INSURANCE RESEARCH SERVICES

The Insurance Research Letter

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April 22, 2011 Tornado rips through St. Louis' Lambert Field

Presse Internationale des Assurances

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Editorial / Opinion

Stories of Interest

This issue of the Insurance Research Letter has several articles concerning the reinsurance landscape in Argentina and Brazil. The situation in Brazil has indeed changed and our look at what transpired and how the business will be conducted going forward is laid out in a comprehensive manner that will be of interest to brokers, risk managers and insurers alike.

The situation in Argentina is still taking shape and we will keep our eyes on developments and report by email to subscribers as more is learned.

Another development worth reading about is The Hanover Group's recently announced intent to acquire London-based Chaucer. The Hanover seems to be moving from strength to strength.

We will be at the RIMS Conference in Vancouver and will provide a detailed report in the June issue.

ISN Website Updates

Broker & Insurer Research – View »
General – Insurance websites – View »
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Captive Insurance Company Domiciles – View »
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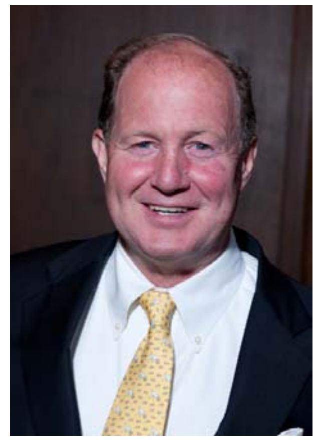

Alexander B. Hodges, Editor-in-Chief

"Don't memorize something when you can look it up." – Albert Einstein

Suggestions, contributions and comments: info@insuranceresearchletter.com.

"Mr. Hodges is in a great mood and I don't want to ruin it by letting you see him."

SYNOPSIS

COMPANIES PEOPLE EVENTS

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Companies

NewsBriefs

Berkshire Hathaway Assumes AIG's Asbestos Risk – more »

Hanover Announces Offer to Acquire Chaucer Holdings – Read story in The United States section

Kiln launches first carbon credit insurance product – More »

Markel UK Launches New Brand and Service with key commercial products – More »

Principal Financial acquires in Mexico

Traveler's chief **Jay Fishman** said in a conference call that Travelers plans to increase its share of sales through call centers and its website after historically selling home and motor cover through agents. The group will change its ad strategy later this year to "more of an 'operators are standing by' type of advertising", he said.

XL Opens in Shanghai – More »

People

John Nelson named next Chairman of Lloyd's – More »

Cesare Geronzi quit as chairman of Generali April 6 after it became clear that a majority of directors at an emergency board meeting were prepared to back a no-confidence motion. Geronzi stepped down before a vote could be taken. – More »

Douglas Elliot named head of The Hartford's Commercial Lines – More »

XL Insurance Appointed **Kadidja Sinz** Country Manager for France – More »

AIG: **Peter Juhas** named Head of Strategic Planning

Reinhard Stary is stepping down as CEO and Chairman of Oranta, the Russian insurance operation of Netherlands-based Eureko. The decision was based on "different views on the strategy going forward", Eureko said. Eureko also said that it remained fully committed to Russia "as one of the three core markets for future growth of the Eureko Group". **Piotr Kowalczewski**, deputy chairman of the board of directors, will continue to supervise Oranta. Eureko bought Oranta from Russian private equity operation PSC in September 2008

Zurich Financial Services announced the appointment of **Antônio Cássio dos Santos** (46, Brazilian citizen) to the position of CEO LatAm General Insurance, effective May 1, 2011. He succeeds **Peter Rebrin** who has been appointed to the newly created position of Head Bank Distribution LatAm General Insurance. He will report to **Mario Greco**, CEO General Insurance, and will be based in São Paulo, Brazil. Mr. dos Santos joins Zurich from Mapfre Brazil where he has served as CEO since 2000.

Publications, Reports & More

Q1 of 2011 was the worst ever for the facultative reinsurance market in terms of job experienced, according to reinsurance broker Aon Benfield's Fac Quarterly report. There were 10 large market losses of more than $50m during the quarter, down from 13 in Q1 2010, but those individual events were far more costly. Read report »

The Aon Benfield Aggregate – FY 2010 – The report analyses the year end 2010 financial position of the world's leading reinsurers and examines how 2011 catastrophe losses may affect their capital positions. Read report »

RIMS Benchmark Survey – Commercial Premiums Tumble as Capacity Grows – more »

Towers Watson Report: JP EQ > No Major Impact on Insurance Industry – more »

Agent – Broker – Consultant (ABC) Review

ABC News

Aon: Record Q1 Losses to Impact Fac Re Rates – more »

Brown & Brown acquired Compass Consulting Group – more »; and First Horizon Insurance Group – more »

Hub acquires Hale Insurance – More »

Lockton Launches Enterprise Disruption Contingency Insurance – more »

On April 1 R-T Specialty closed on the acquisition of American E&S Insurance Brokers from Wells Fargo Insurance Services. RT Specialty now has 22 office locations across the U.S.

Willis South Africa acquires minority share of South African benefits firm – more »

Willis: Energy Rates Firming due to Q1 Losses – more »

ABC People

Aon Appoints **Peter Mullen** Global CEO of Captive Management Practice – more »

Chris Baudouin Named CEO, Aon Global Client Network – more »

CIAB: **Susan Rushford** named SVP of Marketing & Communications – more »

Crump Hires **John Landry**, Expands National Property Practice – more »

Lockton adds **Mike Faughnan** to Denver employee benefits team – more »

MMC announces senior changes: **Daniel S. Glaser**, age 50, has been appointed to the newly created position of Group President and Chief Operating Officer, Marsh & McLennan Companies. **Peter Zaffino**, age 44, is named President and Chief Executive Officer of Marsh Inc., succeeding Dan Glaser. **Alexander Moczarski**, 55, is named President and Chief Executive Officer of Guy Carpenter, succeeding Peter Zaffino.

