fears pressure European sector stocks

Axa share price also constrained by rumours of French sovereign downgrade



AP Photo/Paul White



Rasaad Jamie
Global markets editor

Insurance and reinsurance sector stocks fared better over the week ending April 19 than they had over the previous period. It was not much of an improvement (there were still significantly more losses than gains), but it could have been a lot worse during a week that was marked by a level of financial market volatility, the tone of which was set over the first two weeks of April when the Dow Jones Industrial Average Index rose or fell by more than 100 points on six separate days, with inevitable reverberations across global equity markets.

By way of comparison, there were only six such days over the entire first quarter of this year, a period in which financial markets gained

strongly, mainly on the back of a flow of data that suggested the economic recovery in the US was taking hold. The main cause of the European insurers fell, particularly Generali (down 5.2%) and Axa (down 8.4%), anxiety spread pretty widely across Europe. In this regard, France came under particular scrutiny from the bond markets, with interest rates on French debt rising on the back of rumours the country's credit rating was on track for a downgrade.

There were not only concerns about Spain in the week under review. As the share prices of most European insurers fell, particularly Generali (down 5.2%) and Axa (down 8.4%), anxiety spread pretty widely across Europe. In this regard, France came under particular scrutiny from the bond markets, with interest rates on French debt rising on the back of rumours the country's credit rating was on track for a downgrade.

23%
Unemployment
rate in Spain

6%+
Interest rate on
Spanish 10-
year debt

Best day in four months

But that was at the beginning of the week. You would not know it by looking at our table (insurance sector stocks, it seems, are much slower than most other stocks in terms of catching the upward wave

Table: Share prices as at close April 19, 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 Financial Services	Swiss franc

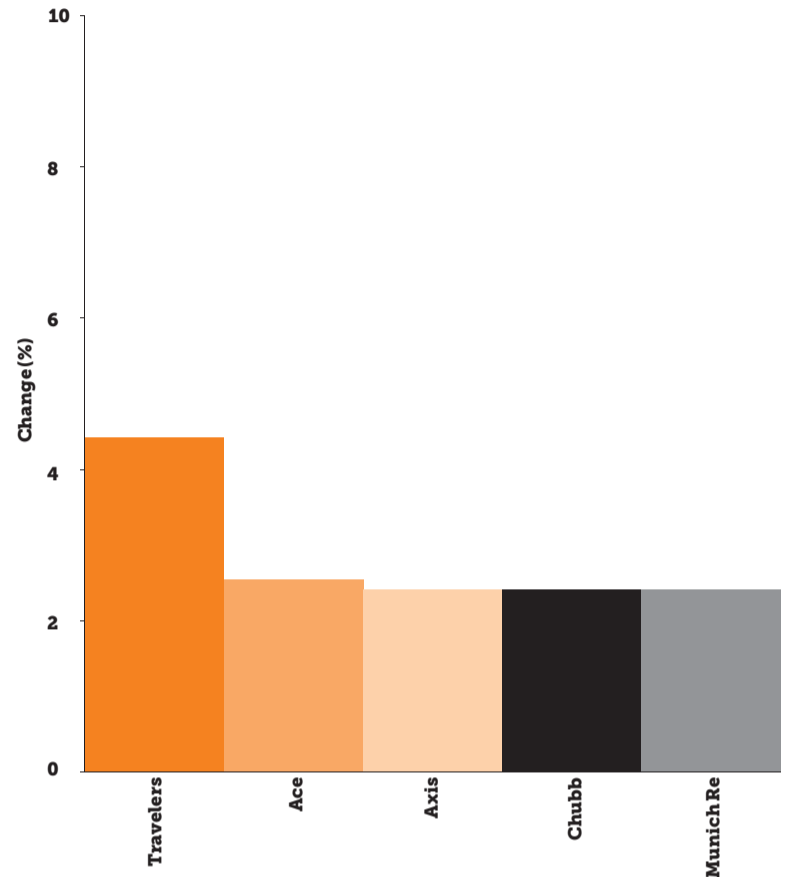
Source: Insurance Day

of a volatile cycle), but only a day or so later European stocks had their best day in four months when an auction of €3.2bn (\$4.2bn) of two-year Spanish debt generated strong demand, albeit the sale was accompanied by a significantly increased interest rate. However, the level of investor optimism prompted a reduction in the cost of insuring Spanish debt and even caused the interest rate on Spanish 10-year debt (for which a keenly watched auction was scheduled for a few days later) to mercifully drop by a

