AIDA EUROPE CONFERENCE, "Insurance and Reinsurance in Europe: The Future Challenges"

Zurich 22/23 October 2009

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AIDA EUROPE CONFERENCE, ZURICH 22/23 OCTOBER 2009
"Insurance and Reinsurance in Europe: The Future Challenges"

PROGRAMME HIGHLIGHTS INCLUDE:

- The Future of the Insurance and Reinsurance Markets from the European and US/Bermuda perspective.
- The relevance of the new European International Insurance Contract Law for International Insurance Programmes
- Questions of Domicile and the Reinsurance Directive.
- Regulation: will Solvency II prevent a future crisis?
- Environmental Risks/Climate Change issues.
- The Financial Crisis and its Impact on Insurance and Reinsurance Claims and Legal Issues.

Including conference AIDA Working Parties on:

- **Civil Liability Insurance**: *Compulsory liability insurance – climate change impact now and in the future on the liability insurance industry?*
- **Distribution of Insurance Products:** *Bancassurance and issues on brokers' conflicts of interest*
- **Life Pension and Collective Insurance**: *Group personal and group indemnity insurance and collective insurance based on collective agreement*
- **Marine Insurance:** *Maritime Insurance & Piracy.* ***A paper on Piracy will be presented by Stella Sakellaridou one of the winners of the Student/Academic AIDA Europe Prizes***
- **Motor Insurance:** *Consideration of the normative and management characteristics of MTPL insurance in the world. Considering comparative rules for the protection of victims in road accidents*
- **New Technologies, Prevention and Insurance:** *The provisions in policies at the pre-contractual stage; wordings provisions and risk prevention measures.*
- **Reinsurance**: *Developments in follow the settlements/follow the fortunes law and issues relating to reinsurance and climate change.* ***A paper on Claims Provisions: A Comparison of English and US law will be presented by Ozlem Gurses, one of the winners of the Student/Academic AIDA Europe Prizes***
- **State Supervision**: *Supervisory laws and European cross-border issues after implementation of the reinsurance directive*
- **Credit Insurance:** *What is credit and political risk insurance, the regulatory framework and key issues in such insurance for practitioners*

Keynote addresses:

Benjamin Gentsch, *CEO, SCOR, Switzerland* and
Patrick Thiele, *President and Chief Executive, Partner Re, Bermuda*

THURSDAY 22 OCTOBER 2009

Morning

08.00 – 09.45 **AIDA PRESIDENTIAL COUNCIL EXECUTIVE COMMITTEE MEETING**
Location – The Auditorium, SCOR Switzerland Ltd, General Guisan-Quai 26, CH-8022

10.45 – 13.15 **AIDA PRESIDENTIAL COUNCIL MEETING**
Location – The Auditorium, SCOR Switzerland Ltd, General Guisan-Quai 26, CH-8022

Afternoon

13.30 – 16.00 **CONFERENCE REGISTRATION OPENS**
SCOR Switzerland Ltd, General Guisan-Quai 26, CH-8022

14.00 – 18.00 **AIDA WORKING PARTY MEETINGS**

AIDA's Presidential Council has created several working parties over the years for the purpose of carrying out research in specific fields of insurance law and related matters.

14.00 – 16.00

Credit Insurance – Auditorium, SCOR Switzerland AG, General Guisan-Quai 26 8002 Zürich

Distribution of Insurance Products - GBF Rechtsanwälte,Hegibachstrasse 47, CH-8032 Zurich

Life Pension and Collective Insurance - Allianz Suisse, Bleicherweg 19, 8022 Zurich

Marine Insurance – Room G0F3, SCOR Switzerland AG, General Guisan-Quai 26 8002 Zürich

New Technologies Prevention and Insurance - Prager Dreifuss, Mühlebachstrasse 6, CH-8008 Zurich

16.00 – 18.00

Civil Liability Insurance - GBF Rechtsanwälte, Hegibachstrasse 47, CH-8032, Zurich

Motor Insurance - Prager Dreifuss, Mühlebachstrasse 6, CH-8008 Zurich

Reinsurance - Auditorium, SCOR Switzerland AG, General Guisan-Quai 26 8002 Zürich

State Supervision – Room G0F3, SCOR Switzerland AG, General Guisan-Quai 26 8002 Zürich

Attendance is free to all conference delegates (as well as to working party members and others who choose to attend the working parties without attending the conference itself).

Evening

19.00 – 20.00	**CONFERENCE REGISTRATION** Papiersaal, Kalendarplatz 1, 8045, Zurich
19.00 – 20.30	**PRE-CONFERENCE DRINKS RECEPTION**: 18.30 Pick-up from Station Enge (10 minutes walk from Park Hyatt Hotel) by Zurich historical trams for short tour (30 minutes) followed by Welcome Reception at Papiersaal – an ***"urban space with bohemian industry chic"*** (www.papiersaal.ch) Kalendarplatz 1, 8045, Zurich

All conference delegates and registered accompanying persons are welcome to attend

FRIDAY 23 OCTOBER 2009 – AIDA EUROPE CONFERENCE, PARK HYATT, ZURICH

08.00 - 08.30	Registration and Coffee
08.30 – 08.45	Welcome address Chairman of AIDA Europe – Colin Croly, London
08.45 - 09.15	The Future of the Insurance and Reinsurance Markets • Setting the scene - The state of the market • Where are we and where are we heading? • The financial crisis - the search for capital • The search for capacity and new products to address new risks Key Note Speaker: Benjamin Gentsch, CEO, SCOR Switzerland Ltd, Zurich
09.15 – 09.45	The US/Bermuda Perspective and Obama's Vision for the Industry Key Note Speaker: Patrick Thiele, President and Chief Executive, Partner Re, Bermuda
09.45 - 10.15	The New European International Insurance Contract Law and its relevance for International Insurance Programmes • Intra- and Extra-Community Risks • Large and Mass Risks • Choice of Law by the Parties • Impact of Mandatory Rules. Speaker: Professor Helmut Heiss, University of Zurich and Chairman Project Group "Restatement of European Insurance Contract Law"
10.15 - 10.35	Coffee
10.35 - 11.25	Panel: Questions of Domicile and the Reinsurance Directive • Comparative overview on national legislation • Feasible business strategies for third country based reinsurers/ Flight of underwriters from Bermuda to Zurich • Relocation of capital and tax benefits:

	Chairman: Lars Gerspacher, Partner, GBF attorneys at law, Zurich Panel Members: Rod Attride-Stirling, Senior Partner, Attride-Stirling & Woloniecki and President of the Bermuda Bar Association< Bermuda Christian Felderer, General Counsel, SCOR Switzerland Ltd, Zurich Liam Flynn, Partner, Matheson Ormsby Prentice, Dublin Hermann Geiger, Group General Counsel and Member of Executive Board, Swiss Reinsurance Company Ltd, Zurich
11.25 – 11.50	Cross-border regulation: Will Solvency II prevent a future financial crisis? Speaker: Rick Lester, Solvency II Lead Partner, Deloitte LLP, London
11.50 – 12.15	Competition law and BER • Impact on subscription/co-insurance markets • The future of Market organisations: IUA etc Speaker: Dave J Matcham, CEO, International Underwriting Association, London
12.15 – 13.30	Buffet lunch
13.30 – 14.00	Environmental Risks/Climate Change • Floods, hurricane, sea level increases, droughts, diseases. • Shaping a group reinsurance protection in an era of climate change • Insurance coverage of new sources of energy, insurance aspects of the carbon market. • Discussion of World Congress 2010 topic "Climate Change" Speakers: Wolfgang Wopperer, Chief Retrocession Manager, Allianz Re, Munich Professor Dr. M. Fontaine, Professor Emeritus at the University of Louvain, Vice-President of AIDA, Louvain-la-Neuve

14.00 – 15.10	Insurance, Reinsurance and the Financial Crisis • Impact on third party liability insurance – FI, D&O and E&O • Mortgage indemnity insurance • Reinsurance Panel Members: Paul Moss, Group Head of Claims, Montpelier Re, London Carolyn Mercer, Claims Manager, Munich Reinsurance Company, London Joachim Krane, Chief Claims Officer, XL Insurance, Zurich • Credit insurance and legal issues arising Speakers: Jerome Kullmann, Professor at the University of Paris-Dauphine, Director of the *Institut des Assurances de Paris*, University of Paris I - Panthéon-Sorbonne, Paris Louis Habib-Deloncle, Chairman, Garant Insurance Company, Vienna • Financial risks and structured insurances • Bancassurance - crossover between banking and insurance – legal consequences Speakers: Dr Rochus Gassmann, General Counsel Europe, Zurich Insurance Company, Zurich Charles A Gordon, DLA Piper UK, London Rolf Staub, Legal Counsel, Allianz Risk Transfer AG, Zurich Panel Discussion: • Current disputes in different jurisdictions and lessons from the past o Film finance o Surety disputes eg. Enron, Worldcom. • Re-structuring issues • Insurance legal issues: o Claims notification; o Disclosure; o One event? • Reinsurance issues o Aggregation; o Follow the settlements/follow the fortunes; o Proper law; o Methods of dispute resolution. • Comparative European insurance law analyses

	Chairman: Jan Heuvels, Partner, Ince & Co, London Panel Members: Jacquetta Castle, Partner, Robin Simon LLP, and Immediate Past Chairman of BILA, London David M Greenwald, Partner, Jenner & Block LLP, Chicago Christian Lang, Associate, Prager Dreifuss, Zurich Ioannis Rokas, Managing Partner, IKRP Rokas & Partners, Athens Peggy Sharon, Partner, Levitan Sharon & Co, Israel, Tel-Aviv Leonid Zubarev, CMS Legal, Moscow
15.10 – 15.30	Coffee/Tea
15.30 – 17.15	Insurance, Reinsurance and the Financial Crisis (continued)
17.15	Closing Remarks Speaker: Chairman of AIDA Europe – Colin Croly, London
AIDA Europe reserve the right to change any part of the programme	

ABOUT AIDA EUROPE

AIDA Europe is the regional grouping of AIDA Chapters in Europe which was established in Rome in 2007 and held its inaugural conference in Hamburg in May 2008. The present AIDA Europe Committee is comprised of the following:

Colin Croly	Chairman (UK Chapter)
Jerome Kullmann	Vice Chairman (French Chapter)
Torben Bondrop	(Danish Chapter)
Giuseppina Capaldo	(Italian Chapter)
Otto Csurgo	(Hungarian Chapter)
Slobodan Jovanovic	(Serbian Chapter)
Robert Koch	(German Chapter)
Jose Maria Munoz Paredas	(Spanish Chapter)
Ioannis Rokas	(Greek Chapter)
Peggy Sharon	(Israeli Chapter)
Herman Cousy	Treasurer (Belgian Chapter)

The AIDA Europe Committee was assisted in the organisation of this conference by the local Swiss AIDA Organising Committee comprised of the following:

Christian Felderer	SCOR Switzerland
Lars Gerspacher	GBF
Professor Helmut Heiss	University of Zurich
Christian Lang	Prager Dreifuss
Professor Anton Schnyder	University of Zurich

Biographies

BENJAMIN GENTSCH, DEPUTY CHIEF EXECUTIVE OFFICER OF SCOR GLOBAL P&C, CHIEF EXECUTIVE OFFICER OF SCOR SWITZERLAND

Benjamin Gentsch, a Swiss citizen, graduated with a degree in management from the University of St. Gallen, where he specialized in insurance and risk management. From 1986 to 1998, he held several positions at Union Reinsurance Company, where from 1990 to 1998 he directed treaty underwriting in Asia and Australia. In 1998, he joined Zürich Re as head of international underwriting responsible for strengthening the company's position in Asia, Australia, Africa and Latin America. He also served as head of the "Global Aviation" reinsurance department and developed the "Global Marine" department. In September 2002, Benjamin Gentsch was appointed Chief Executive Officer of Converium Zürich, then Executive Vice President in charge of Specialty Treaties. In September 2007, he was appointed Chief Executive Officer of SCOR Switzerland and Deputy Chief Executive Officer of SCOR Global P&C SE.