Central Insurance, Scotland's largest independent insurance broker, has continued its recent expansion with the appointment of two new senior staff in Aberdeen. **Steven Cox** and **Euan McKenzie**, most recently employed by Towergate Risk Solutions, joined Central's corporate and commercial insurance broking team as account director and account executive on April 12.

Gianmarco Tosti Appointed CEO of Willis Facultative London – more »

Willis International Strengthens Leadership Team – more »

Country-Specific Insurance Information

Country Guides Update

Hong Kong • India • Japan • Portugal • Chile • Colombia • Germany • Subscriber link »

ISN Country Guides provide underwriters, brokers and risk managers with a simple and easy to use tool to help understand local insurance requirements and to aid in the design, plan and implementation of international coverages at a fraction of the cost of any alternative. Learn more, pay less. »

Global Briefs

Bahrain – Newly elected chief of Bahrain Insurance Association (BIA), Mr. Younis Jamal Al Sayed, CEO of Takaful International, has pledged to lead the BIA to "provide the best for the insurance industry and innovate solutions that serve everyone and promote the Kingdom of Bahrain as a capital of the banking and insurance sector within the region." He takes over from Mr. Ashraf Bseisu, CEO of Solidarity Group Holding, who served two terms as Chairman and leaves behind a strong and financially sound BIA with many achievements and accolades.

Canada / Jordan – Odyssey Reinsurance, a wholly-owned subsidiary of Canada-based Fairfax Financial Holdings, has bought 4.8 million shares of Jordan Kuwait Bank (JKB), or 4.8% of its capital.

Guernsey – Guernsey to see captive growth – More »

Hungary – The new special tax on insurance premiums, and other financial services, has been extended to 2014. It has been modified from the flat rate of 6.2% on premiums to a sliding scale calculation.

India – India to be among top 3 life insurance markets by 2020 – The insurance industry is expected to reach $350-400 billion (about Rs 18000 billion) in premium income by 2020. This will make India among the top three life insurance markets and top 15 non-life insurance markets, says a report from the Federation of Indian Chambers of Commerce and Industry and Boston Consulting Group.

India – State-run Export Credit Guarantee Corporation of India Ltd (ECGC) has reportedly issued a circular stating that it has decided to place Egypt, Tunisia and Yemen under restricted policy cover. This means exporters will have to re-apply for insurance covers on a case-by-case basis.

Japan – Richard Asquith, TMF Group, said that Japan may be facing a 3% temporary consumption (VAT) tax rise to 8% to fund rebuild.

Jordan – Gross premiums in Jordan increased by 9.4% to US$108.7 million by the end of February, compared to $99.4 million recorded in the same period in 2010, said the Insurance Commission of Jordan (IC).

Mexico – Captive Insurance Tax Changes – A new tax agreement with Bermuda will lower the standard 40% withholding tax. It is anticipated that this will stimulate Mexican companies to set-up their captive operations in Bermuda.

Netherlands – Reminder Premium Tax Increase – The premium tax on insurance contracts rose in March from 7.5% to 9.7%.

South Africa – New Consumer Protection Act enacted and effective March 31, 2011. The local insurance market does not feel that this new legislation is likely to result in a significant increase in liability claims, but time will tell. More »

Spain – Premium Income increased nearly 7.22% during Q1 – Insurers wrote 14.11B Euros (24.42B dollars) in premiums during the first quarter of 2011, a 7.22% increase over the same period in 2010. The market seems to return to a path of growth after falling 3.9% in 2010. This increase is accounted only by the development of life business with a premium increase of 16.39% reaching € 8.4B (USD 11.9B). Non-life business had a fall of 0.29%.

United Kingdom – Lloyd's 2010 Annual Result Broadcast (a quick grab) – BBC World Service Radio - Richard Ward - 30 March (700KB, mp3)

United Kingdom – UK Bribery Act starts on July 1, 2011 – Are you ready? More » http://www.claytonutz.com/publications/news/201104/04/uk_bribery_act_starts_on_1_july_2011-are_you_ready.page

United Kingdom – IUA highlights regulatory challenges facing London Market – More »

United States (Vermont) – Vermont licensed seven new captives in the first quarter, which is the strongest start since 2005, according to Vermont's Department of Banking, Insurance, Securities and Health Care Administration. Vermont is the largest captive insurance domicile in the United States and the third largest in the world, with more than $25 billion in gross written premium in 2010. Competition among U.S. captive domiciles continues to heat up, with Utah and Delaware growing faster than many other states. Vermont added 33 new captives and continued to hold on to its top position with 572 captives at year-end 2010.

United States (Vermont) – Vermont is considering changes to its captive law that "open up a whole new genre of potential business for Vermont that didn't exist before," said Steve M. Chirico, assistant vice president of A.M. Best Co. Lawmakers in Vermont are considering H.438, which would allow for the formation of incorporated protected cell companies. Protected cells are allowed today, but are based on contract law, not corporate law. The measure has passed the state House of Representatives and has moved on to the Senate. Incorporated segregated cells allow a company to become part of a greater organization, which can help save frictional costs, Chirico said. Incorporated protected cells are designed to be separate legal entities. Each cell is supposed to be safe from a neighboring cell's potential bankruptcy.