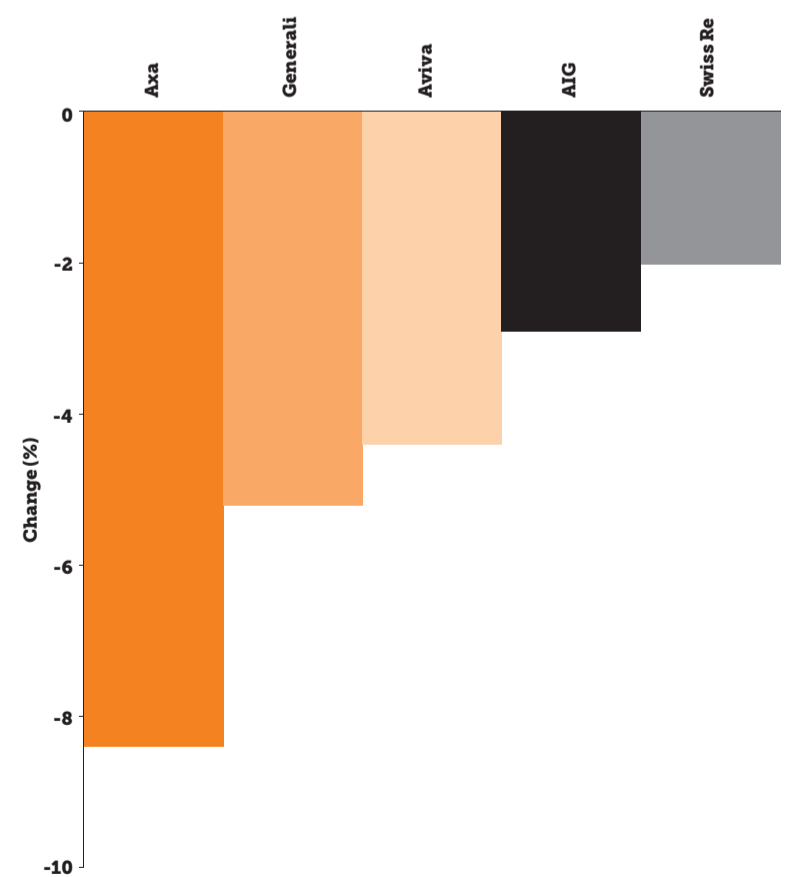
few basis points. The European market's mood was further boosted by the results of a German investor survey conducted by the ZEW Institute, which indicated, despite concerns about the impact of the eurozone debt crisis on the country's economic prospects, companies were confidently moving ahead with investment plans and programmes. It also helped that the International Monetary Fund (IMF) not only issued an upward revision of its forecast for global growth, but a statement that said Spain was not

Dec 31, 2011	Apr 12, 2012	Apr 19, 2012	Change from Apr 12 (%)	Capitalisation (\$m)
70.12	73.02	74.84	2.5	25,345
23.20	33.23	32.27	(2.9)	57,874
285.29	337.04	337.54	0.1	5,713
73.43	84.30	83.41	(1.1)	49,770
27.41	32.87	32.81	(0.2)	16,191
23.63	22.62	22.93	1.4	2,315
313.90	330.00	328.10	(0.6)	2,613
37.23	37.86	38.54	1.8	5,172
26.50	27.99	27.85	(0.5)	1,971
300.80	313.40	299.60	(4.4)	13,495
10.05	11.27	10.32	(8.4)	31,026
31.96	33.49	34.29	2.4	4,487
114,755.00	120,173.00	119,050.00	(0.9)	111,193
398.70	418.90	422.10	0.8	2,434
69.22	70.51	72.19	2.4	19,521
26.75	29.16	29.44	1.0	7,930
38.25	39.34	38.82	(1.3)	1,684
84.09	94.29	94.17	(0.1)	5,899
11.63	10.73	10.17	(5.2)	20,662
38.30	43.91	44.43	1.2	7,035
373.50	399.40	402.30	0.7	2,457
2.98	3.42	3.49	2.0	7,459
15,000.00	13,500.00	13,400.00	(0.7)	1,341
17.75	19.47	19.52	0.3	1,158
1,426.00	1,560.00	1,534.00	(1.7)	7,931
94.59	111.00	113.64	2.4	29,451
1,510.00	1,676.00	1,678.00	0.1	32,533
64.21	67.61	67.41	(0.3)	4,415
34.11	35.89	35.70	(0.5)	1,273
12.95	13.59	13.54	(0.4)	14,399
74.37	75.19	75.09	(0.1)	3,887
105.20	103.80	103.80	0.0	5,748
18.06	19.82	19.64	(0.9)	4,748
21.50	23.50	23.40	(0.4)	4,797
47.87	57.15	56.00	(2.0)	22,670
59.17	59.10	61.70	4.4	24,099
1,705.00	2,044.00	2,082.00	1.9	20,123
19.77	21.47	21.37	(0.5)	6,740
212.50	219.50	221.70	1.0	35,683

Graph: This week's winners...