PATRICK THIELE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PARTNERRE LTD, BERMUDA

As President and Chief Executive Officer of PartnerRe Ltd., Patrick Thiele is responsible for the strategic direction and management of the Company. He is also a Director of PartnerRe. Under his leadership since 2000, PartnerRe has successfully transitioned from a Cat-only reinsurer to a well-diversified, global reinsurance company. With 14 office locations worldwide offering reinsurance coverage for property and casualty, catastrophe, specialty lines, life, and alternative risk products, PartnerRe's total assets are currently $17 billion, total capital is greater than $5 billion, and for the year ended December 31, 2008, revenues were $4.0 billion. PartnerRe aims to provide highly-valued products to its clients, deliver appropriate returns to shareholders, and ensure a satisfying work experience for its employees. To support this vision, PartnerRe has a culture of thoughtful and disciplined risk-assumption within pre-determined return goals. This is the foundation of PartnerRe's success.

Prior to joining PartnerRe, Patrick was Group Director of Development of CGNU (formerly CGU), and Chief Executive Officer and President of St. Paul Companies worldwide insurance operations.

Patrick holds both a B.S. in Finance and an MBA from the University of Wisconsin, Madison, as well as the Chartered Financial Analyst designation. He currently serves on the board of the School of Risk Management and Actuarial Science, New York, and is associated with the University of Wisconsin's Graduate School of Business

ROD S ATTRIDE-STIRLING, J.P, SENIOR PARTNER, LITIGATION, ATTRIDE-STIRLING & WOLONIECKI, BERMUDA

Rod is the senior partner of the firm. He was educated at the University of Maryland; University of Buckingham; Chester College of Law. He was admitted to practice as a Barrister & Attorney in Bermuda and subsequently as a Notary Public and Justice of the Peace.

Rod is listed in the Euromoney Expert Guide to the World's Leading Insurance and Reinsurance Lawyers as well as having being a Board Member of AIDA (US). He is past-President of the Bermuda Bar Association, past- chairman of the Bermuda Human Rights Commission, is a member of the Insurance Advisory Committee, the US/Bermuda Tax Convention Advisory Committee, and the International Business Forum (the latter three are Bermuda Government advisory bodies). He is also a member of the International Bar Association, ARIAS (US), the Chartered Institute of Arbitrators and member of the International Court of Arbitration for Sports (CAS).

Rod specializes in insurance and reinsurance matters. He has wide experience dealing with a variety of regulatory matters, commercial disputes including controversial insurance and reinsurance claims, disputes involving captive insurers, retrocessionaires, managers and brokers; and disputes arising in transnational insurance insolvency proceedings.

Biographies

JACQUETTA CASTLE, PARTNER, ROBIN SIMON LLP

Jacquetta Castle is a Partner at the law firm Robin Simon LLP. She was first called to the Bar before re-qualifying as a solicitor in 1988. Jacquetta is a recognised leader in professional indemnity and FI/D&O/fidelity defence work and coverage claims. Jacquetta has acted for the market in many high profile cross-border disputes in relation to D&O, banks and financial institutions policies, together with professional indemnity work for solicitors and other professions. Her practice also encompasses non-contentious policy drafting and advice. Jacquetta was the Chairman of the British Insurance Law Association (2006-2008) and continues to be closely involved with BILA as the Immediate Past Chair and committee member. Jacquetta writes regularly for legal and insurance publications as well as giving lectures and chairing seminars. Jacquetta is mentioned in both Legal 500 and Legal Experts directory 2009

COLIN CROLY, CHAIRMAN, AIDA EUROPE

Acting for many of the leading insurance and reinsurance companies and syndicates, Colin Croly has advised for over 30 years on all areas of insurance, concentrating on reinsurance including contract wording and dispute resolution and issues relating to asbestos pollution and ART not only in London but in conjunction with overseas lawyers.

Placed as one of the top 20 reinsurance lawyers in the world by Euromoney's Best of the Best survey Colin has again been nominated by Who's Who Legal, the international Who's Who of business lawyers as the Insurance and Reinsurance Lawyer of the Year 2009, the fifth year running. He is also recommended in the *Legal 500* as a leading individual in reinsurance and *Chambers & Partners* identifies him as "basically Mr Reinsurance".

Colin is Secretary General of AIDA (Association Internationale de Droit des Assurances), Chairman of AIDA Europe and Chairman of AIDA's Reinsurance Working Party. An active member of the Federation of Defense and Corporate Counsel (FDCC) Colin was a member of the Board until 2008, being the only non-US member. He is an Adjunct Member of the Excess and Surplus Lines Claims Association. A former government appointee to the IBRC (Insurance Brokers Registration Council) he has held numerous other offices. He lectures regularly at Zurich and Hamburg Universities and throughout the world and is also joint editor of *Reinsurance Practice and the Law* (Informa) and an author of many published articles on reinsurance.

CHRISTIAN FELDERER, GENERAL COUNSEL, SCOR SWITZERLAND LTD, ZURICH

Christian Felderer is the General Counsel and an Executive Vice President of SCOR Holding (Switzerland)/SCOR Switzerland AG and as General Counsel *Operations* at the SCOR Group level responsible for the Group's life and P&C reinsurance transactional legal matters. He has 25 years' experience in the insurance and reinsurance industry, most recently, prior to the consummation of the public tender offer by SCOR on Converium in 2007as General Legal Counsel for the Converium Group and previously as Senior Legal Counsel for Zurich Re. Between 1990 and 1997 Mr. Felderer had various management responsibilities within the Zurich Group's International Division, including the establishment and management of the Captives and Financial Risk Management department and management of the Claims organization of the International Division. From 1986 to 1990 he was Corporate Legal Counsel in the General Counsel's Office of the Zurich Insurance Group, and from 1983 to 1986 he was an underwriter in the Casualty department of the International Division. Mr. Felderer has a law degree from the University of Zurich and is admitted to the Bar of the Canton of Zurich.

LIAM FLYNN, PARTNER, MATHESON ORMSBY PRENTICE

Liam is a partner and head of the Insurance Group at Matheson Ormsby Prentice. His particular focus is on corporate and capital markets work in the insurance industry, including alternative risk transfer and insurance structured financing. He has advised some of the world's largest

Biographies

insurers and re-insurers and major investment banks on mergers and acquisitions in the insurance industry, group reorganisations, the establishment of new insurance and reinsurance operations, structured finance programs and compliance issues.

PROFESSOR DR MARCEL FONTAINE, PROFESSOR EMERITUS AT THE UNIVERSITY OF LOUVAIN, VICE-PRESIDENT OF AIDA, LOUVAIN-LA-NEUVE

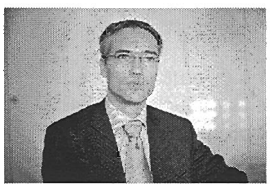
Marcel Fontaine is Professor emeritus from the University of Louvain at Louvain-la-Neuve (Belgium). He has also taught as a guest professor or lecturer in several other universities. His main legal fields of interest are the law of contracts and the law of insurance, domestic, international and comparative. He is a reporter in the working group of Unidroit in charge of drafting *Principles for International Commercial Contracts*. He is the expert in charge of drafting a Uniform Act on Contracts for the 16 African countries of OHADA. He has advised governements of several countries of Central and Eastern Europe, as well as Central Asia, on preparing legislation, and he has written the draft of the Luxembourg law on insurance contracts. He is Vice-President of AIDA. He regularly serves as an arbitrator in domestic and international disputes, both ad hoc and institutional (ICC, LCIA), mostly concerning contracts, insurance and reinsurance. He is the author of several books and over 200 articles. He is doctor *honoris causa* of the Universities of Montpellier, Bourgogne, Paris I Panthéon-Sorbonne et Geneva.

ROCHUS GASSMANN, DR. JUR., ATT AT LAW, GENERAL COUNSEL EUROPE, ZURICH FINANCIAL SERVICES GROUP, ZURICH

In his role as General Counsel Europe Rochus Gassmann is responsible for the legal and compliance function across Europe. He joined Zurich in 1992 following various roles and position of Judge at District Court in Zurich, Switzerland. Initially joining the Legal Department at Corporate Center, Rochus then moved to Zurich North America, working in the Schaumburg and New York offices. In 1997 he was appointed General Counsel Zurich Switzerland before he took up his current role as General Counsel Europe in 2005. Rochus Gassmann holds various courses at Universities and professional institutions on insurance law.

HERMANN GEIGER, GROUP GENERAL COUNSEL & MEMBER OF EXECUTIVE BOARD, SWISS RE, ZURICH

Hermann Geiger was appointed Group General Counsel and also became Member of the Executive Board of Swiss Re in January 2009. Hermann Geiger is a German citizen, born in 1963. He received LL.M. and Ph.D. degrees in law as well as a Ph.D. degree in economics and political sciences from Munich University. He is a qualified attorney-at-law in Germany and also an accredited insurance underwriter and mediator. Mr Geiger started his career as an attorney in private practice, specialising in corporate, litigation and regulation in the financial services sector, with a major German law firm in 1993 and moved on to General Electric / GE Insurance Solutions as an Associate General Counsel in 1995. In 2000, he was appointed General Counsel Europe & Asia and later became a Board Member of GE Frankona in Germany and Denmark. He joined Swiss Re as Regional General Counsel Europe
following Swiss Re's acquisition of GE Insurance Solutions.