AMERICAS

Argentina

Possible Changes in Reinsurance Regulations

The Insurance Department might relax the new reinsurance regulatory environment set to take effect September 1.

Leading international groups rejected the requirement to establish a branch in Argentina with a minimum capital of five million dollars. Now, the ID and the Justice Department are studying how to adjust the rules to allow companies to prove that they have these funds abroad, explained Superintendent Francisco Durañona to newspaper *Pagina 12*.

The new regulations intend to prevent the outflow of capital by way of commissions.

"The publication of the new rules was enough to cause a 40% reduction in this outflow during the first quarter of this year compared to the same period in 2010", said the Superintendent.

Mr. Durañona has met with representatives of almost all foreign reinsurers doing business in Argentina. Alternatives to the 'small print' of the ID Resolution resulted from these discussions.

"The requirement to set up local branches will not change", confirmed the Superintendent. However, the way in which the branch's capital will be provided is still being discussed.

One possibility on the table is allowing that part of the $ 5M fund may be deposited in an account or subsidiary of the same company in a Mercosur member country (Mercosur is formed by Argentina, Brasil, Paraguay and Uruguay, with Chile and Bolivia as associate countries). However, such a relaxation of the rules might clash with the premise that companies must maintain sufficient capital related to their operations in Argentina.

Therefore, the ID is reportedly working to define the applicable framework to prevent non-compliances with this rule.

Another option would be for reinsurers to support part of the capital requirement with assets in other countries "establishing specifically linked reserves. In this latter case, this deposit would be available as a collateral", said Durañona.

CEA's Letter to Superintendent Durañona

On April 8, 2011 the CEA wrote to Superintendent Francisco Durañona expressing concern about the potential impact of Resolution 35.615 and the lack of consultation. Email for copy »

Brazil

CEO's of 3 Major Insurers Resign

- **Marcos Couto** has resigned as CEO ACE Brasil
- **Pedro Purm** CEO Zurich Brasil
- **Antônio Cássio dos Santos** Mapfre Brasil (He has just been appointed CEO LatAm General Insurance.)

What's going on with these top level resignations? Is it the flap over the now cancelled Resolution 224 which was replaced with 232 – a similarly restrictive resolution? Or is it something else? We're keeping an eye on this and will report by email.

Brazil: A Very Complex Environment Indeed

Much has been reported recently about the reinsurance market in Brazil. We first started reporting on developments in early January when several senior players in the market contacted us with fears that the market was taking a big step backwards and asked for our help to get the word out.

With thanks to RIMS, Aon and our correspondent in Brazil, here follows a synopsis of the past, present and future.

History: Prior to April 16, 2008 (the date the market opened):

IRB founded in 1939 with the objective to concentrate with the national insurers the reinsurance demand, by means of a retrocession process.

Government owned – 50%, remaining 50% by insurers

Market was tariff until mid-eighties

IRB was monopoly reinsurer – determined rates, terms & conditions

IRB historically had good treaties – offering +/- US$240 million loss limit – thus reducing demand for facultative reinsurance

Following pressure Government approved Law 126 in 2007 which paved the way for the open market

April 2008 – March 2011

Brazilian reinsurance market opens on April 18, 2008

Cycle of automatic reinsurance through the IRB effectively ended

Three classes of reinsurer were created by SUSEP (Brazilian Insurance Regulatory Authority) after market consultation.

1. **Local** (8 cos. = IRB, Munich Re, XL, ACE, Mapfre, Chartis, Austral, J. Malucelli) – right of first refusal; 40% of any reinsurance placement

2. **Admitted** (25 companies) – rep office in Brazil & minimum capital US$100 million

3. **Eventual** (56 active companies and 8 inactive) – domicile outside of Brazil but not in a tax haven & minimum capital US$150 million & insurers cannot place more than 10% of written premiums

March 31, 2011: Overview of the New Resolutions

The whole idea behind these resolutions is to better control and keep reinsurance premiums in the Brazilian market.

Resolution 225 – requires 40% of all reinsurance to be placed with local reinsurers

- "Insurers will contract with local insurers at least 40% of each reinsurance contract, whether through automatic or facultative contracts".
- The result is that it will become mandatory for 40% of any cession to be placed locally with reinsurers in Brazil

There are two important things to understand here – 1) whereas the 40% cession was on a first right of refusal basis in the old process; under the new process, the 40% cession is mandatory; 2) under the old process terms & conditions had to be matched – under the new rules reinsurers are free to amend the terms & conditions. This second change is troubling

Resolution 232 – limits intercompany reinsurance cessions to no more than 20% per risk, per policy.

§ 4 – The insurer or local reinsurer **may not transfer** to companies based offshore which are linked with or belong to the same financial conglomerate, **more than 20%** of the premium corresponding to each coverage contracted.

§ 5 – By companies which are linked with or belong to the same financial conglomerate, it is understood to mean those companies related, directly or indirectly, by a common shareholding of 10% or more of the capital, or by an effective operational control, characterized by a common administration or management, or by operating in the market under the same name or commercial brand.

§ 7 – The maximum limit mentioned in Paragraph 4 above **does not apply to Surety, Export Credit, Rural Insurance, Internal Credit and Nuclear Risks**, for which lines cessions or retro-cessions in reinsurance are permitted to companies linked with or belonging to the same financial conglomerate and based offshore, provided all other legal and regulatory requirements are observed.

