MARKET NEWS, DATA AND INSIGHT ALL DAY, EVERY DAY

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Italian insurer's former chairman Antoine Bernheim passes away aged 87

Alessia Pierdomenico/Bloomberg

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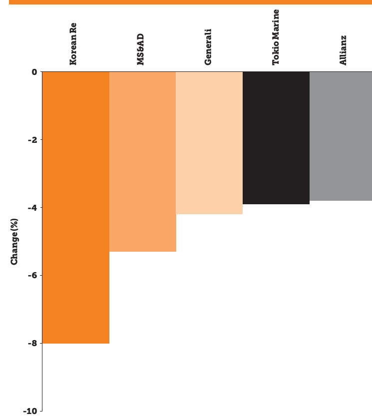

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NEWS

Hearn positions Willis Global to be 'employer of choice in London market'

Chief executive plans to streamline firm into nine divisions

Richard Banks
Editor

Willis Global's newly unveiled corporate strategy aims to position it as the employer of choice in the London broking market, as well as providing enhanced clarity for clients and a catalyst for accelerated growth, the unit's chief executive, Steve Hearn, explained.

Hearn has been conducting a strategic review of the Willis Global operations since taking over at the end of last year and has concluded a simplification of the structure is needed to fulfil its growth ambitions.

The result of his review, made public in a series of meetings last week, is the streamlining of Willis Global's 24 legacy divisions into just nine under three umbrellas: reinsurance, placement and speciality.

Hearn believes the new structure, which is due to come into force officially at the beginning of next year, underpinned by a refreshed strategic direction, will accelerate Willis Global's progress towards a $50bn turnover from today's $40bn, as well as providing personal development opportunities for staff.

Willis Global is a significant contributor to the parent group's bottom line, representing 42% of its profit, but Hearn believes its structure makes it hard for customers and staff to navigate and understand.

Hearn is clear the growth will not be purely organic and is keen to encourage corporate finance boutiques to consider Willis as a buyer in future merger and acquisition activity.

He is also keen to attract individual staff by making Willis Global the employer of choice in London. "If you look back 15 years, my perspective is JLT was the employer of choice in the London market, while on the reinsurance side it was Benfield. That space is vacant today and we are best placed to fill it. We're not there yet, but we could be," Hearn told *Insurance Day*.

Reinsurance will be an area of particular interest and Hearn, who was chairman and chief executive of Glencairn before its acquisition by Willis in 2008, has ambitious plans for improving the facultative offering.

"None of the global brokers has cracked fac, but I'm going to crack it," Hearn insisted.

His strategy involves applying skills developed in the treaty sector, including improved focus on the cedant and better use of analytics.

Willis Global's reinsurance unit brings together the facultative skills of the newly launched Faber Global subsidiary alongside the international, specialty and North American treaty divisions.

"Fac is complicated – we shouldn't pretend it isn't – but, for me, putting it beside the treaty operation should be a strong indicator of where the emphasis should be: the cedant. I want us to be having conversations with insurers and reinsurers that are not just about treaty," he said.

The restructure gives the fac operations of Faber Global a foothold in the 49 Willis Re outlets around the world, Hearn said, adding as a result he expects it to be better connected with the wider business.

"Fac is complicated – we shouldn't pretend it isn't – but, for me, putting it beside the treaty operation should be a strong indicator of where the emphasis should be: the cedant. I want us to be having conversations with insurers and reinsurers that are not just about treaty"

Steve Hearn
Willis Global

$50bn
Willis Global's turnover target, up from $40bn today

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Benign catastrophe experience 'mitigates rate rises' for the rest of 2012 – Guy Carpenter

Richard Banks
Editor

Benign loss activity so far this year moderated the hoped-for price increases at the June 1 reinsurance renewals, with the prospects for pricing improvements for the rest of the year bleak, according to the latest analysis from Guy Carpenter.

According to the reinsurance broker, the global reinsurance sector has close to $15bn of excess capital, thanks to the balance sheet-strengthening effect of the relatively light first-half claims bill.

The focus of the June 1 renewals is Florida, where price trends were generally up, but not by as much as some predictions earlier this year had suggested.

Variations in pricing narrowed, according to Guy Carpenter, to between a decrease of 7% and an increase of 6%, from 15% down to 16% up; the broker added more reinsurers are willing to deploy capacity at lower layers than in the past.

Away from Florida, accounts renewing on June 1 saw greater variability in pricing, which Guy Carpenter's head of global property specialty, Lara Mowery, put down to "the difference in reinsurer appetites across renewals exposed to a broader geographic base and significantly diverse business focus".

"[Greater variations in pricing at June 1 renewals the result of] the difference in reinsurer appetites across renewals exposed to a broader geographic base and significantly diverse business focus"

**Lara Mowery
Guy Carpenter**

In the retrocession arena, the creation of a number of sidecars at the end of last year has ensured "adequate capacity" for both US and non-US business. At the same time, property retro prices had already started to rise last year in response to the losses early in the year such as the New Zealand and Japan earthquakes.

So while prices crept up to around the same levels as those seen in the January 1 renewals, the actual year-on-year increases were not as notable.

Property fac underwriters had mounted a concerted effort to push up rates in the first quarter despite US-focused portfolios largely dodging the large losses of 2011, but because of the substantially lower US tornado losses this year Guy Carpenter's report predicts rate increases should "continue to be modest at best in the near term".

The industry loss warranty (ILW) market has experienced a rollercoaster of demand over the course of the year so far, Guy Carpenter's report said, pointing in particular to a pick-up in demand in recent weeks as "selected buyers secured significant US wind protection in the ILW market".

Before that, there had been a spike in activity in the final weeks of the first quarter as cedants secured significant limits, predominantly for Japanese earthquake cover, ahead of the April 1 inwards renewal.

The start of the year was quieter than usual as the pre-renewals activity in the ILW market at the end of last year meant there were fewer coverage shortfalls or gaps in cedants' programmes to plug.

Chinese credit sales increase 38% to cement position as main financing source

Chinese credit sales have risen 38% over the past four years, cementing its position as the main source of financing for companies in the country, *writes Christopher Munro*.

A greater need to deal with the competition and higher levels of confidence between business partners means credit sales are now used in 90% of transactions, up from 65% in 2007.

At the same time, fewer companies are being forced to offer credit terms of payment because of the cash asset problems faced by their clients.

However, credit and political risk insurer Coface said while credit sales are becoming more widespread, credit terms actually contracted last year. Almost three-quarters of transactions are now being negotiated at 60 days or less, a change in dynamic that actually reduces the risk faced by carriers such as Coface.

"Cash asset problems, competition and more difficult access to financing for small businesses, which were the main causes of payment delays in 2011, will continue to affect corporate financial strength in 2012. Budget stimulus measures may however attenuate economic risks and support activity"

Coface

In addition, while payment delays may be for shorter periods, they are in fact occurring more frequently.