...and losers



in need of a bailout. Christine Lagarde (pictured), the IMF managing director, also said the fund's financial resources would be significantly expanded that week, which, accordingly, would improve its ability to respond to this kind of crisis.

While insurance stocks in Asia took a measure of comfort from the more positive developments in the eurozone, the flow of disappointing economic data from the US (particularly Department of Commerce data released during the week that indicated a further deterioration in the

US employment and housing markets) put huge pressure on stock prices. But during the week, Japanese stocks in particular came under pressure when figures released by the Ministry of Finance indicated the country recorded its biggest annual trade deficit ever in 2011. With only one of Japan's 54 nuclear reactors in operation, the country had to increase its imports of oil and gas significantly to meet domestic and industrial demand for electric power. ■



Andrew Harter/Bloomberg



LAW & ORDER

Sovereign debt – crisis over or a Greek tragedy?

The question of whether or not Europe has turned a financial corner remains unanswered



Jennifer Boldon,
partner
Kennedys LLP

Europe has just experienced the biggest sovereign default in history – and the most anticipated. Greece's recent orderly default was the first time a developed country has defaulted in six decades.

However, the final approval of the second €130bn (\$171.9bn) bailout to Greece and the completion of the €206bn debt swap leading to a €100bn write-off of debt was greeted by most in the financial markets with resignation. The mechanics of the deal were thrashed out for a number of months and most financial institutions had already written down Greek debt in preparation for a Greek haircut.

Collective action clauses

Close to 96% of private bondholders were included in the €206bn debt restructuring following Athens' decision to trigger "collective action clauses" (CACs) under the newly enacted Greek bondholder law, forcing a minority of bondholders to go with the majority decision to take up new bonds. The use of CACs triggered a "credit event", according to the International Swaps and Derivatives Association, which resulted in a payout for holders of credit default swaps (CDSs) in the order of €2.89bn.

The triggering of CDSs has generally been seen as a positive development that will boost the eurozone debt markets, since a failure to trigger could have undermined use of the CDS as a hedging instrument for holding government bonds.

There is still a small minority of international investors whose bonds are covered by foreign (as opposed to Greek) law who are holding out from the restructuring. Whether or not these are bonds purchased by vulture funds or

individual investors hold their nerve to force payment in full, possibly through the courts remains to be seen. It may prove cheaper for Greece to pay the remainder of these bonds in full than fight costly litigation.

Some commentators believe the target for Greece to reduce its debt-to-GDP ratio from 160% to 120% by 2020 may not be sustainable, given the challenges Greece is facing with residual debt of €250bn and a population fatigued by austerity measures in the fifth concurrent year of a contracting economy.

There is also concern about forthcoming elections in Greece and whether those elected will continue to adhere to the austerity measures to be implemented, on which bailout funds are dependent.

Many believe it is only a matter of time before Greece requires a further bailout. Some believe it would be better for Greece to default altogether and leave the eurozone. Others have turned their attention from Greece (which, after all, represents only 3% of the eurozone economy) to speculate on which of the remaining PIIGS countries (Portugal, Italy, Ireland, Greece and Spain) will experience the next default.

Portugal is, on paper, the next-most troubled eurozone country but recent events in Spain, with strikes and demonstrations following significant cuts in public spending and tax rises, together with unemployment running at levels in excess of 23% and continuing to rise, also cause concern.

Italy also has high debt but remains in better economic shape than Ireland, whose economy is slipping back into a recession, despite strict implementation of austerity measures.

Many believe the eurozone is doing too little, too late to assist troubled peripheral eurozone nations to survive rather than doing more to stimulate their economies.

Available bailout funds are likely to increase from present €500bn levels (in addition to Inter-

national Monetary Fund monies of close to €250bn) by allowing the temporary European Financial Stability Facility (EFSF) to continue in tandem with the European Stability Mechanism (ESM), which will be launched in July as a permanent rescue funding program. Indications are the EFSF will stay in existence with the ESM, at least in the short term, leading to a €700bn fund, but this stops short of the €1trn some economists advocate to restore confidence in the eurozone.