§ 8 – Those automatic contracts already signed will be considered, for the application of the limit mentioned in Paragraph 4, as of their renewal, or as of March 31, 2012, whichever date occurs first.

So what changes?

- Insurer must place 40% with local reinsurers, at their terms & conditions
- Maximum intra-company cession – 20%
- Local reinsurers can change terms & conditions, without penalty to their participation
- Differences between terms & conditions proposed and those offered by local reinsurers must be negotiated, in order to align terms & conditions

Overview of new resolutions

Anticipated Impact:

- Potential increase in rates in some situations
- Facultative placements will become more bureaucratic and time consuming, as the other "players" will tend to await outcome of offer to local reinsurers
- Brokers role becomes more critical; consolidating and aligning terms & conditions, negotiating local pricing, managing mandatory cessions, etc.
- Increase in coinsurance placements
- Fronting arrangements between different companies, in order to mitigate impact of intra-company limitation, which could result in increased operational costs & security issues
- Renegotiation in placement of global programs – less flexibility in exporting reinsurance

Impact to Local Underwriting Process

- 2011 – No greater problems foreseen as contracts / treaties remain in force until expiry or March 31, 2012, whichever occurs first
- Possible restrictions in capacity over mid- to long-term
- Increased bureaucracy in effecting placements
- Greater reliance on IRB and / or local reinsurers' underwriting guidelines
- Potential difficulties in full participation in master programs

Recommended Renewal Strategies

What Has Not Changed

- Non-admitted insurance continues to be strictly prohibited
    - Insurance buyers cannot place their business with non-admitted insurers abroad, except in very limited circumstances
    - For this reason no money can be officially received in Brazil as indemnity under non-admitted policies
    - Non-admitted placements are only possible if the coverage required cannot be obtained in the local market – there is a declination process that must be followed with at least 10 insurers

- Penalty
    - The penalty for any company found placing non-admitted insurance, coinsurance or reinsurance abroad is an amount equal to the sum insured or reinsured (Art 113, Decree No 73 of November 21, 1966)

- U.S. Clients with risks in Brazil can either:
    - Place coverage in the local market on a stand-alone basis, or
    - Provide coverage via a controlled master program placed outside of Brazil with reinsurance back

to the lead underwriting market in accordance with local market regulations

Both options have several advantages and disadvantages

A safe option when operating in this uncertain time is to place the coverage in the local market on a stand-alone basis

By negotiating with local insurers, the binding of coverage will be less subject to impact by these new resolutions

However, terms secured may be more narrow in scope and at a higher price than what could possibly be available through a controlled master program

- Should a controlled master program be chosen, it will be key to begin the renewal process early and to maintain focus on the following:
    - Identify the fronting carrier early in the renewal and engage in discussion on their specific capabilities in Brazil
    - Consider the possibility of using multiple global carriers in Brazil to provide great felxibility in order to maximize exportable premium and risk
    - Work closely with the local retail and reinsurance broker to ensure regular communication on current status of local reinsurance quotations

- For clients who may be ceding premium and risk into a captive or other risk bearing facility, the following should also be considered
    - Early discussions with your fronting insurer and captive manager to understand extent of reinsurance premium and risk exposed

In Summary

- The ease of managing reinsurance capacity in Brazil established over the past three years has decreased
- The full extent of the changes instituted by the CNSP is still to be recognized, and further clarity is expected as the market becomes familiar to working within the new constraints
- In the meantime, the following new procedures are in place:
    - A minimum of 40% retention can be exercised by local reinsurers
    - A maximum of 20% can be ceded between the same company, per risk per policy
    - Local reinsurers have the ability to change terms which they are offered
- Non-admitted coverage remains prohibited
- To have contract certainty prior to expiration, a safe option is to place coverage on a stand-alone basis
- If a controlled master program is desired, it is important to begin negotiations well in advance
- Any controlled master program with or without captive reinsurance could expect a decrease in premiums paid as a result of the local participation

Follow the Money

When talking about the new Brazilian Reinsurance Rules, remember that you want to find out who the "murderer" is, there is an old adage that says "follow the money".

On April 12 the newspaper Valor (the Brazilian equivalent of the WSJ) reported that the Brazilian Federal Government (FG) is going to sell 35% of the IRB capital equity to Banco do Brasil (also owned by the Federal Government). The idea is that Banco do Brasil will share control of the IRB with the 2 largest private financial groups Itaú and Bradesco, which are already IRB shareholders (Bradesco 21.24% and Itaú 15.44%).

The FG will also allow the employees of the IRB (including those already retired) to buy up to 10% of the capital.

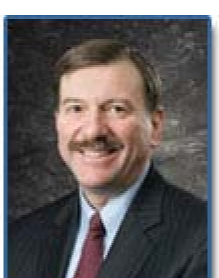
This very patriotic project started on Friday, April 8, with the publication of the Resolution N. 3 of the Privatization National Council, retaking the IRB privatization process that was halted in 2003. The National Bank of Economical and Social Development will open a bidding for the hiring of a consultin firm to evaluate IRB. It is of interest to note that the mentioned Resolution defines a 5 year timeframe for the IRB going public (selling shares in the stock market).

The Banco do Brasil's major goal, in association with Itaú and Bradesco, is to heavily invest in the reinsurance segment, counting with all the investments in infra-structure in general and especially for the World Cup in 2014 and followed by the Olympic Games in 2016.

Leonardo Peirão, IRB President, has stated that another and important goal is to internationalize IRB. (**Editor's note**: By the time this article is published, the IRB President will have been to Argentina to consider setting up a branch in that country.)