The insurer's study involved interviewing 1,300 companies across various sectors. In general, the investigation found Chinese firms' payment behaviour remained globally satisfactory with sales on credit rising sharply.

"Nevertheless, cash asset problems, competition and more difficult access to financing for small businesses, which were the main causes of payment delays in 2011, will continue to affect corporate financial strength in 2012," Coface said.

"Budget stimulus measures may however attenuate economic risks and support activity," the credit insurer added.

Endurance granted eligible reinsurer status in Florida

Endurance Specialty Insurance has become the 19th company handed the opportunity to operate in Florida with reduced levels of collateral as an eligible reinsurer, the 17th from Bermuda to have done so, *writes Christopher Munro*.

With the company having reported capital and surplus of $2.4bn at the end of 2011, Endurance has exceeded the $250m required to be considered for eligible reinsurer status in Florida.

"The reinsurer also indicated secure financial strength by demonstrating favourable ratings from two statistical rating organisations deemed acceptable by the commissioner as having experience and expertise in rating insurers doing business in Florida," the Florida Office of Insurance Regulation (FLOIR) explained.

Florida was the first US state to allow reinsurers to post lower levels of collateral and act as eligible reinsurers. Since then, other states have followed suit, including New York, New Jersey and Indiana.

The only UK-based reinsurer to be granted eligible status in Florida is Lloyd's, which was approved last October. The Lime Street market's $29.9bn of statutory capital and surplus held at the time was far more than the $250m requirement set forth by the FLOIR to obtain the eligible reinsurer status.

One German reinsurer – Hannover Ruckversicherung – also holds the status. The remaining 17 are based in Bermuda.

FLOIR's eligible reinsurers

- Ace Tempest Reinsurance
- Allied World Assurance Company
- Alterra Bermuda
- Arch Reinsurance
- Ariel Reinsurance Company
- Aspen Insurance
- Axis Specialty
- DaVinci Reinsurance
- Endurance Specialty
- Hannover Re (Bermuda)
- Hannover Ruckversicherung
- Hiscox Insurance Company (Bermuda)
- Lloyd's
- Montpelier Re
- PartnerRe
- Platinum Underwriters Bermuda
- RenaissanceRe
- Tokio Millennium Re
- XL Re

NEWS

Axa outlines plans for rapid growth in direct p/c operations

Fabien Buliard, Paris
French correspondent

Axa intends to grow its direct property/casualty (p/c) business at a rapid pace, both organically and through acquisitions or start-ups.

The head of Axa Global Direct, Stéphane Guinet, indicated during a recent media seminar the group aims to post average annual organic growth of 11% in its direct operations between 2011 and 2015 to close to €3.2bn ($4bn) in revenue.

He added Axa is also working on establishing a direct distribution presence in new countries, either through acquisitions or "greenfield" operations, with an emphasis on Asia and Latin America.

In 2011, continental Europe, the UK and Asia each accounted for one-third of Axa's €2.1bn direct premium income.

In terms of profitability, Axa Global Direct intends to bring its average combined ratio down to 97% by 2015 from 102% last year and aims to contribute €200m in operating earnings over the next five years.

However, Guinet insisted the 2011 figure reflects the higher combined ratios of recent start-ups and said the group's well-established direct units are already operating profitably, with combined ratios ranging between 96% and 98%.

11%
Axa's target for average annual organic growth in direct p/c business between 2011 and 2015

97%
Combined ratio Axa Global Direct is seeking to achieve by 2015

Formed in 2009, Axa's direct division drives all the group's direct low-cost operations, from Europe to Asia, which already account for 20% of the company's global €9.8bn retail motor turnover and 8% of its €27bn total p/c revenue.

Active in nine direct markets, Axa holds significant market shares in several countries, ranking first in France, Belgium, Portugal and South Korea, where it recently acquired Ergo Daum from Munich Re (*Insuranceday.com*, May 3).

It ranks second in Poland, Spain and Japan, holding a more modest sixth position in the UK market, where it operates under both the Axa and Swiftcover brands.

With its savings business under pressure in several markets, Axa's p/c activities largely drove operational profitability growth last year (*Insuranceday.com*, Feb 16).

However, the group's chief executive, Henri de Castries, said Axa has no ideal, set balance between p/c and its other two main businesses (life and savings and health and protection), instead wanting to keep the flexibility to adjust to market conditions in each business.

"The beauty of the [diversified] model is to have three accelerators you can push on depending on the circumstances," he explained.

He also reiterated the group has no intention of setting up a retail p/c business in the US, hinting the country's tort system and litigious culture are partly to blame for Axa's lack of interest.

Carrier confident of euro survival but prepares 'for extremes'

French insurance giant Axa could withstand a potential break-up of the eurozone without a capital increase, according to the insurer's chief executive, who insisted a euro breakdown is not the group's central assumption, *writes Fabien Buliard, Paris*.

During the company's international media seminar, Henri de Castries explained it is the group's responsibility to plan for a variety of extreme scenarios, like a massive pandemic hitting its health and protection business.

He said: "We think the euro will survive but our job is to be prepared for the extreme", adding the role of an insurer is to survive "unusual times".

Earlier in the day, the group's chief risk officer, Jean-Christophe Menioux, indicated the group had started working on a euro breakdown scenario in 2009. Back then "it was a purely intellectual scenario", he said. Since then, the company has refined this breakdown scenario, starting with a Greek exit and adding a contagion effect to other countries, which could eventually lead to a break-up of the eurozone.

"We have also updated all the consequences from such a scenario on our balance sheet, our capital, liquidity and so on," he explained. "We have also gone into more detail about the operational consequences."

For instance, Menioux's teams have worked on the consequences for IT operations of a currency conversion and a subsequent devaluation of the new currency.

Other contingency plans cover such aspects as communication toward customers, employees and shareholders, potential legal implications and continuity of service to clients, as well as alternative products the group could develop – for instance, policies in US dollars.

Among the measures already under way, the company has reorganised its assets by repatriating its sovereign bonds to their respective countries of origin.

"If it were to come to this extreme point, everything on the liability side would be converted to a new currency and it would be good from an ALM [asset liability management] perspective to have the assets in the same currency or a stronger currency," he explained.

Menioux declined to give an estimate of the potential cost for the company of a eurozone break-up, but admitted it would be very significant. He also insisted the group could weather such an event and continue to operate. "We would be severely wounded, but not killed," he said.

Menioux indicated an orderly exit of Greece alone would be a "non-event" for the group, which no longer holds any of the country's sovereign debt, while its exposure to Greek banks is "close to zero".

He added a bigger issue is the potential contagion to other countries following a disorderly exit of Greece and explained Axa is working on several scenarios based on groups of countries and potential devaluation hypotheses, including the most extreme scenario of a full break-up of the eurozone.