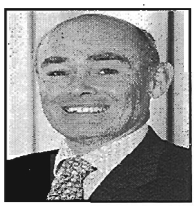
LARS GERSPACHER, PARTNER, GBF GERSPACHER BÜHLMANN FRANKHAUSER, ZURICH

Lars Gerspacher is a partner at the law firm of GBF Attorneys-at-law (www.gbf-legal.ch) and focuses his activities mainly in the areas of insurance and reinsurance law, aviation and maritime law as well as transport and trade law. Because of his special area of expertise, his client base primarily consists of insurance and

Biographies

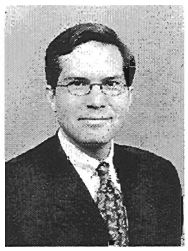
reinsurance companies primarily from the Swiss, London, US and German market. The main focus of his activities lies in conducting law suits of an international nature but he also has many years of experience in establishing insurance companies in Switzerland, obtaining licences from the competent local supervisory authorities and redomesticating foreign insurance and reinsurance companies to Switzerland and Liechtenstein.

Lars Gerspacher has been active as an independent attorney at law for several years. His previous experience with other law firms concentrated on complex claims in marine and aviation matters. He is, amongst others, member of the Swiss Association for Torts and Insurance Law, the Swiss Association for Aviation and Space Law, the British Insurance Law Association, the German Association for Transport Law as well as the Insurance and the Maritime and Transport Committee of the International Bar Association.



CHARLES GORDON, PARTNER, DLA PIPER

Charles heads the DLA Piper European Insurance and Reinsurance team. He focuses on London market and international insurance and reinsurance disputes, coverage issues and policy wordings across all insurance classes but with a particular focus on property and casualty. Charles has acted on behalf of Lloyd's syndicates and insurance/reinsurance companies in major insurance/reinsurance disputes affecting the London market. He also has substantial experience in the run-off sector. Charles' team has also developed a strong practice in the regulatory and structured products field.



DAVID GREENWALD, PARTNER, JENNER & BLOCK LLP, CHICAGO

David Greenwald is the Co-Chair of Jenner & Block's internationally prominent reinsurance claims and counseling group, which has a broad-based practice representing cedents and reinsurers in select reinsurance disputes. He is a tested trial lawyer with over 23 years of commercial litigation, arbitration, and jury trial experience. He and his group have represented AXA Re, Berlin Steel, Canada Life Assurance Company, CIGNA, CSX Transportation, Employers Re, General Dynamics, General Electric, Genworth, HSBC, Missouri Pacific Railroad, Peoples Energy, People's Insurance Company of China, SCOR, Sunbeam, Tennessee Gas Pipeline Company, Trustmark Insurance Company, Union Pacific Railroad, and many others in substantial insurance and reinsurance disputes.

Mr. Greenwald is co-author of the comprehensive treatise *Testimonial Privileges* (Thomson West 3d ed. 2005) (update through 2009), and he is editor of Jenner & Block's Attorney-Client Privilege online resource center, which provides monthly reports on this legal issue. He has served as the co-chair of the ABA's International and Reinsurance Subcommittees and he is an active member of the IBA's Re/insurance and Litigation Committees. He has lectured and written frequently on insurance and reinsurance coverage law, as well as on the attorney-client privilege and work product doctrine in the United States and their analogues in non-U.S. jurisdictions.

For seven years, Mr. Greenwald was the President of Mwangaza, Inc., a non-profit corporation that supports health-related projects for physically disabled children in Tanzania and other developing countries. He graduated *cum laude* from the University of Michigan Law School (1986) and *cum laude* from Georgetown University (1983).

Jenner & Block is a full-service firm with offices in Chicago, Los Angeles, New York, and Washington, D.C.

PROF DR. HELMUT HEISS LL.M (CHICAGO) , FULL PROFESSOR OF PRIVATE LAW, COMPARATIVE LAW AND PRIVATE INTERNATIONAL LAW, UNIVERSITY OF ZURICH

Helmut Heiss was born in Innsbruck/Austria in 1963. He graduated from Innsbruck Law School in 1985 where he also obtained his PhD in law in 1987. Heiss did his post-graduate studies (LL.M.) at the University of Chicago in 1989/90. He became associate Professor at the University of Innsbruck in 1997 and taught as a Visiting Professor at St. Mary's University, Law School, San Antonio/Texas/USA in the fall semester of 1998. In 1999 he took a chair for

Biographies

Private Law, Comparative Law and Harmonisation of Laws in the Baltic Sea Area at the University of Greifswald/Germany. Heiss moved to another chair for Private Law, Insurance Law, European Private and Private International Law as well as Comparative Law at the University of Mannheim/Germany in 2004. In 2007 he took his current position as an Ordinarius for Private Law, Comparative Law and Private International Law at the University of Zurich/Switzerland.

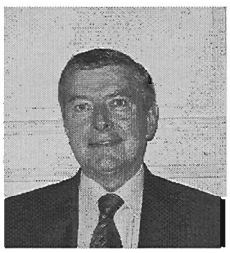
Heiss is Chairman of the Project Group "Restatement of European Insurance Contract Law" and a Member of the Co-ordination Committee of the Joint Network on European Private Law (CoPECL – Network of Excellence). He acted as an expert on "The European Insurance Contract" to the European Economic and Social Committee in 2003/04. Currently he acts again as an expert to the European Economic and Social Committee on "The 28th Regime" in European Contract Law.

JAN HEUVELS, PARTNER, INCE & CO, LONDON

Jan is head of the reinsurance group at Ince & Co. He specialises in non-marine insurance and reinsurance work with emphasis on complex dispute resolution (litigation, arbitration and ADR) in the international insurance and reinsurance markets, and non-contentious advice work. Jan is regularly consulted on 'corporate risks' by large companies, their captives and their insurers and reinsurers, including claims and coverage issues relating to high-value liability, property and business interruption claims. Reported cases include *Bonner v Cox* [2005] EWCA Civ 1512; *KCM v Coromin & Ors and Swiss Re & Ors* [2006] EWCA Civ 5; *Coromin v Axa Re & Ors* [2007] EWHC 2818 (Comm); and *Equitas v Allstate* [2008] EWHC 1671.

Jan has strong industry links with the London and international insurance markets including Germany (Jan is a member of the Hamburg Bar), Bermuda, the US, Scandinavia and Australia. Prior to joining Ince & Co, Jan obtained an honours degree in Jurisprudence from Hertford College, Oxford, before working for the Confederation of British Industry (CBI). Jan is a past chair of the insurance committee of the International Bar Association (IBA). He is a regular speaker at conferences and contributor to publications, and a member of the Insurance Institute of London and the British Insurance Law Association.

Jan is "*practical and able*" (Legal 500, 2009) with a "*fantastic reputation*" (Legal 500, 2008). He is also "*hugely energetic and proactive*" and "*moves quickly and assertively while listening to the client, and peers admit that he really gets results,*" Chambers & Partners 2008.



JEROME KULLMAN, UNIVERSITY PROFESSOR – UNIVERSITY OF PARIS-DAUPHINE (PRIVATE LAW)

Director of the *Institut des Assurances de Paris*, University of Paris I - Panthéon-Sorbonne, *Docteur d'Etat, mention droit* (PhD in Law)

Avocat at the Paris Bar - Consultant and arbitrator in cases relating to damage insurance and insurance of persons, on behalf of insurance companies, brokers, banks, industrial and commercial corporations.

Association Internationale de Droit des Assurances (AIDA.) - International Association : Member of the Presidential Council; Chairman of the international working group "Consumer protection". - French Chapter (AIDA-France) : Chairman; AIDA-Europe : Vice Chairman.

French member of the Project Group *Restatement of European Insurance Contract Law.*

Member of the board of *Centre Français d'Arbitrage de l'Assurance et la Réassurance* (CEFAREA) : French association for arbitration in insurance and reinsurance.

Member of the scientific Committee of *Association pour le Management des Risques et des Assurances des Entreprises* (AMRAE) .

Chief editor of *Lamy Assurances* – Annual publication (first edition 1995 ; edition 2009 : 2500 pages)

Biographies

Chief editor of *Revue Générale de Droit de l'Assurance,* LGDJ.

CHRISTIAN LANG, SENIOR ASSOCIATE, PRAGER DREIFUSS, ZURICH

Christian Lang is a senior associate with Prager Dreifuss, Attorneys at Law, in Zurich, Switzerland. He works for Swiss and foreign clients from the insurance industry in non-contentious and contentious matters, including litigation and arbitration. He also advises clients in insurance regulatory matters in connection with corporate transactions or their conduct of business in Switzerland. Christian is also a member of the practice group "Corporate and M&A".

Christian graduated from Zurich University in 1997, and received an LL.M. from New York University in 2004. He is admitted in Switzerland and in New York and gathered some international experience as a foreign attorney with a Wall Street law firm in New York in 2004/2005. Christian is a member of the Swiss Bar Association, the Association of the Bar of the City of New York, the Federation of Defense and Corporate Counsel (FDCC), and the British Insurance Law Association (BILA).

RICK LESTER, PARTNER, DELOITTE, LONDON

Rick is a Partner within the Finance Services Advisory practice of Deloitte in the UK. He has over 20 years experience in the financial sector combining 10 years in the Insurance Industry with 10 years in Consulting. He has conducted a variety of engagements for major financial institutions throughout Europe involving the analysis and benchmarking of risk management and internal control approaches and practices. Rick leads Deloitte's Solvency II service offering in the UK and is currently engaged in the delivery of Solvency II programmes for both life and non- life insurers.

DAVID MATCHAM FCII, CEO, INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON (IUA)

David Matcham is Chief Executive of the International Underwriting Association of London (IUA). IUA is the market association representing insurance and reinsurance companies writing international business in or through London.

Previous to joining IUA at its formation on 31 December 1998, he worked for 18 years, many in a senior managerial position, for the Institute of London Underwriters – a long established trade association for marine and aviation insurers in London. ILU merged with LIRMA to form IUA on 31 December 1998 with David being appointed Director of Operations.

David was appointed Chief Executive on 17 March 2005 and joined the IUA Board at that time.

David obtained his Associateship of the Chartered Insurance Institute in 1986 and his Fellowship (specialising in Aviation) in 1989. He still takes an active role in the CII, having served twice as president of one its regional local institutes.

David also acts as Chairman of the Insurance Institute of London's Market Issues Committee and is a member of the London Market Faculty Board.

David was made a Fellow of the Institute of Association Managers in October 2006.

Since 1997 David has been a regular attendee of both NAIC and NCOIL meetings, working with state regulators/legislators on many surplus lines and reinsurance policy issues. For the last few years he has also chaired the CEA ad-hoc reinsurer group which oversees industry activity on reinsurance issues, particularly US.