The United States

The Hanover Group set to acquire Chaucer



The Hanover Group's President and CEO Fred Eppinger hosted a conference call / webcast on April 20 to announce the intended acquisition of London-based Chaucer for $510 million. This was an important announcement as it effectively supercharges The Hanover's dynamic as it moves deeper into specialist products and diversifies its earnings while expanding its market presence.

The Deal

Chaucer is a leading specialist Lloyd's insurance group. Through its in-house syndicates 1084 and 1176, Chaucer underwrites business in all the major insurance classes, encompassing global marine, energy, non-marine and aviation, as well as UK motor and nuclear.

In 2010, Chaucer reported gross written premium of £849 million ($1,333 million), net earned premium of £589 million ($925 million) and total assets of £2.3 billion ($3.7 billion). Headquartered in London, the company has regional operations in Whitstable, England and international operations in Houston, Singapore, Buenos Aires and Copenhagen.

Chaucer's board of directors has unanimously approved the terms of the acquisition and resolved to recommend that Chaucer's shareholders vote to accept the offer. There will be a shareholder meeting at which 75% must agree. At April 20 it was reported that 23% of the shareholders 'irrevocably' have committed to the deal. Subject to a favorable vote and all regulatory hurtles are cleared, this deal will close early in the third quarter 2011.

The Hanover plans to fund the acquisition with a combination of cash on hand, as well as $250 million of new senior debt, expected to be issued prior to closing.

The Reasoned Pitch

As one would expect, Mr. Eppinger began the meeting by promoting the strategic benefits of the proposed deal and saying that his firm had been looking for the right acquisition for a year. He did not disclose when the discussions with Chaucer were initiated but we know it was before the

Japan earthquake because The Hanover team had to go back in and evaluate Syndicate 1176's nuclear underwritings (reported to be 'not significant') for any impact on the deal or its price.

Chief among the reasons for the acquisition Mr. Eppinger cited similar cultures, common business philosophies, and the strong Chaucer franchise which would significantly advance The Hanover's specialty arm.

Mr. Eppinger said they were impressed with Chaucer's 'advanced understanding of enterprise risk management' and their 'philosophy of risk' matched The Hanover's. While Chaucer usually writes larger risks than The Hanover, Mr. Eppinger said he was comfortable with the net retention picture.

In support of The Hanover's willingness to invest in this deal, Mr. Eppinger told attendees that the insurer was not in the best financial condition when he joined the firm in 2003 but has in recent years returned millions to shareholders and is on solid financial footing.

Distribution
Mr. Eppinger understands the distribution space well – perhaps his days as EVP of Property and Casualty Field and Service Operations for The Hartford laid the groundwork for what he calls Hanover's 'national network of winning agents and brokers'.

Until the OneBeacon acquisition (most of it anyway), Hanover had offices in 4 states but with the OneBeacon deal Hanover quickly became a national player with offices in more than 35 states. This was one of a series of steps in the overall strategy to develop The Hanover into a major player in the P&C business.

Mr. Eppinger referred repeatedly to these producers which demonstrates a keen understanding that providing 'shelf space' for specialist insurance products is only part of the equation – The Hanover must also have the right product mix coupled with service and competitive pricing in order to succeed. As said in the presentation, they aim to "focus on product innovation to give agents and brokers direct access to most sophisticated insurance offerings."

And so, Chaucer brings expertise in the marine, aviation, energy, fine arts and political risk / trade credit lines as well as some more pedestrian lines such as the UK motor business. Mr. Eppinger made the point that in this business "distinctiveness means something."

The pending acquisition of Chaucer creates – in the words of Mr. Eppinger – "an attractive opportunity to advance our journey". He said that the Chaucer deal would augment the financials, enhance the product mix and increase 'shelf space' for its national network of agents and brokers.

Analyst Questions
One analyst questioned whether there was an overlap with some of Hanover's larger more sophisticated producers who might be cover holders to which with what must have been a brush of a smile Mr. Eppinger said that there was some overlap and that he had already received several calls. The bottom line is that, as with all these types of things, despite the speed bumps, accommodations will be made and everyone will be satisfied.

Another questioner asked if Chaucer wrote business for its own account or on a subscription basis as has been the custom in the Lloyd's market. Mr. Eppinger replied that many insurers find the subscription model especially efficient to distribute the risk among many which is one of Lloyd's biggest strengths as well as its "chain of security" which provides three layers of capital backing claims. However, while he did not say so, I felt as if he wanted to continue by saying that the combined firm will continue to lead business and lay down percentage lines but increase participations as it gets a better handle on the risks involved.

When asked about the UK motor business, Mr. Eppinger said it was too early to say much about this portfolio but that he liked what Chaucer was doing with it and more importantly "it was 'a great diversifier'". Perhaps, it is also a 'cash cow'.

With respect to a question about the reinsurance business, he said that it was small and he was 'very supportive of their direction."

On the question of whether there would be changes at Chaucer, Mr. Eppinger said "The deal wasn't about this; it's about growth and opportunity. We'll keep the companies separate and run them that way."

The Future

Since 2004 The Hanover has built and bought specialization – a trend Mr. Eppinger says is the future though he said the industry mostly doesn't see it that way.

Since 2004 his focus has been on bringing on underwriting, finance and IT talent, and significantly reshaping the group's business model with the growth of specialty. The Hanover is quickly becoming a leading US-based provider of niche products similar to companies one sees in the London market. The Chaucer acquisition is a huge step forward.

In light of Chaucer's net earned premium of $910 million and $3.7 billion in assets, the $510 million price tag seems like legal larceny.