"We must be nimble enough to address a wide range of scenarios because, in the end, what will happen is not exactly what we have forecast," he added. "We have made sure we could sustain an exit in each individual country."

"We think the euro will survive but our job is to be prepared for the extreme"

Henri de Castries
Axa

De Castries says insurers do not meet SIFI criteria

Henri de Castries also addressed the issue of systemically important financial institutions (SIFIs). Asked about the Financial Safety Board's endorsement this week of a proposed methodology for assessing the global systemic importance of insurance companies, the Axa chief said insurers do not meet any of the main criteria for systemic institutions and insisted size alone does not make a player systemic.

"In terms of financial stability, to be systemic you need a risk of sudden failure, a risk of transmission to the rest of the sector and a risk of non-substitutability," he explained.

He contended there is no risk of sudden failure for insurers, unlike banks, which he said could "die of a heart attack called a liquidity crisis".

He also ruled out any risk of transmission, even through reinsurers. "If the company next door fails, it's a problem for its own policyholders, but not for people insured by Axa," he explained.

De Castries said the main reason regulators might want insurers on the list of SIFIs is to ensure they do not have "side activities that could be dangerous, as was the case with AIG".

"There is also a tendency for regulators to want to look at all the very big institutions because they fear the local oversight is not going to be enough," he added.

He insisted additional capital charges are not the answer to such concerns and insurers hope these issues will eventually be addressed with "additional reporting requirements".

Greco succeeds Perissinotto as Generali chief executive

Incumbent was forced out after public spat with shareholders

Alessia Pierdomenico/Bloomberg

Peter Birks
IIN24 editor

Mario Greco, an Italian industry veteran with stints at Allianz's RAS, Intesa's Eurizon and most recently as head of non-life at Zurich, has been named chief executive of Generali following the sacking on June 1 of Giovanni Perissinotto.

The former boss had refused to resign and his sacking has brought into the public eye his concern about the control Mediobanca exerts over the Italian finance industry. Perissinotto had been seen as a survivor, putting in 30 years with Generali, during which both French chairman Antoine Bernheim and Cesare Geronzi had departed (in 2010 and 2011 respectively), as well as taking the sole chief executive spot after several years as co-chief with Sergio Balbinot.

However, last week, when Luxottica founder, Leonardo Del Vecchio joined Mediobanca in demanding Perissinotto should go, it was only a question of whether he would go quietly or loudly. Unusually for Italian boardroom machinations, where most disagreements such as this are kept behind closed doors, the now ex-chief executive chose the latter.

This very public spat saw Del Vecchio describe Perissinotto as "inadequate to lead Generali", adding this had been demonstrated by "poor operating results, a more than negative perception by markets of his management and more generally his total lack of a strategic vision".

Perissinotto, who had clearly fallen out with Mediobanca boss, Alberto Nagel, said the bank had put its own interests above those of Generali and had "obstructed Generali management efforts to diversify risk into new high-growth areas".

A central problem appears to have been Mediobanca's reluctance to back a rights issue at Generali because it did not want to subscribe to such a rights issue, but also did not want to see its 13% stake diluted.

Greco, highly regarded in the European insurance world, is an outside appointment – unusual for Generali.

However, analysts said they did not see how the appointment of Greco would solve any of the problems from which Generali is suffering at present – including a €46bn ($57.49bn) level of exposure to Italian bonds and the need to find €2.8bn in cash by 2014 to buy full control of Generali PPI Holding, its eastern European joint venture and a major plank of its planned growth through to the end of the decade.

Italian insurer's former chairman Bernheim dies

Former Generali chairman Antoine Bernheim passed away on June 5, aged 87, *writes Fabien Buliard*.

He had served twice as the Italian insurance giant's executive chairman – from 1995 to 1999, and again from 2002 to 2010.

Born in Paris in September 1924 and involved in the French Resistance during the Second World War, Bernheim was an extremely influential figure in the French – and ultimately Italian – business communities, owing in large part to his long career at investment bank Lazard, where he was a senior partner from 1967 to 1999.

Sometimes described as a kingmaker, Bernheim's advice and influence were instrumental in the building of several of France's business heavyweights, from luxury group LVMH to industrial empire Bolloré.

While at Lazard, he became chief executive of insurer La France, a Generali subsidiary, from 1972 to 1997, joining the Italian giant's board in 1973.

He was appointed vice-chairman of Generali in 1990, before starting his first term as executive chairman in 1995.

Although he was already 85 when the group's shareholders forced him out over strategic disagreements with main stakeholder Mediobanca, Bernheim clearly had no desire to renounce his position, saying during his farewell speech: "Sometimes when you work well, you are punished." (*Insuranceday.com*, Apr 26, 2010).

Earlier this week, the Italian insurer appointed its third chief executive since Bernheim stood down two years ago (*Insuranceday.com*, Jun 4).

W&W shifts product focus to p/c as it intensifies cost-cutting drive

German insurance and mortgage banking group Wüstenrot & Württembergische (W&W) is revamping its product portfolio to focus on property/casualty (p/c) insurance, at the same time as intensifying its cost cutting measures, *writes Ilse Schlingensiepen, Cologne*.

On the life side, it is shifting its focus to non-guarantee offers such as policies based on mutual funds.

Dubbed "W&W 2015", the programme is a response to increasing competition and the continuing low interest rate level.

The situation in the capital markets is making it increasingly difficult for insurers and mortgage banks to fulfil long-term guarantee promises made to clients.

Alexander Erdland, head of the Stuttgart-based company, told its annual general meeting: "The pressure on our profit and loss accounts and our financial results is getting continually greater."

The company has adjusted its capital-investment policies through a further diversification; this has lessened the pressure on the financial results, although only to a limited extent.

The group's aim is to earn €250m ($312.6m) annually from this year onwards and to use €170m of this to strengthen its capital base.

"We do not want to have to rely on outside help," Erdland said. Since the merger of the Wüstenrot building society with the Württembergische insurance companies in 1999, the Wüstenrot Stiftung foundation has owned 66% of the group. Other shareholders are the regional state-controlled L-Bank, Swiss Re and Unicredit.

Employees face the prospect of further cost-cutting measures as the group's cost ratio lags well behind its competitors.

What is necessary is not a short-term saving, but structural changes, Erdland said. As examples of these changes, he cited improving efficiency and effectiveness and reducing the costs of internal and external services.

One measure already agreed is the transfer of 70 property maintenance staff from W&W's Ludwigsburg-based service company WWS to the Berlin-based Dussmann Group, which is not part of W&W.

All areas of the group will be drawn into the group's rationalisation programme.