CAROLYN MERCER, CLAIMS MANAGER, MUNICH RE, LONDON

Biographies

Carolyn Mercer is a Claims Manager in the London Branch Office of Munich Re. She is responsible for overseeing insurance and reinsurance claims arising from casualty business, including professional indemnity, directors and officers, bankers blanket bond, motor and liability. Carolyn joined Munich Re in 1997 having completed the graduate programme at RSA. She is a fellow of the UK Chartered Insurance Institute

PAUL MOSS ACIArb, GROUP HEAD OF CLAIMS – MONTPELIER RE/MONTPELIER SYNDICATE 5151 (BERMUDA & LONDON), NON EXECUTIVE DIRECTOR – NAVIGANT CONSULTING UK (A SUBSIDIARY OF THE PARENT COMPANY BASED IN CHICAGO, UNITED STATES OF AMERICA (2001-2009)

Paul was previously Head of Claims, QBE European Operations and Limit Underwriting Limited, reporting to the Chief Underwriting Officer and Technical Claims Director, QBE International Insurance Limited; QBE Re UK; QBE Insurance (formerly Iron Trades Insurance Company); Director, Ridgwell Fox (Underwriting Management) Ltd, all being subsidiaries of QBE Insurance Group, Australia.

1992-2000 Chief Claims Officer – AXA Corporate Solutions Worldwide; 1986 – 1992 Claims Manager, Charter Reinsurance Company & Claims Director, Lime Street Services Limited and various other senior claims positions in the London Market going back to 1978.

Chair LMA Reinsurance Claims Group (2006 – 2008); member of the Lloyd's Members' Claims Group and the newly formed London Market Claims Strategy Group. Has held Company membership of CEDR and CPR (New York) and the Excess and Surplus Lines Claims Group. An Associate of the Chartered Institute of Arbitrators and a member of the Civil Mediation Council and the British Insurance Law Association. Chaired the Lloyd's Katrina Claims Co-ordination Group and led the Insurance Institute of London Study Group 253, which published "Run-off Management and Commutations in Practice". A member of the Panel of Arbitrators A.R.I.A.S (UK). Paul has written articles, given presentations and spoken at public industry conferences on reinsurance claims related matters both in Europe and the USA over the last 15 years. Most recently, he has promoted actively an international mediation initiative for reinsurance disputes culminating in the creation of the CPR International Reinsurance Dispute Resolution Protocol.

Paul chairs the Insurance Institute of London research study group for "ADR in Practice for Insurance & Reinsurance" and was the winner of the Insurance Day "Industry Achiever" of the year Award 2007

PROF. DR. IOANNIS ROKAS , MANAGING PARTNER, IKRP ROKAS & PARTNERS

Founder & Managing Partner of IKRP Law Firm coordinator of the network of *IKRP* firms under the same name, which spread across countries of Central & SE Europe.

Hè is practicing lawyer, member of the Athens Bar & Professor at the Athens University of Economics & Business Sciences.

He is member of the Presidential Council of AIDA, Chairman of the Working Party «Distribution of Insurance Products», President of the Hellenic Insurance Law Association .

Former General Secretary of the Commité Maritime Internationale (Greek Section); member of the project group "Restatement of European Insurance Contract Law"; former Chairman of the Mediterranean Maritime Arbitration Association; former President of the Private Insurance Committee of the Greek Insurance Supervisor Authority; Chairman of Drafting Committees, among others, for the modernization of the Commercial Code, for the Law on Private Insurance Supervision; draftsman of the new Greek ICA; former Vice-chairman of the Hellenic Committee for Electronic Commerce; Leader/Member of EU-funded projects in BiH, Romania & the Russian Federation on the strengthening of insurance industry in these countries awarded to *IKRP* law firm.
He has published numerous articles in Local & International Law Reviews, monographs, books for students on insurance, maritime & other commercial law subjects.

Biographies

PEGGY SHARON, LEVITAN SHARON, SENIOR PARTNER, LITIGATION OF INSURANCE CLAIMS, INCLUDING PROFESSIONAL LIABILITY CLAIMS, MULTIJURISDICTIONAL DISPUTES, REINSURANCE AND AVIATION

Peggy heads the litigation department and has been involved in major coverage litigations handled by the firm in various insurance disputes. In recent years, Peggy has dealt with several high profile aviation, insurance and reinsurance litigation cases. Peggy has brought about the creation of several important Supreme Court precedents.

A graduate (Suma Cum Laude) of the Tel Aviv University in which Peggy was assistant lecturer on Contract Law and Jurisprudence for six years.

Publications and Lectures:
The Israeli chapter in "**International Execution Against Judgement Debtors**" published by Sweet & Maxwell; The Israeli section in "**Enforcement of Foreign Judgements**", edited by J. Campbell and published by Kluwer. The Israeli Chapter of **"International Franchising"** Comparative Law Yearbook of International Business published by Kluwer Law International. Lectures to various departments of insurance companies in Israel, to lawyers in seminars organized by the Israel Bar Association and to directors and officers, in seminars organized by L.A.H.V. in the Tel Aviv University.

Peggy is a member of The Israeli Bar Association; a Representative of the Israeli Section of AIDA Reinsurance Working Party in which Peggy is responsible for the International Comparative Chapter on Limitation; Representative of the Israeli Chapter of AIDA in the AIDA Europe Committee

ROLF STAUB, LEGAL COUNSEL, ALLIANZ RISK TRANSFER AG, ZURICH

Rolf Staub has been with Allianz Risk Transfer AG in Zurich since 2007 as a member of the Legal & Compliance Team in the position of Principal and Legal Counsel. He has been working on large structured insurance and reinsurance transactions as well as insurance linked market projects. He is responsible for all regulatory and corporate legal aspects involving Allianz Risk Transfer AG.

Prior to joining Allianz Risk Transfer, Rolf Staub has been with Zurich Insurance Group for 15 years working in various capacities in the field of alternative risk transfer, amongst others with Centre Re in New York from 1991 to 1999.

Rolf Staub has received a legal degree at the University of Zurich and was admitted to the bar in Switzerland in 1988.

Rolf Staub has also been the founder of a contemporary art gallery in Zurich and has had a career as a curator and expert in contemporary art.

WOLFGANG WOPPERER , CHIEF RETROCESSION MANAGER, ALLIANZ RE, MUNICH

In 1990, Wolfgang Wopperer graduated from the University of Bayreuth in economics. After that, he assumed different expert and management positions in two German insurance and reinsurance companies. Starting in Catastrophe Management and pricing methodology of Excess of Loss Protections, he then changed to the Engineering lines, where he built up a portfolio of ceding companies and at the same time acted as a Chief Underwriter for facultative and treaty reinsurance business. Since 2001, Wolfgang Wopperer has been working in the reinsurance operations of Allianz, where he headed a unit responsible for inwards proportional and non-proportional treaty business across all non-life branches. In early 2008, he changed to the newly established outwards reinsurance unit of Allianz where in his position as Head of

Biographies

Retrocession Management he is responsible for designing and placing regional catastrophe excess of loss solutions that protect the Allianz Group. From 1996 until 2005 Wolfgang Wopperer headed the Committee for Computer Risks within the European Insurance Association C.E.A. During that time he published in professional journals several articles on topics like fraud risks in e-commerce and cyber terror.

LEONID ZUBAREV, PARTNER, HEAD OF CMS INSURANCE & FUNDS GROUP IN RUSSIA COORDINATOR OF CEE INSURANCE GROUP, CMS RUSSIA

Leonid Zubarev has been working in CMS, Russia since 1995, when he joined the firm as a junior lawyer after graduation from the International Law Department of the Moscow State Institute of International Relations. Leonid became a partner in 2002; he leads Commercial Practice group comprised of 8 lawyers, and coordinates the firm's CEE Insurance Industry Group.

Leonid advises international companies from various industries on the legal aspects of their operations in Russian market, including advice on entry strategy, legal establishment, green-field and brown-field investments, acquisitions and antimonopoly clearance issues, drafting investment documentation, advising on joint ventures arrangements labour and immigration issues, licensing and permissions, commercial contracts, IP issues, and represents clients in disputes.

Leonid advises many Russian and international insurers and re-insurers on market entry strategies and new product entry strategies, shares acquisitions, including structuring the transaction, receiving all necessary licences and permissions, long-term life insurance schemas, credit life insurance. Leonid represented several foreign insurers in disputes over compensation for damage caused by an alleged design defect of a product sold in Russia, Belarus and Ukraine, including successful defence against the largest claim in Russia to date.

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W www.dlapiper.com

13 October 2009

Dear Delegate

We would like to extend a warm welcome to you as a delegate to the AIDA Europe Conference in Zurich. DLA Piper is a global legal services provider and is a very strong supporter of AIDA's goals and a regular participant in its events.

Dr Gunne Bähr, myself and a number of other representatives from DLA Piper European offices will be attending this conference and participating in workshop and panel sessions. Dr Bähr will lead the supervisory Working Group.

Across Europe, DLA Piper advises on corporate and commercial insurance transactions, regulatory work, insurance and reinsurance claims and coverage and general insurance contractual issues. We increasingly represent clients on a global basis and are able to advise on major market issues including Solvency II, regulatory and claims response to the Global Financial Crisis, class action litigation and the growing complexity of property damage/business interruption claims.

We trust that you will enjoy this conference and that you will find it both inspirational and stimulating, and that you will meet many friends and colleagues.

Yours sincerely

Charles Gordon

CHARLES GORDON
Partner
DLA PIPER UK LLP

charles.gordon@dlapiper.com

FDCC

FEDERATION OF DEFENSE & CORPORATE COUNSEL

Welcome from the FDCC!

The Federation of Defense & Corporate Counsel appreciates the opportunity of sponsoring the AIDA Europe Conference. FDCC Board Chair, Steve Barney, looks forward to speaking to the group and providing more information about the Federation. International membership brochures have been included in the conference attendee packets as well.

The Federation of Defense & Corporate Counsel is an international organization founded in 1936 to further the principles of knowledge, justice, and fellowship. The Federation has approximately 1400 members from the United States, Puerto Rico, Australia, Canada, Mexico, Europe, the Middle East, and Asia. Our members include experienced attorneys in private practice who specialize in the defense of civil litigation, corporate counsel, risk managers, and insurance claims executives. Membership is by invitation only following an extensive peer review selection process.

The general membership meets twice a year at Winter and Annual Meetings. Advanced continuing legal education programs are presented, both in plenary sessions and in separate Substantive Law Section meetings. The Substantive Law Sections are also responsible for contributing Hot Cases and topical Internet links for the Federation website (www.thefederation.org), for submitting articles for the *FDCC Quarterly,* and for publishing at least two newsletters a year. Membership in the sections is open to all members. The 26 Substantive Law Sections include the Corporate Counsel Section, which focuses on issues of special interest to the FDCC corporate members and provides them with a means to address business and litigation issues unique to the corporate environment.