Implications for insurers

What does this mean for insurers? Instability is likely to continue for many months and years to come. A large number of insurers have already effected substantial write-downs on Greek debt over the past year, adversely affecting their profitability.

To date, however, it is believed insurers have not written down the debt of other PIIGS countries and if a further bailout for one of these countries were necessary or if they were to attempt a debt restructuring of a similar nature to that of Greece, there could be significant repercussions throughout the financial market.

In terms of casualties to date, the nationalisation of Dexia and the collapse of MF Global were both blamed on sovereign debt exposure. However, there have been few reported claims directly resulting from sovereign debt. The general economic malaise has led to claims being made by unhappy investors but fears sovereign debt could be the "next sub-prime" have not, as yet, come to pass.

There may potentially be a number of claims brought by disgruntled holders of Greek debt who have been forced into debt restructuring, who may claim they were badly advised. Whether such claims could be made good remains to be seen.

Optimists believe the worst is behind us with improved liquidity thanks to the European Central Bank's long-term refinancing oper-

Protesters opposing austerity measures in Barcelona, Spain

AP Photo/Manu Fernandez



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ation policy and the Fiscal Compact to be approved by January 2013, which aims to restore prudent fiscal policy in the EU.

The compact mirrors a number of principles of the Growth and Stability Pact implemented by the Maastricht Treaty, which were flouted by so many EU countries in the 2000s. Yet there is a perception the treaty will be ineffectual and all that is being done is papering over the cracks.

For example, Spain has, while signing up to the pact, already indicated it will not be able to reduce its budget deficit to the target levels set for it and has simply rewritten its own target.

Minimising the risks

So what can insurers do to minimise their risks? Few insurers appear in favour of imposing sovereign debt exclusions in their policies on the basis that to be effective they would need to exclude both direct and indirect losses and may be unworkable in practice with insureds refusing to accept them.

The tailoring of proposal forms to understand sovereign debt exposures of insureds and appropriate rating of risk would appear to be a sensible way of evaluating exposures but the future of the eurozone economy and exposures are very difficult to predict. Insurers, along with the rest of the financial markets, must wait and hope the eurozone has finally turned the corner. ■

Argentina makes moves to nationalise Repsol subsidiary

Manuel Varela, partner
Lewis Baach PLLC, Washington, DC

Argentina's president has announced plans to nationalise a majority of the shares of Repsol-YPF, an Argentine oil-producing subsidiary of the Spanish energy company Repsol.

President Cristina Fernandez de Kirchner announced on April 16 she would introduce legislation in the Argentine congress to carry out the nationalisation plans. Fernandez also announced emergency measures for an immediate government takeover of the oil company on an interim basis while a permanent takeover is debated in congress.

With shares of the subsidiary valued by Repsol at \$10.5bn, the nationalisation measures could result in significant claims for political risk insurers and their reinsurers.

While nationalisation efforts are still in the very early stages, the most significant issue for insurers is the valuation of expropriated shares. Repsol has already

announced it is seeking compensation for the market price of the shares, which were publicly traded in New York. Under Argentine law, a local claims tribunal will determine compensation to Repsol, but many believe the tribunal is heavily politicised and likely to assign a value to the shares well below Repsol's view of their value.

Even if the tribunal values the shares at market, a dispute is likely to arise over the date of valuation. Fernandez's government has had a number of disputes with Repsol in the past few months, including the use of allied regional governors to remove forcibly Repsol from functioning oil fields.

These developments have depressed the oil subsidiary's share price significantly. The announcement of nationalisation plans further lowered their value to the

point where the New York Stock Exchange suspended trading in Repsol-YPF shares.

Another dispute may arise about the form of compensation. The Argentine government has recently implemented measures to prevent the outflow of US dollars from the country. It is unlikely to agree to compensate Repsol in foreign currency and may try to pay with Argentine government bonds, which are difficult to value given the limited market for Argentine debt.

These issues may extend beyond expropriation of Repsol-YPF shares. The day after she announced plans to take over the oil producer, Fernandez hinted nationalisation of foreign telecoms and banks could also be in the works. ■

Repsol HQ
in Madrid,
Spain

Angel
Navarrete/
Bloomberg



Professional indemnity insurers lose out on mitigation costs cover

Leon Taylor, partner
DLA Piper, insurance and
reinsurance team, London

Just as the UK's Financial Services Authority (FSA) is increasingly requiring financial institutions to take proactive steps to compensate customers in cases of mis-selling, insureds risk falling between a rock and a hard place vis-à-vis their professional indemnity (PI) insurers: the cost to an insured of "doing the right thing" by customers may not always be recoverable under its PI cover.