WORLD LOSS INTELLIGENCE/LIABILITY

Settlement: Arctic Glacier given approval to settle with shareholders

CANADA: The insurers of the Arctic Glacier Income Fund are facing a C$13.75m ($13.4m) loss after the Ontario Superior Court approved the settlement between the unitholders of the firm and the company itself.

Arctic Glacier produces, markets and distributes packaged ice across North America and the class action sought damages on behalf of all those who acquired units in the company between March 22, 2002 and September 16, 2008, as well as anyone who held some or all of these units on that same day.

The settlement was agreed back in February, but it is only now after court approval the payment can go ahead. Arctic Glacier said the $13.75m will be funded entirely by its insurers. As a result, it is not making any monetary contribution to the settlement fund.

Under the terms of the settlement, Arctic Glacier has not made any admission of liability.

The class action was filed against the fund itself, its trustees, the operating company Arctic Glacier Inc and some of its previous and incumbent senior officers and directors.

Settlement: AIG pays $100m for worker

$100m Amount AIG must pay for misreporting workers' comp premium

$2.12bn Workers' comp premium that was misreported by AIG

$46.5m Amount AIG must pay in additional premium taxes and assessments

US: AIG has been forced to pay agreement between the insur misreporting of $2.12bn of wo

The company must also pay mium taxes and assessments a

Florida, Delaware, India New York, Pennsylvania an that led the multi-state exam discovered the irregularity.

Kevin McCarty, Florida's "AIG systematically under-r insurance premium by putti liability or commercial autom

"The practical effect of this mium in lines of business wi tions or premium tax rates an

Under the terms of the a Insurance Regulation will re alty, with an additional $8.7m Financial Services Division Department of Revenue and tion Insurance Guaranty Asso

Sandusky: Chubb subsidiary Federal told to keep paying defence costs

US: New Jersey's Federal Insurance Co, a subsidiary of Chubb, must continue to pay the defence costs of former Pennsylvania State University (PSU) football coach Jerry Sandusky, who has been accused of sexual abuse, US District Judge Yvette Kane has ruled.

The decision comes after Federal sought a court order in March declaring it had no obligation to pay, partly because certain policy provisions preclude or limit cover, and partly because, Federal claims, to extend cover would be unlawful "because providing insurance coverage for claims arising from sexual assault, molestation and/or abuse is repugnant to Pennsylvania public policy".

Pennsylvania public policy prevents the enforcement of insurance contracts that protect an insured against damages arising from "certain reprehensible conduct".

However, Kane has decided this argument does not hold true. According to Kane, it is unclear whether Pennsylvania public policy makes Federal's duty to pay for Sandusky's defence unenforceable.

Federal issued a policy to Second Mile, a charity founded by Sandusky, covering April 1, 2011 to April 1, 2012.

Settlement: Costco environmental allegations cost company $3.6m

US: Membership warehouse chain Costco has settled allegations it mishandled hazardous waste materials at some of its sites in California.

In response to the allegations, which have been made by district attorneys for more than two dozen counties, Costco has been made to pay $3.6m after Alameda County superior court judge Winifred Smith agreed to the settlement.

According to the prosecution, Costco allegedly contravened state law for the safe storage, handling and disposal of hazardous waste, including pharmaceutical and pharmacy waste.

The $3.6m settlement covers civil penalties, costs and funds for environmental projects.

The violations allegedly occurred during a five-year period at various Costco stores and distribution centres across California and the retailer has now been bound under a permanent injunction that prohibits similar future alleged violations of law.

$3.6m Amount Costco has agreed to pay to settle environmental allegations

Tim Boyle/Bloomberg

Medical liability: Pfizer escapes P

US: Pharmaceuticals giant Pfizer has been held cancer death of woman who took menopause dru

Jurors found Pfizer's Wyeth unit had provide health risks associated with Prempro hormone-re

Lynn Moss, a 62-year-old former nurse, died breast cancer. A study published in 2002 highlig such as Prempro and other similar menopause m

According to a Bloomberg report, until 1995 m bined the drugs Premarin and Provera to relieve the two in Prempro. Moss took all three drugs to c diagnosed with the cancer in 1999.

Since they began in 2006, Pfizer's Wyeth and Up ufacturer of Provera, have won 10 of the 21 P decided by juries.

In May 2011, Pfizer said it had settled one-third set aside $772m to resolve the others.

Pfizer's win in this case comes weeks after the more than $4m in damages to a woman who rep cer after taking the Prempro drug.

Prempro remains on the market, with sales the report was published.

IN TOMORROW'S WORL LIVES & LIV

Y & SETTLEMENTS

rs' compensation misrepresentation

y out $100m as part of a settlement
er and all 50 US states owing to the
orkers' compensation premium.
a further $46.5m in additional pre-
s part of the settlement agreement.
na, Massachusetts, Minnesota,
d Rhode Island were the states
nination of AIG's books that first

insurance commissioner, said:
eported workers' compensation
ng this premium into the general
nobile liability categories.
s misreporting was to report pre-
th lower residual market obliga-
d assessments."
greement, the Florida Office of
ceive $5.6m of the fine and pen-
split between the Department of
of Workers' Compensation, the
the Florida Workers' Compensa-
ciation.

Florida, Delaware, Indiana, Massachusetts, Minnesota, New York, Pennsylvania and Rhode Island were the states that led the multi-state examination of AIG's books that first discovered the irregularity

Norovirus: Outbreak at Gleneagles could cost hotel more than £200,000

UK: A norovirus outbreak at Gleneagles could cost the internationally renowned hotel more than £200,000 ($309,773) in compensation costs alone.

More than 100 guests were reportedly struck down with the illness at the luxury hotel last week and a lawyer for Thompson Solicitors, which is representing those affected, has warned the hotel total compensation could exceed £200,000.

Norovirus causes vomiting and diarrhoea. Gleneagles could face claims for medical costs and any potential loss of earnings.

The hotel is home to Andrew Fairlie at Gleneagles, Scotland's only restaurant to hold two Michelin stars, as well as several other bars and restaurants.

The cause of the bug, which can be fatal, is yet to be ascertained but Gleneagles is working closely with NHS Tayside to discover the root of the problem. All incidents of the illness were limited to the golf clubhouse, called the Dormy.

Gleneagles hotel and grounds

Simon Ledingham

Compensation: Woman handed £1m settlement for GP misdiagnosis

UK: A young woman who suffered severe brain injuries owing to misdiagnosis from her GP has been awarded more than £1m ($1.5m) in compensation.

Morwenna Ganz suffered the injuries in 1999 when she was 14 years old. Having fallen ill, she was repeatedly told by doctors she was suffering from a viral illness. However, she was actually suffering from mycoplasma pneumonia and her condition deteriorated overnight.

Having called the out-of-hours GP service, Ganz's mother was reassured her daughter's condition had been correctly diagnosed.