The Federation also sponsors, participates in, and encourages special projects that have an impact beyond the Federation membership.

The FDCC Executive Director maintains the international business office of the Federation under the authority of the FDCC President and Secretary-Treasurer. If you have questions about the Federation, or want to learn more about the organization, please contact:

Martha J. (Marty) Streeper
Executive Director, FDCC
11812 North 56th Street • Tampa, FL 33617
Phone: 813-983-0022 • Fax: 813-988-5837
E-mail: mstreeper@thefederation.org

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contact@gbf-legal.ch
www.gbf-legal.ch

Zurich, 22 October 2009

Welcome to Zurich!

Dear Delegate

We warmly welcome you to the AIDA Europe Conference 2009. As a Zurich based boutique law firm, particularly specializing in insurance and reinsurance law, we are delighted to see that the third conference takes place in Zurich as one of the major centres for the insurance and reinsurance market in the world.

We trust that the Conference will give you a great opportunity to discuss the future challenges of the insurance and reinsurance industry in Europe. Almost 200 delegates from more than twenty countries have subscribed to this event and we are convinced that, despite its young age, AIDA Europe already serves as an important organization for discussing issues facing the insurance market today.

We wish you a successful conference and a pleasant time in Zurich and we hope to see all of you at the pre-conference drinks reception on Thursday, 22 October 2009.

Kind regards

Lars Gerspacher
gerspacher@gbf-legal.ch

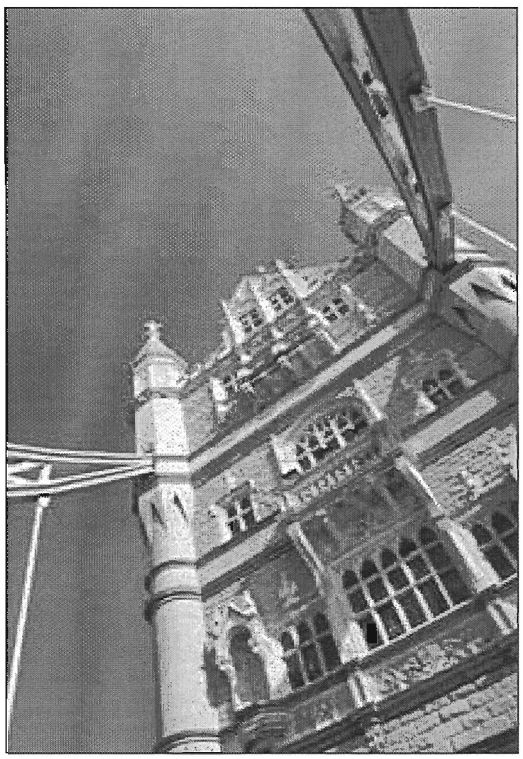
Welcome!

INCE & CO
INTERNATIONAL LAW FIRM

AVIATION | BUSINESS & FINANCE | COMMERCIAL DISPUTES
ENERGY & OFFSHORE | INSURANCE & REINSURANCE
INTERNATIONAL TRADE | SHIPPING

Dear Delegates,

We welcome you to Zurich and the AIDA Europe conference 2009. Ince Global has over 80 partners worldwide, practising English, French, German and Hong Kong law and advising on Singapore law.



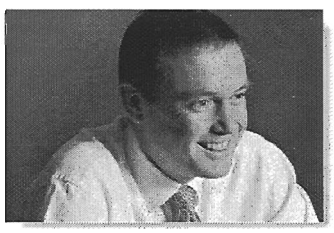
Ince has been involved in most of the leading cases in the evolution of insurance and reinsurance law. We cover all aspects of these business sectors including marine, aviation, energy & offshore and non-marine plus corporate and regulatory, political risks and professional indemnity.

Our global insurance and reinsurance practice has "risen to the pinnacle of the market, reflecting the extent to which the firm has evolved into the top-calibre, full range provider' that it has" Our clients appreciate our "excellent service".

Chambers and Legal 500

Jan Heuvels
Head of Reinsurance

Chris Jefferis
Head of Insurance



Dr Markus Eichhorst
Partner, Hamburg

DUBAI | HAMBURG | HONG KONG | LE HAVRE | LONDON | PARIS | PIRAEUS | SHANGHAI | SINGAPORE

PRAGER DREIFUSS

RECHTSANWÄLTE
ATTORNEYS AT LAW

Dear Delegates,

Prager Dreifuss is proud to be one of the sponsors of this year's AIDA Europe conference, and it is our sincere pleasure welcoming you to Zurich, the heart of Switzerland's insurance industry.

Only a few steps away from the conference hotel you will find the headquarters of some of Switzerland's largest insurance and reinsurance companies and branch offices of many international insurers. It is this vicinity which allows us to maintain a close relationship and short (and sometimes informal) lines of communication with our domestic clients from the insurance industry.

Prager Dreifuss has many years of experience in Swiss and international insurance and reinsurance law and is one of Switzerland's leading providers of legal services in this field. We advise insurers and reinsurers in contentious and non-contentious matters. One of our main areas of expertise is the handling of complex claims, inter alia in the sectors of professional indemnity, D&O, fidelity, product liability, aviation and maritime law, from the investigation of the claims, the assessment of coverage questions to representing clients before state courts and arbitration tribunals. We also advise our clients in regulatory matters and represent them vis-à-vis the regulator FINMA.

We hope that you will enjoy the conference and your stay in Zurich and wish you a safe return journey thereafter.

When it comes to insurance and reinsurance law, your main contacts at Prager Dreifuss are:

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BULLÓ - TASSI - ESTEBENET - LIPERA - TORASSA
ABOGADOS

Since its inception in the year 1925 in the city of Buenos Aires, the Law Firm Bulló – Tassi – Estebenet – Lipera – Torassa Abogados has been an outstanding benchmarker when it comes to knowledge, expertise and trustworthiness in the Insurance, Business, and Bank sphere in the Argentine Republic.

This has been the starting point for the active participation and specialization in different business scopes where the Firm has always strived to support the full accomplishment of their clients' objectives.

Its well known domestic and international client portfolio and the increasing demand for effectiveness in corporate advisorship has generated with time a sustained growth of its structure and resources, essential conditions in order to render a service which stands out in terms of celerity and quality.

The permanent changing scenario of events taking place worldwide in the last years has built up a work culture and vision in the Firm and in its members which has granted them the highest flexibility and ability to adapt to keep their leadership in the 21st century.

The Firm counts on 95 correspondent law firms in many cities throughout the country, which allows for the provision to its clients of a total coverage to satisfy their needs.

At the same time, we count on correspondent firms in the capital cities of Latin American countries, as well as in the United States of America, Spain and the United Kingdom.

Contacts:

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Gustavo J. Torassa
gtorassa@ebullo.com.ar

HEUKING KÜHN LÜER WOJTEK

RECHTSANWÄLTE STEUERBERATER ATTORNEY-AT-LAW

Berlin Brüssel Dortmund Düsseldorf Frankfurt Hamburg Köln München Zürich

Heuking Kühn Lüer Wojtek is a name which is synonymous with legal competence. The firm is one of the largest commercial law firms in Germany, with more than 200 specialised lawyers and tax advisers, representing the interests of national and international clients. Included in the client list are large and medium-sized German and international companies in all areas of the manufacturing industry, as well as trade and service industries, associations, governmental and public sector organisations and private clients and trusts.

Heuking Kühn Lüer Wojtek was founded in Düsseldorf, Germany, in 1971. Since then, the firm has spread geographically, and Heuking Kühn now has seven significant offices in Germany, as well as an office in Brussels and one in Zurich.

Heuking Kühn Lüer Wojtek has an international advisory capacity in Insurance and Reinsurance law represented by several highly specialized and experienced lawyers. The firm represents insurance, reinsurance and industrial companies in court and arbitration, advises them as well outside of formal proceedings. The Cologne and Düsseldorf offices have special insurance departments. Heuking Kühn Lüer Wojtek is well known among German and foreign insurance companies, direct insurers as well as reinsurers. The insurance practice of the firm complements all other legal areas in which the firm specializes, particularly in Corporation law and M&A, Labour law, Unfair competition and IT-law as well as Taxes.

FDCC

FEDERATION OF DEFENSE
& CORPORATE COUNSEL

All Members Are Peer Reviewed

Professional skills

Ethics

Honesty & integrity

Likeability

KNOWLEDGE

JUSTICE

FELLOWSHIP

FDCC

FEDERATION OF DEFENSE & CORPORATE COUNSEL

Objectives & Purposes:

1. Provide quality continuing legal education to our members.
2. Help establish standards for providing competent, efficient and economical legal services.
3. Use the knowledge and experience of our membership for the promotion of public good.

Corporate Members include:

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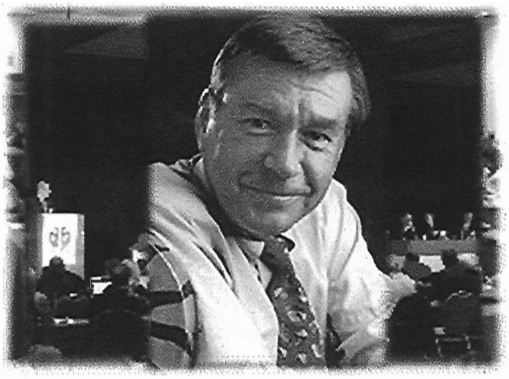
KNOWLEDGE



THE FEDERATION HAS GREAT PROGRAMS & SPECIAL PROJECTS

- Corporate Counsel Symposium
- Litigation Management College
- Leadership Institute
- 20/20 Insurance Summit
- Law Firm Management Conference

International subjects have included:

Arbitration & ADR in the U.S., U.K. and Australia—a comparative study.

Experiences of Alternative Risk Transfer in the U.S, U.K. and Europe.

Comparative study of "follow the settlements" in reinsurance of various jurisdictions.

FDCC FEDERATION FLYER

A Publication of the Federation of Defense & Corporate Counsel

Volume 36, No. 1 | Fall 2008 | Editor – Gregory A. Wrike

President's Message

Steven L. Barney
President

I only wish every member of the FDCC could have the experience we officers have as we move through the chairs. What you would learn is a very simple but heartwarming fact: "Lawyers really are great people with big hearts, friendly attitudes, tons of energy, and intellect." I just completed the appointment process and had personal contact through e-mail or phone with literally a hundred or more members. While the focus was to do the "right thing" to best we could in appointing folks to positions they wanted and deserved, the real lesson for me was the caliber and dedication of our membership as a whole. I cannot tell you how many times I heard something along these lines: "Steve, whatever it takes, whatever you need me to do, count me in and I'll do my best." This theme has been and is being repeated everyday I'm involved in a Federation task from the highest ranking officers to the brand new member. I plan to post on our website, a letter I received from our newest European member. In a nutshell, the letter reflects how this individual was in awe of the Federation, its friendliness, the camaraderie, and the knowledge gained in just one meeting. So, the first thing I want to do in this short note is to say "thank you" to everyone for your commitment and willingness to do what is needed to make the Federation what it is today. More importantly, thank you for your friendship. If there ever is anything such as a family, not blood related, this is it!