In *Standard Life Assurance Ltd v Ace European Group and others*, the High Court has provided policyholders with some relief – to the frustration of insurers. The claim concerned allegations of mis-selling against Standard Life (SLAL) in relation to one of its pension funds.

Following the collapse of Lehman Brothers in 2008, SLAL

switched to a different valuation model for the fund, which caused it to lose 4.8% (about £100m (\$160.9m)) of its value overnight. In response to a mass of complaints from investors, SLAL decided to restore the value of the fund rather than deal with claims individually, which it considered would prove more expensive in the long run.

SLAL's PI policy included cover for "any payment of loss, costs or expenses reasonably and necessarily incurred ... in taking action to avoid a third-party claim or to reduce a third-party claim". SLAL claimed its £100m cash injection to restore the fund was covered as a mitigation cost.

Insurers disagreed because one of the reasons for restoring was to protect SLAL's brand. The court rejected insurers' arguments: the proper approach was to consider the intended effect of the payment.

SLAL's subjective motive for it was irrelevant. Even if the pay-

ment benefitted SLAL's reputation, if its intended effect was at least partly to avoid or reduce claims, the policy responded. After all, the policy did not require mitigation costs to be incurred "solely" or "exclusively" to avoid claims.

The court also rejected insurers' suggestion the loss should be apportioned to reflect the different purposes of the payment. While valid in marine insurance, the court was very doubtful apportionment could play a role under a liability policy. Insurers also lost an aggregation argument with the result a single deductible applied to all the customer claims.

While the insured was successful in this case, disputes like this usually turn on the particular wording of the insurance policy. The decision may encourage insurers to consider whether to tighten their mitigation costs wordings so only expenses made "solely" or "exclusively" to reduce losses are recoverable. ■

Evolution of contractual interpretation and business common sense



Following the UK Supreme Court's recent pronouncement a "business common sense" approach is most appropriate when faced with competing interpretations of contract wording, the courts have since seen fit to follow suit.

During 2012, the courts have cited the Supreme Court's decision in *The Rainy Sky* (2011) and have adopted the same approach. It therefore seems an important, albeit subtle, shift in judicial thinking has occurred.

It is now more likely where a clause is open to interpretation the literal meaning of the words used will be disregarded in favour of the interpretation closer to business common sense.

Therefore, insurers and insureds may now be able to bring (or must face) the argument a business common sense (rather than a literal) interpretation of the words in a policy should be adopted to determine whether the policy responds or the scope of cover.

In *Chalabi and others v Agha-Jaffar and another* (2012), purchasers of a group of companies warranted to the vendors the price paid was three-fifths or more of the sum they would get from their onward sale of the companies. The structure of the onward sale resulted in a tax liability (which the third-party buyer paid).

Rejecting the argument the vendors should also receive three-fifths of the sum paid in respect of tax, the Court of Appeal held it did not make commercial sense to treat this as part of the purchase price as it was an expense incurred as a result of structuring the sale in a particular way.

To hold otherwise would effectively allow the claimant vendors to pocket three-fifths of the tax payment, leaving the defendant purchasers to pay most of it. Following *Rainy Sky*, such an interpretation would be unfair and must yield to the more commercially sensible solution of excluding the tax payment from the purchase price.

In *RGI v Synergy Classic Ltd*

(2012), the parties' investment agreement envisaged Synergy would acquire first shares and option shares. Clause 5.5 provided if RGI failed to allot and issue the option shares in accordance with clause 5.2(b), Synergy could exercise a put option requiring RGI to procure the purchase of the first shares from it for \$99m.

Synergy subsequently contended the option shares had not been allotted and issued to it as required by clause 5.2(b). This was because they had been registered in the name of a nominee (even though this had been at Synergy's request) rather than to Synergy itself as legal and beneficial owner. Synergy therefore alleged it was open to it to serve the put option notice.

Insurers and insureds may now be able to bring (or must face) the argument a business common sense (rather than a literal) interpretation of the words in a policy should be adopted to determine whether the policy responds or the scope of cover

The High Court held the term "investor" meant not only a legal and beneficial owner of shares but included the beneficial owner of shares held through a nominee. In particular, the agreement had envisaged the shares being credited to a Crest account where shares are commonly held through nominees.

To limit "investor" to a legal and beneficial owner would run contrary to the Crest scheme. As in *Chalabi* and again following *Rainy Sky*, the court refused to permit a construction of clause 5.2(b) that would have flouted business common sense.

Neil Jamieson is a partner and Max Hope a senior associate at Clyde & Co

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