The next day, Ganz visited another doctor who rushed her to hospital. Despite being told she would be seen within 10 minutes, it was two hours before Ganz was attended to. By then, Ganz had slipped into a coma and when she regained consciousness, she had suffered severe and irreversible brain damage.

The initial hearing occurred in December 2010 and the High Court decided Ganz's injuries arose as a direct result of the GP's negligence. The two doctors appealed against this decision but their appeal was later dropped and the settlement agreed on.

Ganz will use the money to lead a more independent life, as she has been completely dependent on her family for the past 13 years.

£1m+ Compensation awarded to Morwenna Ganz, after a GP's misdiagnosis led to her suffering severe brain injuries

Prempro claim

not liable following the breast
ugs manufactured by the firm.
ed proper warnings about the
placement drug.
d following a long battle with
ghted the links between drugs
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any menopausal women com-
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pjohn units, the latter the man-
rempro cases that have been

l of its Prempro claims and had

e company was ordered to pay
ortedly developed breast can-

having reached $2bn before

Pfizer has won 10 of the 21 Prempro cases that have been decided by juries

JB Reed/ Bloomberg News

LD LOSS INTELLIGENCE: VELIHOODS

Sector stocks inhibited by Spanish concerns

Asian stocks under most pressure as IPOs in Hong Kong and Singapore are called off

Rasaad Jamie
Global markets editor

Insurance and reinsurance stocks, which had staged something of a recovery during the previous period, came under renewed pressure during the week ending May 31. This was mainly as a result of escalating concerns about the Spanish banking sector and the steep rise in the interest rates on the country's 10-year debt issues, which over the course of the week edged ominously closer to 7%, the level at which both Portugal and Greece were forced to apply for a bailout from the EU and the International Monetary Fund (IMF).

Investors' sense of unease was further compounded by the flow of disappointing data from the US and China, the two engines of the global economic recovery, during the week. In the US, first-quarter GDP growth was revised down from 2.2% to 1.9%, there was a greater-than-expected slowdown in manufacturing in the Chicago area (which serves as an index for industrial activity for the rest of the country) in May and a further deterioration in the employment figures.

In China, the influential National Development and Reform Commission warned second-quarter economic growth is likely to fall below 8%. However, this warning was accompanied by the news the Chinese government had approved several infrastructure projects, including three large steel plants.

Downward pull

With the exception of a number of industrial and energy stocks which rose sharply on the back of this news, the rest of the market continued to struggle. With the first-quarter reporting season more or less at an end, there were no significant insurance sector specific developments to mitigate the downward pull on sector stocks of broader financial market developments.

Bankia: the Spanish banking group requires a €19bn bailout by the government
Angel Navarrete/Bloomberg

Indeed, to underline the fact these developments – particularly the eurozone debt crisis and the potential dissolution of the currency union – constitute the main threat to insurers and reinsurers at present, a number of companies issued statements over the course of the week to reassure the financial markets.

Although Spain (where share values fell to a nine-year low as it became clear the Spanish government had no choice but to arrange a €19bn ($23.65bn) bailout of the recently nationalised Bankia group) was the main focus for the markets, the fear Greece might exit the euro after the June 17 elections was not far off. This was despite the fact polls taken over two successive weekends suggested Greece's pro-austerity New Democracy Party is ahead of Syriza, which gained a significant share of the vote with its anti-austerity platform at the recent elections. Indeed, the most recent polls put New Democracy ahead of Syriza by as much as 5.7%.

Lloyd's

Early in the week, Richard Ward, chief executive of Lloyd's, said the Lime Street market has contingency plans in place in the event the euro collapses. For example, one of these measures would see Lloyd's syndicates, which generate 18% of their collective premium income from the eurozone, settle claims using multiple currencies. Ward emphasised his belief the eurozone will not necessarily disintegrate if Greece exited the currency.

Similarly, Henri De Castries, chief executive of Axa, said the French insurance group has taken steps to enable it to withstand a "disorderly" Greek exit from the euro. These include significantly reducing its holdings of Spanish and Italian sovereign debt and restructuring its debt portfolios in such a way that sovereign debt is held by the Axa subsidiary in the country in which that debt was originally issued, limiting the overall impact on the group's balance sheet in the event of the collapse of the financial system in an individual country. The view within Axa is the group would be significantly affected, but not "killed" by the break-up of the euro.

Export credit

Export credit insurer Euler Hermes, which had issued a warning to this effect the previous week, suspended cover for companies exporting to Greece. This came in the wake of a similar decision by rival export credit insurer Coface. Atradius of the Netherlands continues to provide cover for Greek risks on a very selective basis but is expected to follow the rest of the market

Table: Share prices as at close May 31, 2012

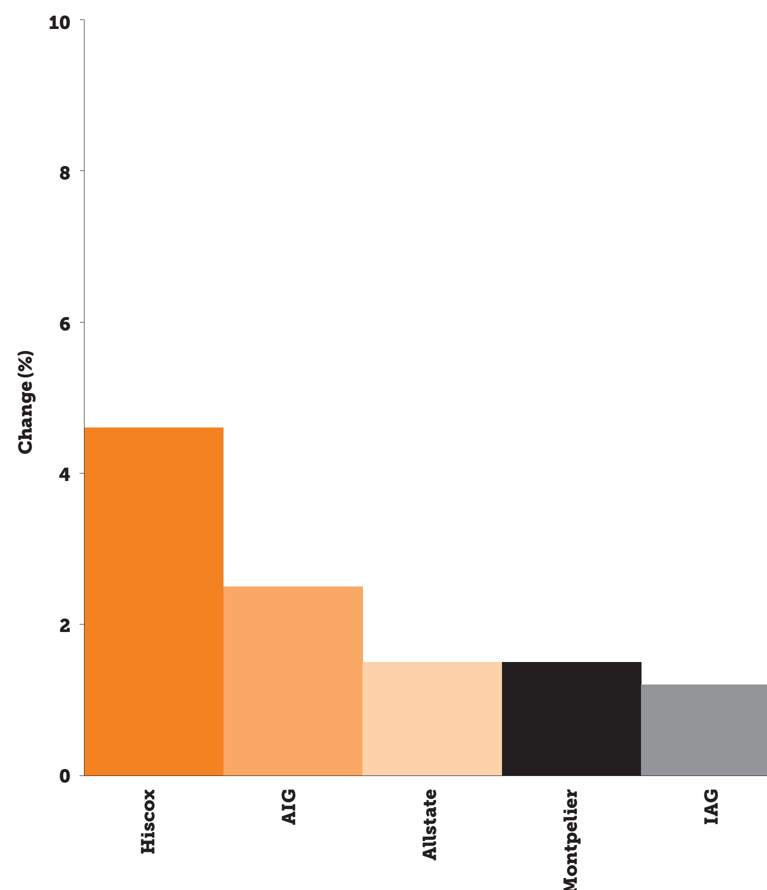
Company/group	Currency
Ace	US dollar
AIG	US dollar
Alleghany Corporation	US dollar
Allianz	Euro
Allstate	US dollar
Alterra	US dollar
Amlin	Pence
Arch Capital	US dollar
Aspen	US dollar
Aviva	Pence
Axa	Euro
Axis Capital	US dollar
Berkshire Hathaway (A)	US dollar
Catlin	Pence
Chubb	US dollar
CNA Financial	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 Global Markets