In closing Mr. Eppinger said Chaucer is an attractive acquisition opportunity which will provide The Hanover with earnings diversification, additional product capabilities, new products, and advance its specialty strategy and strengthen its position with its network of agents and brokers. He might have said that The Hanover is now moving from strength to strength which he did not but it's obvious that it is.

Vermont: New Property and Casualty Rates and Forms Filing Procedures

Property and casualty insurers doing business in Vermont are advised that new rules governing the filing of policy forms, rates and supporting rate information with the Insurance Division will go into effect on May 15, 2011.

The new rules are the result of the adoption of Regulation I-2010-03 ("Property & Casualty Insurance Filing Procedures & Reporting Requirements"), which replaces the Department's existing filing regulation, I-85-1. Regulation I-2010-3 is intended to modernize the rate and form filing process in Vermont, make it easier for the Department to exercise its regulatory authority, and make it easier and less costly for insurance companies to do business in the state.

Please refer to Bulletin 160 for a general overview of the key changes within Regulation I-2010-3.

EUROPE

Hungary

New Insurance Tax

The Hungarian Parliament has passed into law a new Bank Levy which includes a tax on insurance premiums. The premium tax was set at a flat rate of 6.2%, but has now been revised to a sliding scale. The tax on insurance companies now ranges from 1.5% to 6.4%, depending on premiums.

The new insurance premium tax will apply to non-Life and certain Life insurance contracts. It will be payable until 2014, to assist with paying down the State deficit incurred during the recent financial crisis.
It is a tax on the insurer – as opposed to most European IPT regimes, which charge taxes on the insured and are administered by the insurer. It is therefore not clear how or if the tax will be passed onto the insured – probably through increased premiums.

The tax only applies to Hungarian resident insurers and overseas branches of Hungarian insurers. There is no mention of foreign insurers who are providing cover in Hungary on a Freedom of Services basis. Again, this is subject to change. (Source: TMF provides a global IPT, VAT and GST settlement service for international insurers, including fiscal representation where required. This service is coordinated through our UK office, which work with TMF's 87 global offices.)

Romania

Ten Major Trends of the Local Insurance Market in 2011

Marsh Romania has analyzed the insurance market perspectives and has identified 10 major evolution trends for the current year.

Although they had also manifested in 2010, it is very likely that they continue their evolution in 2011, given current market conditions, said Marsh specialists.

Therefore, the main development trends of the Romanian insurance market, in 2011, are:

1. Increased competitiveness on the profile market – that evolution will lead to insurance companies offering better coverage, to flexibility in negotiation and to possible cost reductions.

2. Increasing importance of brokers – customers have an increasing need for insurance consultancy and for negotiations in this market, so the insurance brokerage will develop.

3. Personalized Motor Hull Products – motor insurance industry is more aware of the need to generate revenues on the after-sales segment and proposes launching Motor Hull products that are especially negotiated for their customers.

4. Increasing interest in professional liability insurance – it has registered a positive evolution lately, and customer appetite for such products is also increasing. Media exposure of malpractice cases helps raising awareness on the risks.

5. Insurance for the energy industry – investments in the energy sector, particularly in renewable energy, will generate additional revenues for brokers and insurers who provide solutions against the complex risks faced by this industry.

6. Returning to employee benefits – companies are in the process of analyzing and reorganization of employee benefits, in order to make them more effective. We are talking, mainly, about deductible benefits, such as health insurance.

7. Development of online retail – Romanians are now more willing to buy online insurance and the brokers and insurers have developed, in this sense, online commerce solutions.

8. Up selling through household insurance – once the mandatory household insurance policy has appeared, insurers have a selling vehicle that can help them promote voluntary insurance.

9. A different kind of retail – after mobile phone insurance and unemployment insurance, extended warranty for home appliances insurance has appeared.

10. Credit insurance – the demand finally meets the offer, given that specialized insurers are more flexible in covering the risk

United Kingdom

Insurance Premium Tax 2011 Budget Change to de minimis Rule

As part of the annual UK budget reported the week of March 20, it was announced that two current implied de minimis rules on insurance contracts will be written into the new Finance Bill.

The first change impacts the higher rate IPT. If a contract is sold by a broker or intermediary at less than the cost price then it will be permitted to pay insurance premium tax only on the amount charged to the insured party. This concession is already in operation, and will be given the force of law from April 1, 2011.

The second change concerns mixed or blended policies that contain elements of exempt and taxable cover. This concession permits the entire contract to be exempt if the cover subject to IPT is below the de minimis limits. This concession is already in operation but it will be given the force of law during 2011. (Source: TMF Group)

FAR EAST

India

IRDA Increases Premium Rates for TPM

The Insurance Regulatory and Development Authority (IRDA) has raised the premium rates for third-party motor insurance policies by 10-65 per cent across different categories of vehicles and ownerships.

While third-party premiums for personal cars and two-wheelers were raised by 10 per cent, new premiums for commercial vehicles would be higher by 65 per cent. The new rates are effective from April 1.

Third-party motor premiums for commercial vehicles rose for the first time in four years. Third-party motor premiums in India are regulated by Tariff Advisory Committee, a constitutional body under IRDA.

The IRDA also specified third-party motor premiums would be revised annually, based on inflation and claim experience. Third-party premium rates for commercial vehicles were stagnant for the last four years, owing to opposition from transport unions. This resulted in an accumulated loss of Rs 35-50 billion for general insurance companies and adversely impacted their solvency margins.