Gretchen and I are, of course, honored and ex-

(See President's Report *Page 2*)

Please take this *Federation Flyer* home to your family.

FDCC Winter Meeting

February 21 – 28, 2009

Grand Hyatt Kauai Resort & Spa • Kauai, Hawaii

Rich Trask, Winter Meeting Chair

BEYOND PARADISE

It is time for an adventure beyond paradise. This is it, its time to make your plans for the FDCC Winter meeting on the amazing island of Kauai, Hawaii, February 21 - 28, 2009. We will be meeting at the spectacular Grand Hyatt on the "Garden Island" of Kauai, one of the most beautiful places on earth. But don't believe me, just ask Hollywood – when the motion picture industry needs a Brazilian rain forest, a prehistoric lush mountainside with waterfalls, a beach for a lost island, an incredible canyon view, they come to Kauai. You will feel the enchantment and spirit of this unique island paradise the moment you arrive.

You will enjoy as many special activities as you wish and Mills Gallivan's unique CLE program will enthrall us all. Carol Anne Gallivan has promised to make registration enjoyable and easy. For all of the early birds, we will be enjoying our first "Fellowship Day," a day without formal meetings of any kind. It will be time to renew old friendships, meet new friends, relax for a day, or maybe even catch up on work at the office. We will have several activities planned - take advantage of them or not. Lounge by the pool, or go for the zip line ride of your life. Tour the Grand Canyon of the Pacific by motor coach, or play a

(See 2009 Winter Meeting *Page 3*)

FDCC QUARTERLY

FDCC

FEDERATION OF DEFENSE & CORPORATE COUNSEL

VOL. 59, NO. 1 — FALL 2008

JUSTICE

- Lawyers for Civil Justice
- Amicus Committee

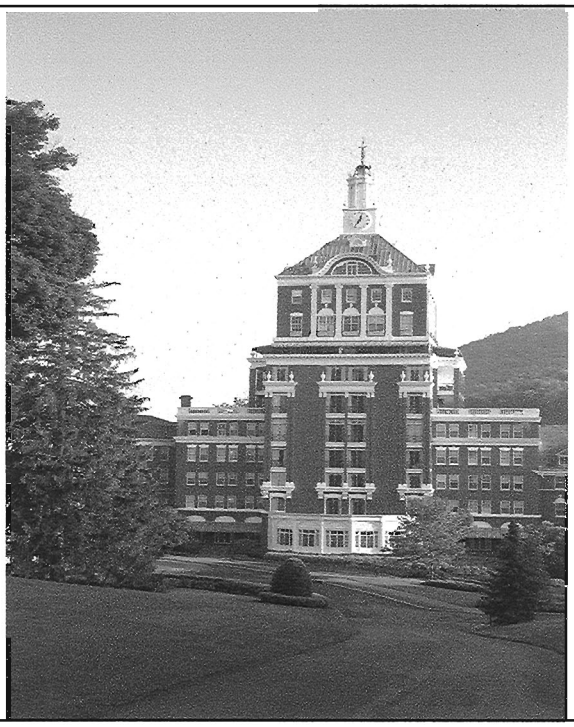
FELLOWSHIP

SPECTACULAR

VENUES

The Munich Program is scheduled to include good international subject matter:

1. International Perspectives on Managing, Measuring, and Enhancing the Representation of Clients in a Global Economy.
2. The Great Healthcare Debate at Home and Abroad.
3. Government Regulation of Industry in the Global Economic Crisis.
4. Expectations of Carriers in International Litigation (e-discovery, expectations of privacy in Europe and U.S.)
5. Internet liability – sexting, texting while driving, Internet predators, cyber bullying and other current Internet news issues from U.S. and International perspective.



Fellowship: It's all about relationships:

. . . and maybe a little fun along the way with our friends!

www.thefederation.org

Thank You!

FDCC

FEDERATION OF DEFENSE & CORPORATE COUNSEL

PartnerRe

AIDA Europe Conference 2009

Keynote Address by Patrick Thiele
President and CEO, PartnerRe Ltd.

October 23, 2009

Re/insurance: a global industry with local issues

US/Bermuda tax issues

Solvency II

Free trade/collateral issues

International reinsurance environment is changing

- Global, regional, local
- Regulatory, legal, tax, accounting

Need to take a global view with local execution

Lessons from the financial crisis

Financial system is vulnerable to systemic risk

System is too opaque

Risk management is key

Models are not to be believed

Importance of maintaining ample capital

We can't rely on rating agencies

Mark to market accounting is flawed for solvency management purposes

Increased spotlight on policy reform and regulation

Re/insurance industry is not the culprit…

Financial crisis did not originate from re/insurance

Limited number of insurance companies impacted

- Issue was in non-insurance activity

Reinsurance industry came through crisis well

- Less leveraged
- Non-corellation with investment risk
- Sensible asset portfolios
- Better risk management

...yet re/insurance regulatory issues are accelerating

Regulatory equivalence and mutual recognition

Solvency II and group supervision

Macro-prudential regulation/systemic risk regulation

US regulatory reform

- Federal charter and NAIC developments
- Natural catastrophe policy

Discriminatory tax issues

Key themes of US Reinsurance Regulatory Reform

Affordability/Availability	Efficiency
Absence of affordable Cat coverage in private market leads to government intervention	Current state system is inefficient with respect to international issues but has many supporters
Globalization	**Solvency**
Calls for reduction of collateral requirements, mutual recognition and a single focal point for international issues	Result of financial crisis; calls for reduction in volatility in capital of reinsurers

Key themes of EU Reinsurance Regulatory Reform

Transparency

Affordability/Availability

State displacement of private markets; particularly for catastrophe and credit

Level Playing field

Potential distortion in the choice of organizational structure or jurisdiction. under Solvency II

Single Reinsurance Market

Elimination of reinsurance collateral requirements among EU Member States

Macro-Prudential Risk

Result of financial crisis; misrepresentation of reinsurance as systemic risk

PartnerRe

Key themes of Bermuda Reinsurance Regulatory Reform

Transparency

Single EU Reinsurance Market

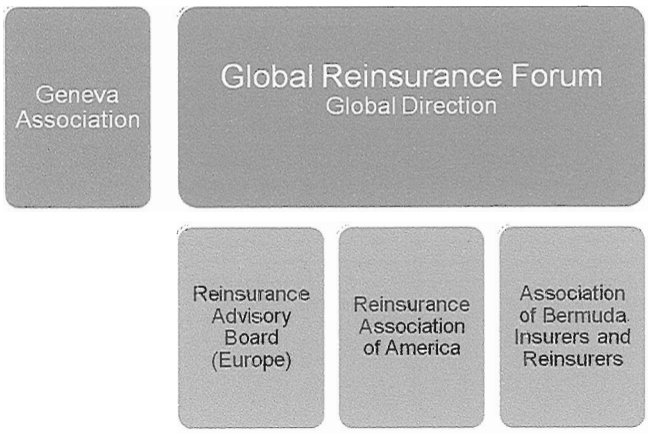
Group supervision; Regulatory decision on open access under reinsurance directive

Solvency

Impact on Bermuda regulatory requirements under Solvency II; equivalence decision;

PartnerRe

Addressing the issues: Regional advocacy supported by global direction



Global Reinsurance Forum Promotes

- Open markets
- Level playing field
- Effective and relevant regulation
- Mutual recognition
- Transparency and disclosure
- Individual responsibility -no (reinsurance) guarantee funds

Conclusion

Difficult times from regulatory standpoint

There is a place for a risk-taking industry to reduce burden on the taxpayer

- Need for intelligent capital and light regulation

Politicians and regulators must understand the place for reinsurance in the economy

Reinsurers must participate in the discussion

Thoughtful regulation means a more secure and cost-effective form of risk transfer

New European International Insurance Contract Law
- relevance for international insurance programmes -

Helmut Heiss
University of Zurich

New PIL

- Regulation 44/2001 (Brussels I)
  - ECJ C-112/03 (Société financière et industrielle du Peloux ./. Axa Belgium et al.)
  - ECJ C-463/06 (FBTO Schadeverzekeringen NV ./. Jack Odenbreit)
- Regulation 593/2008 (Rome I)
  - applicable as of 17th December 2009

Jurisdiction (Brussels I)

- Art 9 para. 1 lit b Brussels I
  - jurisdiction of courts at the place where the *insured* is domiciled
  - subsidiary or director of subsidiary (D&O)
  - derogation by jurisdiction clause only in case of large risk insurance (art 14 para. 5 Brussels I; see ECJ C-112/03)

Jurisdiction (Brussels I)

- options
  - „financial interest cover“
    → subsidiary/director of a subsidiary is not an insured person (?!)
  - insurance contract restricts right to bring an action for payment of insurance money to policyholder

Jurisdiction (Brussels I)

- ECJ C-463/06 (FBTO Schadeverzekeringen NV ./. Jack Odenbreit)
  - jurisdiction of courts at the place where the *injured person* is domiciled („direct action")
  - no derogation by jurisdiction clause
  - no contractual derogation of direct claim
  - financial interest cover?

Law Applicable (Rome I)

Art. 3, 4, 6 Rome I	Art. 7 (2) Rome I	Art. 7 (3) Rome I
• ***re***insurance • ***extra***-Community ***mass*** risk insurance	• ***large*** risk insurance	• ***intra***-Community ***mass*** risk insurance

Law Applicable (Rome I)

- „splitting“ of contracts covering more than one risk (recital 33; art. 7 para. 5)
- choice of law by parties
  - art 7 para. 2 (*large* risks)
  - art 3 para. 1 (*extra* Community *mass* risks)
  - Art 7 para. 3 lit. e (*intra* Community commercial and industrial *mass* risks)

Law Applicable (Rome I)

- *foreign* mandatory provisions (art. 9 para. 3)
  - „non-admitted“ business
  - no reservation clause
    ↔ art 7 para. 2 Directive 88/357/EEC
  - mandatory provisions of the country where contractual obligations have to be or have been *performed*
    ↔ art 7 para. 1 Rome Convention: *close relationship* = location of the risk

Law Applicable (Rome I)

- Recital 14 Rome I
  - indication of a future „Optional Instrument“
  - Art. 1:102 sent. 1 PEICL:

    „*The PEICL shall apply when the parties, notwithstanding any limitations of choice of law under private international law, have agreed that their contract shall be governed by them.*“

AIDA Europe Conference 23 October 2009 – Panel: Questions of Domicile and the Reinsurance Directive

Introduction to the Reinsurance Directive

Third country issues

CEIOPS assessment of third country reinsurer treatment

Christian Felderer, General Counsel SCOR Switzerland

SCOR

Reinsurance Directive*

Main thrust of the Directive

- Convergence of prudential regulation on reinsurance and introduction of EU wide uniform prudential principles for reinsurance
- Stipulation/Implementation of the Freedom of Services principle for EU reinsurers
- EU internal regulation – no third country „coverage"

Article 1 - Scope

1. This Directive lays down rules for the taking up and pursuit of the self-employed activity of reinsurance carried on by reinsurance undertakings, which conduct only reinsurance activities, and which are established in a Member State or wish to become established therein.