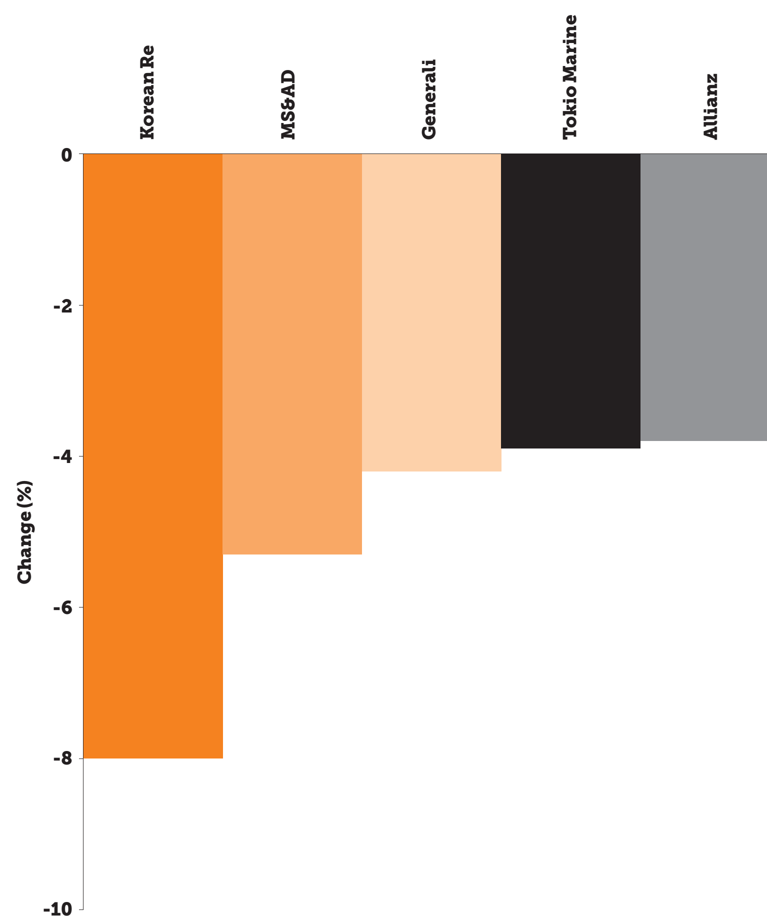
$7.7bn
Value of Asian (exclusing Japan) IPOs cancelled in first five months of this year

Dec 31, 2011	May 24, 2012	May 31, 2012	Change from May 24 (%)	Capitalisation ($m)
70.12	73.42	72.33	(1.5)	24,498
23.20	28.47	29.18	2.5	52,349
285.29	327.29	329.00	0.5	5,570
73.43	75.20	72.36	(3.8)	40,664
27.41	33.43	33.94	1.5	16,677
23.63	23.00	22.21	(3.4)	2,242
313.90	315.60	318.10	0.8	2,432
37.23	38.62	38.23	(1.0)	5,130
26.50	28.25	28.26	0.0	2,021
300.80	268.00	261.50	(2.4)	11,307
10.05	9.36	9.08	(3.0)	25,709
31.96	33.62	32.90	(2.1)	4,257
114,755.00	120,217.00	118,850.00	(1.1)	110,649
398.70	409.50	401.00	(2.1)	2,219
69.22	72.10	72.07	0.0	19,455
26.75	28.71	28.45	(0.9)	7,663
38.25	39.35	39.06	(0.7)	1,695
84.09	101.69	102.12	0.4	5,386
11.63	8.58	8.22	(4.2)	15,728
38.30	43.87	43.03	(1.9)	6,416
373.50	378.00	395.30	4.6	2,318
2.98	3.29	3.33	1.2	6,713
15,000.00	12,550.00	11,550.00	(8.0)	1,115
17.75	20.58	20.88	1.5	1,209
1,426.00	1,271.00	1,204.00	(5.3)	6,473
94.59	102.00	100.00	(2.0)	24,407
1,510.00	1,492.00	1,442.00	(3.4)	29,072
64.21	72.01	70.87	(1.6)	4,575
34.11	36.11	36.30	0.5	1,265
12.95	12.38	12.38	0.0	12,418
74.37	78.40	77.07	(1.7)	3,989
105.20	100.40	98.80	(1.6)	5,252
18.06	17.79	17.55	(1.3)	3,996
21.50	21.20	20.85	(1.7)	4,029
47.87	54.80	55.00	0.4	20,988
59.17	63.19	62.49	(1.1)	24,311
1,705.00	1,777.00	1,707.00	(3.9)	17,157
19.77	20.44	20.42	(0.1)	6,365
212.50	202.30	200.10	(1.1)	30,359

Graph: This week's winners...



...and losers



and withdraw cover for Greek risks completely.

Interestingly, AIG subsidiary Chartis has reassigned staff from its Argentinean operations to assist its subsidiary in Greece ahead of any decision by the Greek parliament to exit the euro. Chartis' Argentine team, according to chief executive, Peter Hancock, have valuable experience of operating in an environment of extreme uncertainty and capital flight. Argentina defaulted on its sovereign debt in 2001 and devalued its currency.

There was the odd gain for insurance and reinsurance company stocks during the week under review and, with the clear exceptions of sector stocks in Asia and those in the heavily indebted eurozone countries such as Italy and Spain, the losses were a little less severe than they had been during the first three weeks of May, one of the toughest periods for the global financial markets in living memory. Over that time, global stock markets lost between 80% and 100% of the gains made during the first three months of this year, when investor optimism was fuelled by the sense the global recovery, powered by the US, was well on the way.

Asia

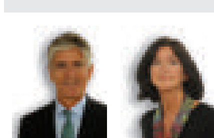
However, Asian stocks came under the most pressure as three major initial public offerings (IPO) priced at close to $1.4bn, including that of the UK-based luxury jeweller Graf, were cancelled. The value of Asian (outside of Japan) IPOs cancelled during the first five months of this year, according to data issued by Thomson Reuters, reached $7.7bn, a significant increase over the same period in 2011.