Nuclear Insurance Pool Creation Fast-tracked

The nuclear crisis in Japan has led the Indian government as well as the insurance industry to speed up the development of a nuclear insurance pool for similar accidents in the country.

According to sources, the government has convened a meeting involving the Nuclear Power Corporation and General Insurance Corporation (GIC), the only domestic re-insurer in the country, to take stock of the progress.

Sources said the government was in the process of opening certain portions of nuclear plants for inspection by reinsurers to assess the risk, based on which a pricing model could be developed.

The government is actively considering reinsurers' proposals to allow agencies to inspect the plant and decide on the extent of the coverage, said a source familiar with the development.

One has to understand that nuclear insurance is unique in every country. Hence, inspection is must, which, in turn, will decide the size of the pool. However, inspection will be allowed keeping in mind the national security norms, he added.

There are 26 nuclear insurance pools across the world. The size of a pool varies with the size of a plant, the machinery used and the levels of radiation expected.

GIC was in talks with various global reinsurance firms for additional capacity. A couple of reinsurers had shown interest regarding participation in the pool, a insurance industry official said.

IRDA to Trim M&A Norms for General Insurance Firms

Following feedback from insurers, the IRDA is likely to tone down the requirements for mergers and amalgamation as envisaged in the draft guidelines released in February.

According to industry officials, insurers have requested two areas to be revised. One concerns getting permission from local courts for mergers and informing all policy holders whenever any merger is proposed.

Also, they are seeking a framework regarding valuation norms. The draft was silent about the latter.

Insurers want alterations to be made to three areas listed in the draft guidelines. The revised ones will address the same, said an industry official.

The first area they want addressed is the court approval required for mergers. They feel it should not be mandatory.

According to the draft guidelines, the final approval from the IRDA is subject to clearance from a relevant court or tribunal.

Under the current guidelines, the IRDA would not be able to override the court ruling. Hence, it is not ideal. Being the regulator, it should have the complete authority, like in the case of mergers of life insurance companies, said a senior executive at a private insurance company.

The Insurance Act, which provides provisions for mergers and acquisition of life insurance companies, gives complete authority to the IRDA. However, it is silent regarding the issue of mergers of general insurers, an IRDA official added.

SPECIAL REPORT

The Exploratorium

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INTERNATIONAL RESEARCH SERVICES
SPECIAL REPORT

Two Looks at the Insurance Legal Landscape

New York High Court: "Other Insurance" Clause Relieves D&O Insurer of Obligation to Share Defense Costs with CGL Insurer

By Joshua P. Broudy

In *Fieldston Property Owners Ass'n, Inc. v. Hermitage Ins. Co., Inc.*, 2011 NY Slip Op. 01361 (Feb. 24, 2011), the New York Court of Appeals ruled that a D&O policy's excess "other insurance" clause relieved the D&O insurer of any obligation to reimburse a CGL insurer for defense costs incurred in connection with two underlying tort actions.

In *Fieldston*, Hermitage Insurance Company issued an occurrence-based CGL policy to Fieldston Property Owners Association.

Federal Insurance Company issued a "claims-made" D&O liability policy to Fieldston and its directors and officers which overlapped with portions of the CGL coverage period. Federal's D&O policy contained an 'other insurance' clause which provided that its coverage was excess where "any Loss arising from any claim made against the Insured is insured under any other valid policy(ies)."

Fieldston and its directors and officers were sued in two underlying actions for claims of interference with property rights and publication of injurious falsehoods.

Hermitage demanded that Federal defend the underlying actions, arguing that only the injurious falsehoods claim was potentially covered by its CGL policy, whereas several of the other claims were potentially covered under the D&O policy.

Federal, however, declined to contribute to the defense of the underlying actions, taking the position that the other insurance clause rendered its coverage excess to the Hermitage CGL policy. Hermitage subsequently undertook the defense of both actions subject to a reservation of rights, and two declaratory judgment actions ensued seeking to determine the respective defense cost obligations of Hermitage and Federal.

The New York Supreme Court, Appellate Division held that Federal was required to reimburse Hermitage for defense costs incurred in the underlying actions, despite the existence of the excess other insurance clause. The appellate court explained that Federal's other insurance clause was inapplicable because the "CGL and D&O policies do not provide concurrent coverage as they do not insure against the same risks." Thus, the court concluded that Federal, as a primary insurer, was obligated to share equitably in the defense of the actions with Hermitage, except as to the single "injurious falsehoods" claim which fell within the scope of the CGL coverage.

The New York Court of Appeals, relying primarily on the language of the other insurance clause and duty to defend under New York law, disagreed with and reversed the Appellate Division's decision, holding instead that Hermitage was not entitled to any reimbursement for defense costs from Federal. The court pointed out that, under New York law, a single, potentially covered claim triggers an insurer's duty to defend an entire action, irrespective of whether any of the additional claims may be covered.

Based on such a broad duty to defend, together with the possibility that the CGL policy at issue covered at least the injurious falsehoods claim, the court held that Hermitage was solely obligated to defend both underlying cases in their entirety, even though Federal might eventually have a duty to indemnify a larger proportion of the claims. Thus, as the court explained, "under the terms of Federal's D&O policy, there does exist 'other insurance' which would cover the 'loss' arising from the defense of the two underlying actions."

While acknowledging the "equitable appeal" of the decision reached by the Appellate Division, the Court of Appeals stated that it could not "judicially rewrite" the plain language of the policies at issue in order to fashion a more equitable result.