* **DIRECTIVE 2005/68/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (Text with EEA relevance)**
http://ec.europa.eu/internal_market/insurance/reinsurance_en.htm

No Favorable Treatment

- The Directive stipulates the principle that third country reinsurers must not be treated more favorable than EU reinsurers

Article 49

Principle and conditions for conducting reinsurance business

A Member State shall not apply to reinsurance undertakings having their head offices outside the Community and commencing or carrying out reinsurance activities in its territory provisions which result in a treatment more favourable than that accorded to reinsurance undertakings having their head office in that Member State.

Agreement with Third Countries

- Reinsurance Directive lays the foundation for agreements between the EU Council and third countries to ensure market access
- Prerequisite is equivalence of prudential regulation of third countries.

Article 50

Agreements with third countries

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over:

...

2. The agreements referred to in paragraph 1 shall in particular seek to ensure under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance.

...

3. Without prejudice to Articles 300(1) and (2) of the Treaty, the Commission shall with the assistance of the European Insurance and Occupational Pensions Committee examine the outcome of the negotiations referred to in paragraph 1 of this Article and the resulting situation.

CEIOPS Database on Third Country Treatment

„22. September 2009

CEIOPS published today a **database on the regulatory and supervisory treatment of third country reinsurance undertakings and existing equivalence practices**.

The database is based on the responses of CEIOPS Members and Observers to a detailed questionnaire - a report in respect of which was published in January 2009."

http://www.ceiops.eu/media/files/supervisory-disclosure/CEIOPS-public-database-treatement-3rd-country-reinsurers.xls

Freedom of Services for Reinsurance Business

CEIOPS Questionnaire:

"1(a) Are third country reinsurers able to write reinsurance business on a freedom to provide services basis from their home state?"

NO *	YES		
Austria	Belgium	Italy	Romania
Cyprus	Bulgaria	Latvia	Slovenia
Czech Republic	Denmark	Lithuania	Spain
Greece	Finland	Luxembourg	UK
Malta	France	Netherlands	
Slovakia	Germany	Norway	
Sweden	Hungary	Poland	
	Iceland	Portugal	
No answer to question 1(a): Estonia; Liechtenstein (EEA)			

* **Note:** The question a (a) has to be seen in context with question 5 (a) of the CEIOPS questionnaire, which asks whether or not, on the basis of the individual country's regulations, reinsurance cessions can be made to third country reinsurers where these are arranged at the proposer's own initiative and the contract is concluded and serviced in the jurisdiction of the third country. The country responses to this specific question suggest that, subject to the local restrictions applicable to any activity by way of correspondence *(Korrespondenzversicherung)*, reinsurance cessions may be entertained by a third country reinsurer in these premises.

Convergence Criteria

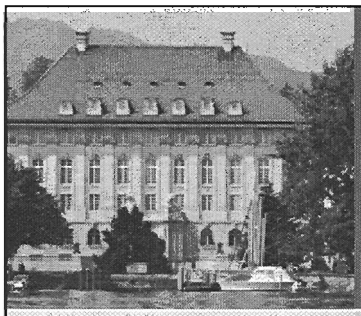
- CEIOPS has already established prudential convergence criteria, by which equivalence of a third country supervisory systems may be judged against the EU benchmarks.

1. Principle – Supervisory Authority
2. Principle – Authorisation Requirements
3. Principle – Business Change Assessment
4. Principle – Supervisory Cooperation and Exchange of information
5. Principle – Supervisory and Enforcement Powers
6. Principle – Financial Supervision and Solvency Requirements

http://www.ceiops.eu/media/files/publications/standardsandmore/recommendations/CEIOPS-ConCo-17-08-Equivalence-Assessment-Criteria.pdf

Remedy the Gap

- Exploration of scope of country specific restrictions and possibility for exemptions/alternative approach? E.g. by way of conclusion and servicing of reinsurance contract outside of the EU cedant's jurisdiction *(Korrespondenzversicherung).*
- Failing flexibility of interpretative/alternative approach: National legislative initiatives in Austria, Cyprus, Czech Republic, Greece, Malta, Slovakia, Sweden? Examples of regulatory convergence, e.g. § 121iVAG Germany.
- Merits of Article 50 of the Directive – EU Commission initiated agreements with third countries to allow for market access?



Project Swiss Re in Europe

Hermann Geiger

Group General Counsel & Member of Executive Board

Swiss Reinsurance Company Ltd.

AIDA Europe Conference

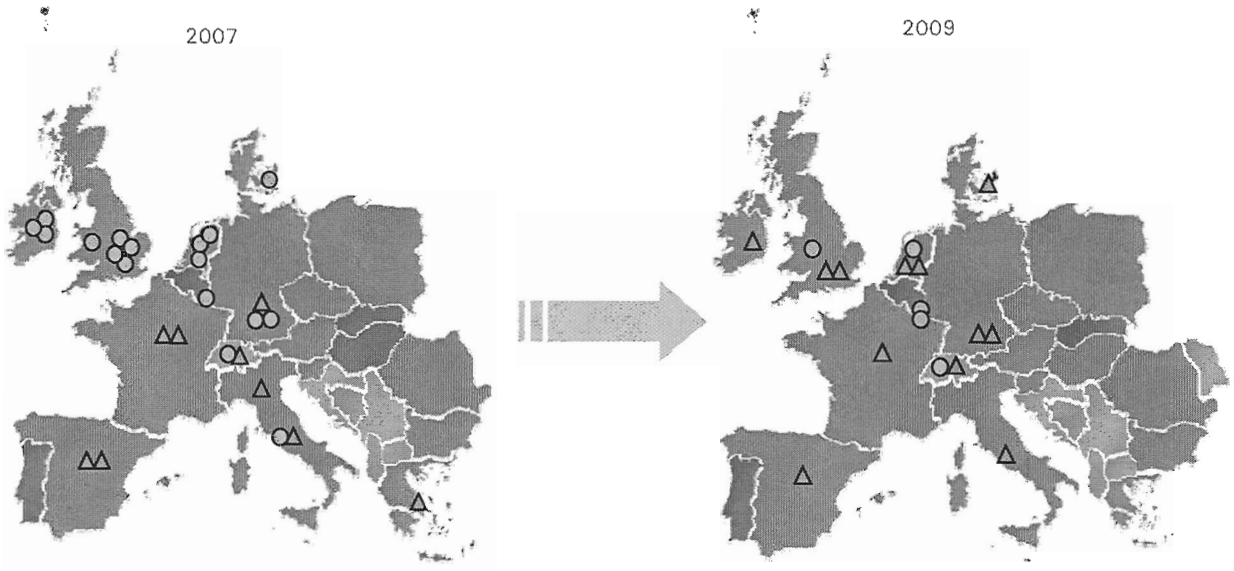
Questions of Domicile and the Reinsuance Directive

Zurich, 23 October 2009

Change Drivers in 2006

- External aspects
  - Upcoming RID implementation
  - Solvency II
- Internal aspects
  - Legal entity simplification following GE Insurance Solutions acquisition
- Conclusion
  - Anticipate the implementation of the RID
  - Operate via one central EU carrier per type of business, located in Luxembourg, and with branch offices in the other EU Member States

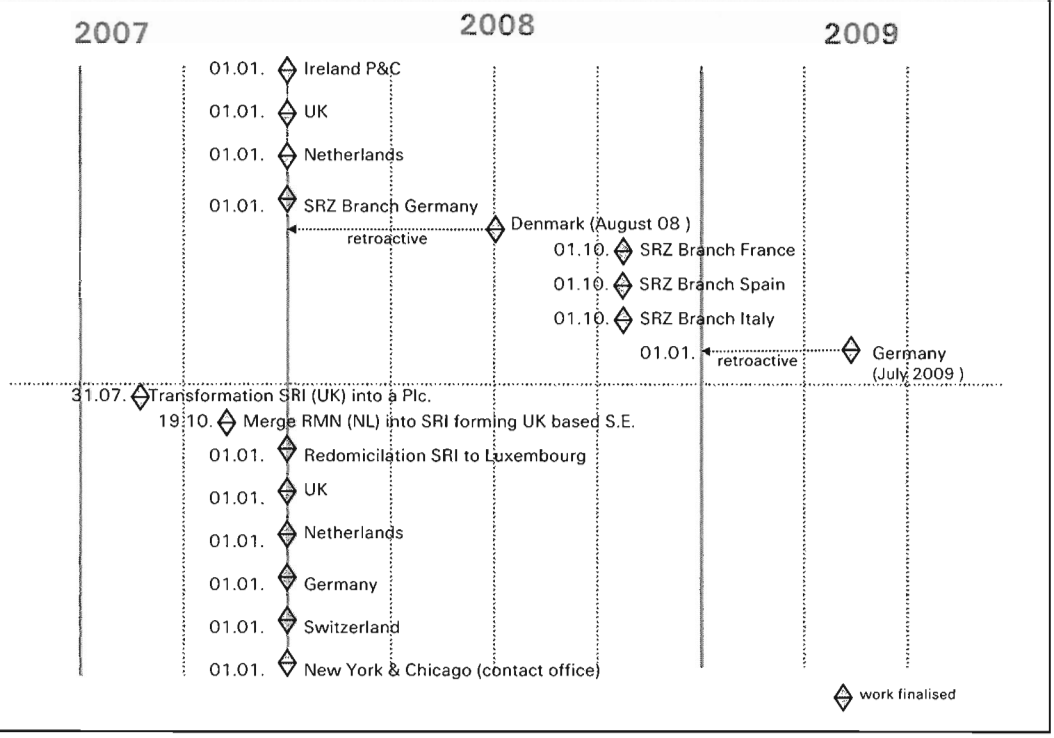
Raising Efficiency Through Simplifying EU Structure



Effecting Business Transfers

- Challenges
  - No uniform method availlable
  - Evolving laws
- Applying diverse business transfer techniques
  - RID portfolio transfer
  - "Part VII" transfer
  - Cross-border merger
  - Contribution in kind
  - "SE route"

Timeline



Swiss Re in Europe
AIDA Conference
23 October 2009

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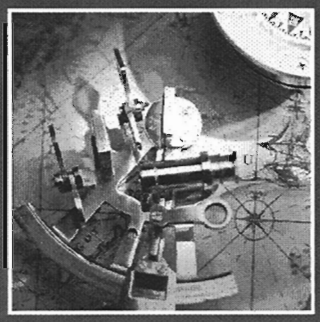

NAVIGATE THE LEGAL RISK

Rod S. Attride-Stirling
Senior Partner

Aida Europe Conference, Zurich 23 Oct 2009
Insurance and Reinsurance in Europe: The Future Challenges

The Reinsurance Directive and Bermuda

Regulator's / Bermuda Monetary Authority View on Reinsurance Directive

- For a clear view on the position of the Bermuda Monetary Authority see: http://www.bma.bm/uploaded/343-Bermuda_Insurance_Solvency_Framework_-_The_Roadmap_to_Mutual_Recognition.pdf

- The BMA appears to welcome the developments and the move to bring European reinsurers under regulation. Note that reinsurers have always been subject to regulation in Bermuda.