This trend must cast significant doubt as to whether the $6bn IPO (by way of a dual listing on the Hong Kong and Shanghai stock exchanges) of Chinese state-owned insurance group PICC, planned for later this year, will go ahead, despite the reported support for the issue by a number of sovereign wealth funds. ■

LAW & ORDER

Latin America in focus

Reinsurance seminar on region attracts attention from the market



Christopher Cardona and Michelle George, partners
Chadbourne & Parke

Latin America represents one of the most attractive and growing markets for the insurance and reinsurance industry. As the London market increases its presence in the region, it is imperative to the market's success the different rules, risks and nuances of each country are fully understood and the market avoids the assumption all countries in the region follow homogenous rules.

The insurance team at Chadbourne & Parke, which has a long and successful track record of handling complex insurance and reinsurance disputes in Latin America, hosted a seminar for underwriters and claims handlers in London looking at "navigating risk and managing claims" in Colombia, Ecuador and Venezuela.

Joining Christopher Cardona and Michelle George on the panel were three leading reinsurance lawyers from Latin America: Esteban Pardo from Salazar, Pardo & Jaramillo in Colombia; Ider Valverde from Moeller, Gómez-Lince & Cía in Ecuador; and Carlos Acedo from Mendoza Palacios Acedo Borjas Páez Pumar & Cía in Venezuela.

All three lawyers, who regularly act for the London market on a wide variety of reinsurance disputes, brought a unique perspective on both wordings and how disputes arise and can be resolved, from both sides of the fence – reinsured and reinsurer.

After a short overview of the insurance market and political and economic situation of each country, the debate focused on the following key topics: fronting, governing law and jurisdiction, follow clauses, claims control/claims co-operation and local claims regulations.

The all-important topics of governing law and jurisdiction were discussed. The questions compared which law governs the local policies issued in each country and which law governs the reinsurance contract with the Latin American cedants. Further, where will any disputes arising under these contracts be resolved and how – in the local or overseas courts or through local or international arbitration?

In Colombia, local policies must be governed by Colombian law and resolved locally – either through the Colombian courts or arbitration. There is no law that prevents a reinsurance contract being governed by English law but Pardo thought Colombian insurers generally prefer the application of Colombian law.

In Ecuador, local policies must be subject to local law and jurisdiction, but for reinsurance, Valverde explained there are no legal requirements or regulations concerning jurisdiction and applicable law, so in Ecuador the parties have complete freedom of choice.

In Venezuela, local policies must be subject to local law and jurisdiction. As regards reinsurance, Acedo said many local insurers do not mind having English law and jurisdiction provisions in their reinsurance contracts: it is all a matter for negotiation.

A variety of key clauses including follow the fortunes and follow the settlements were discussed. The lawyers from Venezuela and Colombia pointed out their local insurance law already contains a follow-obligation provision and therefore, the follow-the-fortunes principle is part of the reinsurance contract irrespective of whether the clause appears in the reinsurance contract. In Ecuador, there is nothing in the local law regarding follow the fortunes or follow the settlements, so what matters is what is agreed in the reinsurance contract.

Another important issue flagged by the visiting lawyers is the fact some reinsurance clauses that are fully understood in the London market are poorly translated into Spanish or simply inapplicable in a civil law country. For example, conditions precedents regularly appear in reinsurance contracts even though this concept does not exist in Colombia (although they recognise the similar concept of "garantia").

The speakers also discussed the problem arising from the very tight timetables imposed on insurance companies to respond to and pay claims in Latin America. Most local insurance laws in Latin America favour the insured and therefore insurers have to decide and pay claims within a very short period of time.

If these time limits are not complied with, the insurance regulator may well become directly involved. For instance, art 42 of Ecuadorian Insurance Law provides once the insured has filed all the necessary documents and information to process the claim, the underwriter has only 45 days to answer the claim.

If the underwriter does not answer the claim within that period of time, the insured is entitled to file a claim before the Superintendent of Banks against the underwriter. If the superintendent confirms the insurance company has not answered the claim within the 45-day period, it will issue an order forcing the company to pay the claim within a period of 15 days.

The insurance company has eight days to appeal before the Banking Board and its resolution will be final. Perhaps most importantly, if the local insurance company does not pay within the 15-day period, the superintendent can order the company to cease its operations.

This mechanism was designed to prevent local insurers from delaying the payment of claims. The idea was to protect local insureds from insurance companies that failed to handle insurance claims promptly. However, the regulation has become a headache for both local insurers and foreign reinsurers, which may be left with only a few days to decide how to respond to a very significant claim. ■

Insights

The seminar, interspersed with interesting anecdotes and insights into professional life in these three countries, provided the capacity audience with plenty of food for thought.

In light of the success of this first seminar, Chadbourne & Parke is organising a follow-up event that will involve prominent reinsurance lawyers from other key markets in Latin America. Further details regarding the event and the participants will be available later this summer.

Court rejects use of receiver to tap liability insurance

Joseph Ruby, partner
Lewis Baach PLLC, Washington DC

The highest court in the state of Ohio has issued a ruling that may help liability insurers limit their exposure to long-tail claims against dissolved corporations. The Ohio Supreme Court ruled in *In re All Cases Against Sager Corp* a receiver may not be appointed as a stand-in defendant for a dissolved corporation for the purpose of gaining access to liability insurance.

Most US states have passed statutes providing a dissolved firm can be sued years after dissolution. As long as it can be sued, its liability insurers must continue to provide a defence and pay settlements or judgments on its behalf. In practice, the insurers typically defend and pay indemnity and the continued presence of the dissolved company in the litigation is largely a formality.

In many states, however, a time comes when the dissolved company can no longer be sued. When that happens, insurers are insulated from further exposure. Plaintiffs have tried to restore this missing link in the chain from claimant to insurer by petitioning a court to appoint a receiver who can be sued as a stand-in for the dissolved company.

Such an attempt was made in the *Sager* matter. Sager, incorporated in Illinois, was dissolved in 1998. Under Illinois law, it ceased being amenable to suit in 2003. The Ohio lower courts found Ohio law justified the appointment of a receiver as a stand-in defendant in asbestos bodily injury suits, thus obligating Sager's liability insurers to continue to defend and pay claims brought by asbestos claimants.

Reversing the lower courts, the Ohio Supreme Court concluded appointment of a receiver was appropriate only to assist in the proper distribution of undistributed assets. Because Sager was no longer subject to liability, its liability policies had no value and were not such assets. The court viewed the appointment of a receiver for the purpose of gaining access to insurance as authorisation of otherwise prohibited direct actions against insurers.

While the decision is controlling authority only in Ohio, it establishes an important precedent on an issue that is unsettled in most US jurisdictions.