The *Fieldston* decision seems to have resolved the apparent conflicts in the lower New York appellate courts regarding the applicability of other insurance clauses in determining allocation of defense costs among overlapping policies. As a general rule, courts will only consider an other insurance clause in a policy when there is concurrent coverage between the policies at issue. For that reason, other jurisdictions may favor a different approach than that of the *Fieldston* court when the policies insure different risks. As courts may vary on the precise meaning of "concurrent coverage," this issue should be closely analyzed and monitored on a state-by-state basis.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact the author Joshua P. Broudy (jbroudy@cozen.com or 215-665-4624).

The Year in Emerging Risks

By William G. Passannante

The time is ripe to take a look back at key developments in insurance recovery in 2010 — and trends that are likely to be salient in 2011.

Bank failures continue to loom: In 2010, 157 U.S. banks failed, costing the FDIC $22.4 billion — the highest tally since 1992, the peak of the savings and loan crisis. At that time, the FDIC sought aggressively to recoup a portion of its losses through lawsuits against directors and officers. Moreover, from 1990 to 1995, federal officials prosecuted almost 2,000 bank insiders. Bank officers would do well to assume that the past is prelude, though the legal action is just getting started. Early this year, the FDIC said that as of mid-December it had authorized lawsuits against 109 directors and officers of failed financial institutions, seeking to recover nearly $2.5 billion. The FDIC is also reportedly conducting approximately 50 criminal investigations targeting executives, directors and employees of recently failed banks. The FDIC's problem list is over 884 banks.

Institutions whose directors and officers are subject to such suits, investigations and prosecutions should look to their D&O policies. They should note, too, that D&O insurance companies' past efforts to deny coverage for suits brought by statutory receivers by invoking the "insured vs. insured" exclusion have for the most part proved unsuccessful.

Shareholder and bondholder action against banks is also increasing: Late in the year, several foreclosure fraud class action lawsuits were filed, some seeking treble damages under RICO, with a number of large financial institutions among the targets. Banks are also fending off multiple foreclosure-related investigations, including one by all 50 state attorneys general. Bondholders likewise are targeting banks, alleging misrepresentations in the sale of collateralized debt obligations and other toxic securities. In all of these cases, D&O insurance should provide crucial protection to officers and directors.

Gulf oil spill: The release of millions of gallons of oil into the Gulf of Mexico following the explosion on the Deepwater Horizon oil rig entails billions of dollars in losses and liabilities for the principle companies involved, e.g., BP, Halliburton, Transocean and others. While hundreds of on-shore businesses that suffered business interruption losses will look to the BP fund established to compensate for such claims, many have opted out of the settlement and are suing the companies involved in building and operating the rig. Many may also seek coverage under time-element business interruption insurance included in their own property insurance policies.

Climate change liability risks won't go away: Late in 2010, the United States Supreme Court agreed to hear an appeal in *American Electric Power Co. Inc. et al. vs. State of Connecticut et al.*, in which a coalition of states and environmental groups sued several large coal-burning utilities, alleging that greenhouse gas emissions from the utilities contributed to beach erosion, droughts and floods. If the Supreme Court allows the suit to go forward, a raft of similar suits likely will follow. *American Electric* is one of three such suits currently pending in U.S. District Courts, one of which, *Kivalina vs. ExxonMobil Corp.*, has led to the first insurance coverage dispute concerning liability for greenhouse gas emissions. Should the Supreme Court uphold the Second Circuit in *American Electric*, then, as day follows night, greenhouse gas liability will become a major insurance coverage battleground.

Under commercial general liability policies, much dispute will probably center on interpretation of the polluter's exclusion.

D&O liability for climate change: Directors and officers can be sure that increased regulation of greenhouse gas emission will lead to increased liability. A raft of SEC regulations address disclosure of a company's climate-change-related issues, including legislation that may have a material effect on a public company, or conditions that may reduce demand. Alleged failure to comply with these disclosure requirements may lead to suits against directors and officers.

Notwithstanding the large anticipated costs to the insurance industry stemming from the recent earthquake and tsunami in Japan, insurance markets remain soft in most property-casualty lines, and policyholders are thus well-positioned to purchase insurance products that will actually work when needed. As always, maximizing insurance protection will require informed purchasing, proactive claims pursuit and aggressive pushback when insurance companies delay or deny coverage.

(Source: courtesy of Anderson Kill & Olick)

The Back Page

Featured PhotoArt

Demon Pairs of Words and Phrases

Compose: to form by assembling (the parts compose the whole)

Comprise: to be formed out of (the whole comprises the parts)

The United States comprises 50 states, and the states compose the United States. Or if you turn it around to the passive voice, the United States is composed of the states and the states are comprised by the United States.

Latin Words of help to insurance professionals

Per annum – annually
Per diem – paid by the day
Persona non grata – someone not welcome
Per se – by or in itself or "as such"

Paraprosdokian Sentences

Ø Light travels faster than sound. This is why some people appear bright until you hear them speak.

Ø If I agreed with you we'd both be wrong.

A paraprosdokian (from Greek "παρα", meaning "beyond" and "προσδοκία", meaning "expectation") is a figure of speech in which the latter part of a sentence or phrase is surprising or unexpected in a way that causes the reader or listener to reframe or reinterpret the first part. It is frequently used for humorous or dramatic effect, sometimes producing an anticlimax. Some paraprosdokians not only change the meaning of an early phrase, but also play on the double meaning, creating a syllepsis.

Word Play

Take any word from the dictionary, alter it by adding, subtracting, or changing one letter, and supply a new definition.

Glibido: All talk and no action.

Ponder this…

If you try to fail, and succeed, which have you done?

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