An insurer defending and paying claims for a defunct insured may wish to determine whether the company has formally dissolved and, if so, whether the time for suit has expired under applicable state law. If it has, the insurer may be able to terminate its exposure to long-tail claims. ■

Defending claims against financial institutions

Insurers at a recent seminar organised by DAC Beachcroft heard, in the context of claims against financial institutions, there is a growing mismatch between the legal position in the UK on liability defences, particularly technical legal defences based on causation and the position taken by the Financial Ombudsman Service (FOS) and the Financial Services Authority (FSA) on the same issues.

DAC Beachcroft partner Dan Preddy explained there is a "regulatory squeeze" on the position adopted by the courts and this is creating considerable uncertainty and will continue to cause firms and their insurers problems in the future.

Preddy referred to several high-profile examples of this mismatch. In the context of the problems that arose in relation to the AIG Life Premier Access Bond, he contrasted the position taken by the court last September in a case involving HSBC, where the court found the losses suffered by the investor were not caused by the bank's negligent advice and were not reasonably foreseeable at the time the advice was given, with the opposite position taken by the FOS in a virtually identical case in a provisional decision it published a few weeks ago.

> **£6.3m**
> **Fine imposed on Coutts by the FSA relating to it selling AIG life bonds**

In that latter case, principal ombudsman, Tony Boorman, said he saw "no reason to limit the fair compensation I require [the bank] to pay [the complainants] on the basis of arguments around foreseeability, remoteness or potential breaks in the chain of causation".

Preddy went on to highlight the FSA's approach is also markedly different from that of the court. In October last year the FSA imposed a £6.3m ($9.7m) fine on Coutts for failing to take reasonable care to ensure the suitability of its advice in relation to AIG life bonds, with Coutts agreeing at the same time to carry out a past business review and compensate all customers who had suffered loss as a result of any failings on its part.

The FSA's approach in cases such as this illustrates the "regulatory activism" DAC Beachcroft partner, Mathew Rutter, had warned delegates was something they and their financial institution clients were going to have to get used to.

Rutter described how light-touch regulation had now been replaced by intensive, intrusive regulation. He explained the FSA intended to intervene earlier in, for example, the product development process to prevent future mis-selling scandals before the damage was done.

He went on to say this presented a challenge to financial institution underwriters in terms of providing products that were of assistance to firms in this evolving regulatory landscape. ■

Professional privilege in question

Anyone can provide legal advice in respect of contracts or claims in the UK; with no requirement of professional legal membership. The growth in construction adjudication has widened the claims advice market, with claims consultancies willing to be a primary provider of adjudication advice and representation. However, this raises issues consultancies and their professional indemnity insurers should be aware of.

A recent case in the Technology & Construction Court, *Walter Lilly & Co Ltd v Mackay*, considered whether documents generated by or for a claims consultant, even one that retains legally qualified personnel, attract legal professional privilege.

A defendant appointed a firm of claims consultants to advise in relation to works being carried out by the claimant contractor that were significantly delayed and subject to claims for loss.

Claims consultants should be clear about the services they are providing and bear in mind the risks that can arise where they perform quasi-legal functions. They may wish to consider the use of alternative business structures now permitted under the Legal Services Act 2007 to avoid some of these issues

The defendant gave evidence his principal contacts at the consultancy were understood to be practising barristers or solicitors and the advice received was legal in nature from "people who held themselves out to be lawyers". He therefore claimed correspondence with the claims consultants was subject to legal advice privilege and could not be produced in court.

Justice Akenhead disagreed, referring to previous cases emphasising privilege should be strictly confined to legal advisers such as solicitors and counsel, who are professionally qualified, and describing a previous judgment to the contrary as an "exceptional case".

The nature and terms of the consultants' engagement was examined by the judge. He emphasised the firm was well known as one that provides claims consultancy services and he concluded the consultancy was retained not as barristers to provide legal advice as such but as an organisation to provide claims and project-handling advice.

The judge referred to *Prudential v Special Commissioner of Income Tax*, in which privilege was claimed in respect of advice contained in communications with an accountant on tax issues.

The court held legal advice privilege did not apply to any profession other than a qualified lawyer, acting within the legal profession. The judge in *Walter Lilly* therefore held legal professional privilege did not attach to the consultants' advice and the defendant was required to disclose it.

It should be noted, however, even if a claim for legal professional privilege would be unsuccessful it remains unclear whether advice relating to adjudication proceedings could still be protected by litigation privilege.

Claims consultancies must be aware where they provide legal advice there is a risk the documents containing advice may be disclosable. Consultants who do not advise a client of the risk of disclosure and the possibility of appointing solicitors or barristers so as to avoid that risk could find themselves faced with claims.

Claims consultants should be clear about the services they are providing and bear in mind the risks that can arise where they perform quasi-legal functions. They may wish to consider the use of alternative business structures now permitted under the Legal Services Act 2007 to avoid some of these issues.

It should also be noted the *Prudential* case is under appeal to the Supreme Court, due to be heard in November, so it is still possible privilege may be extended beyond the legal profession. ■

Tom White, legal director, and Edward Freeman, senior associate, Clyde & Co

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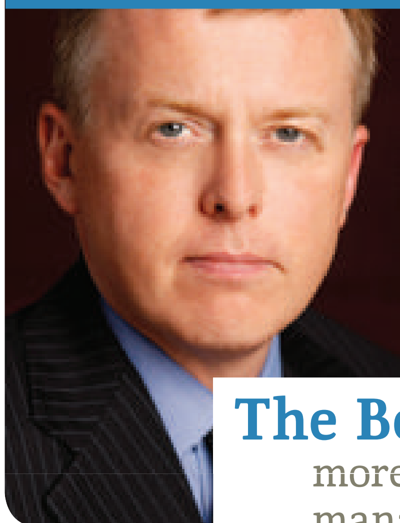

Keynote speaker
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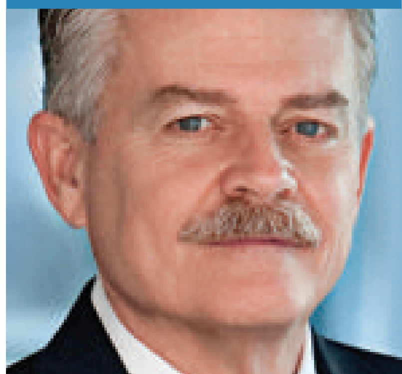
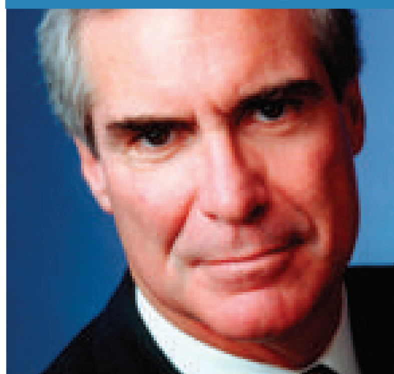
Chief Executive and President, Renaissance Re



Keynote speaker
Brian O'Hara
Former Chairman and Chief Executive, XL Group



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