- It is hoped, I believe that the EU will not go outside the IAIS model, given that the EU has signed up to the IAIS principles and in particular where it comes to mutual recognition.

- It appears that the focus of the Bermuda regulator is Solvency II and achieving equivalence under this. Given that the Reinsurance Directive will be subsumed into Solvency II, this is where the main emphasis is being placed and the BMA have recently advised that they are on target to make the Solvency II equivalence time frames.

The Reinsurance Directive and Bermuda

OECD Compliance

- Bermuda has substantially implemented OECD's international agreed to tax standard
- Has met the OECD test; has met the G 20 test
- 15 TIEA's signed, four more coming.
- Moved to the G20 'White List'
- Appointed Vice-Chair: Global Forum of the OECD (the first time for an 'off shore' centre)

Solvency II

The Economist: 20 June 2009

"Bermuda, for example, is ahead of most countries in Implementing the EU Solvency Rules for insurance companies soon to come in."

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Navigate the legal risk.

The Flight of Insurance Capital From Bermuda to Europe

- Fact or Fiction?
- The History of Movement of Capital into Bermuda
- Concerns about Bermuda and Underlying Issues
- Bermuda and US Tax Issues.

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The Flight of Insurance Capital From Bermuda to Europe

The History of Movement of Capital into Bermuda

•Bermuda developed as the world's leading captive insurance domicile and a significant reinsurance market.

•The first reinsurance company domiciled in Bermuda was the American International Re-Insurance Company in 1948.

•In 1961 Fred Reiss introduced the first "captive" insurance company in Bermuda, and by 1970 there were approximately 120 offshore insurance companies.

•The offshore insurance industry grew rapidly in Bermuda in the 1970s and 1980s. There were approximately 200 offshore insurance companies in 1972, and by 1979 the number was 753 with net written premiums of US $2.8 billion.

•As at the close of 2007, Bermuda is believed to be the domicile of nearly half of the world's estimated 2,500 captive insurance companies with 1149 licensed captives (a net gain of 22 from 2006) whose total 2007 assets reached $88.8 billion and wrote premium income totaling $19.4 billion.

The Flight of Insurance Capital From Bermuda to Europe

The History of Movement of Capital into Bermuda

Collapse of US Casualty Market in the 1980's.

In the mid 1980s the excess casualty insurance market in the United States collapsed. This was due to a number of reasons including:

•the impact of liability claims and adverse pro-insured US Court decisions.

•the cyclical 'boom' and 'bust' nature of the insurance industry, and

•poor investment results in the early 1980s.

The Flight of Insurance Capital From Bermuda to Europe

The History of Movement of Capital into Bermuda

A number of insurance companies rose from the ashes, fuelled in part by capital from large United States manufacturing companies which, as policyholders, sought to help stabilize capacity in the excess casualty insurance market.

The effort to create this 'alternative' excess liability insurance market was spearheaded by insurance brokerage Marsh & McLennan and bankers JP Morgan. These two companies created ACE Insurance Company Ltd ('ACE') in 1985 to provide excess catastrophe coverage at layers in excess of US $100 million. Capital was provided by their clients.

Due to ACE's success and the need for excess insurance at layers below ACE's US $100 million attachment point, XL Insurance Ltd ('XL') was created and began underwriting in May 1986.

Both were based in Bermuda and began to write insurance on a freshly-drafted and novel policy form which rapidly became known as the Bermuda Form.

Bermuda Form: Bermuda or London arbitration including New York substantive law. Demonstration of faith placed in Bermuda's court regime which has supervisory jurisdiction of the arbitration.

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The Flight of Insurance Capital From Bermuda to Europe

Class of 2001

The September 11th World Trade Centre attack led to the formation of a new wave of Bermuda Insurance companies introducing approx $13 Billion in capital to the worlds insurance markets, almost overnight. (Including: Arch, AXIS, AWAC, Endurance, Montpelier Re Holdings Ltd., Olympus Re and DaVinci Re)

Class of 2005

Hurricanes Katrina, Rita and Wilma, again led to a ne w round of insurance incorporations and raised approx $18 Billion.
(Including: Amlin Bermuda, Ariel Re, Arrow Capital Re, Cyrus Re, Flagstone Re, Flatiron Re, Hiscox Bermuda, Harbor Point Re, Lancashire (Bermuda), New Castle Re and Validus Reinsurance)

Standard and Poor's reinsurer rankings:*

- Bermuda 13 of the top 40 (2 in top 10)
- Europe 12 of the top 40
- US 6 of the top 40

*2009 reports; 2008 data; S & P NWP

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The Flight of Insurance Capital From Bermuda to Europe

Fact or Fiction?

Always companies entering and exiting Bermuda for a variety of reasons.
There has been no flight of insurance companies to Switzerland or to Europe.

Only one insurance company. Flagstone Re. Announced in 2008 that it will merge Flagstone Reinsurance Ltd. of Bermuda with Flagstone
•Reassurance Suisse S.A. in Martigny, Switzerland, where the merged company will operate with a Bermuda branch.
•The move allows the company to "maximize our capital efficiency and creditworthiness," Flagstone said in a public statement. It continues its Bermuda operation.

•ACE redomiciled from Cayman to Switzerland. It was never domiciled in Bermuda. ACE continues to have a significant presence in Bermuda, unaffected by the move of its domicile.

•Non-insurance Companies: eg Tyco. But in the Bermuda insurance market these companies are not significant, nor relevant.

•Broker: Willis, who have said: "operations will not be affected by the move".

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The Flight of Insurance Capital From Bermuda to Europe

Concerns About Bermuda and Underlying Issues

•Allegations of political corruption; work permit term limits; unfriendly environment

•Bermuda has only one daily newspaper which is owned by the local merchant establishment, who hold no love for the current labour government.

•Accusations of corruption investigated by Scottland Yard officers from London to ensure impartiality found no evidence of corruption

•Nevertheless the international media picks up the local reports and these are repeated, regardless of the lack of evidence

•Work permit term limits policy excludes a long list of insurance industry professionals

•If one speaks to people on the ground, you get a better impression, that in Bermuda it is still business as usual.

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Bermuda Tax Issues

•Taxation – Not Applicable for Bermuda which is a tax neutral jurisdiction.

•No Income tax, corporate tax or capital gains taxes

•There are domestic taxes, eg: payroll tax (on salaries up to a cap but not dividends), property taxes and import duties (which can be quite high).

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US Tax Issues

US Tax Havens Bills

Doggett and Levin companion bills (HR 1265 & S 506)
•Management and control tests; Lists of Jurisdictions

Bauchus Staff Draft
•Financial reporting; Government contractors; less interest in management/control tests and lists of jurisdictions

The Neal Bill, 30 July 2009 H.R. 3424.
Would disallow deductions to certain non-life insurance companies for excess reinsurance premiums with respect to US risks paid to affiliated insurers not subject to US income taxation.
•If passed, this proposal make it more difficult for foreign insurance and reinsurance companies to provide insurance protection to the US market. This isolationist legislation will have adverse consequences for American consumers. The Brattle Group and the country's leading insurance scholar Dr. David Cummins (Wharton and Temple) have estimated that HR 3424 would increase consumer insurance prices in the United States by $10 to $12 billion annually.
•Very similar to a bill Rep. Neal introduced last year, which did not become law.

•All being monitored carefully and daily, but no major concerns at this time.

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The Flight of Insurance Capital From Bermuda to Europe

The History of Movement of Capital into Bermuda

•Neal Bill is an effort by a few companies (13 companies that have about 20% of the US market) to attempt to use the Congress to obtain market advantage by placing unjustified punitive taxes on their competitors.

May 2009 Study show results of a study on such proposed taxes.

- •Reduce the supply of reinsurance in the United States by $19–$22 billion, which represents 20% of all reinsurance and 40 percent of all foreign reinsurance (non-affiliated as well as affiliated);
- •Reduce the supply of primary insurance in the U.S. by 1.8–2.1 percent;
- •Increase the price of primary insurance by 1.8–2.1 percent, overall, and by more than 16% in some lines of business; and
- •As a result of higher prices, require U.S. consumers to pay $10–$12 billion more per year for the same insurance coverage.

•Various US consumers, oppose efforts to increase the taxes paid by global insurers because they know this sort of legislation will decrease insurance supply and increase costs which get passed on to US consumers. RIMS is the nation's largest insurance consumer group and it opposes HR 3424.
•The US needs global capital to spread the cost, e.g. of hurricanes and earthquakes beyond the US borders. This legislation would force additional natural disaster costs to be absorbed within the US.

The Flight of Insurance Capital From Bermuda to Europe

•There are many issues out there: US taxes, the Reinsurance Directive, Solvency II, predictions that the sky will fall on our heads…

•But there have always been challenges for Bermuda, and no doubt these new ones will be addressed in the ordinary course of business

•Bermuda continues to thrive as an insurance and reinsurance market.

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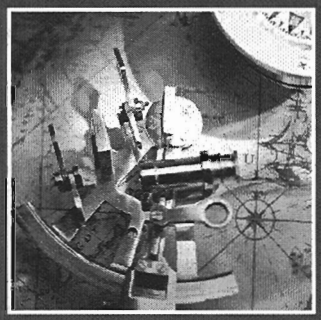

NAVIGATE THE LEGAL RISK

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Insurance and Reinsurance in Europe: The Future Challenges

MATHESON ORMSBY PRENTICE

The Reinsurance Directive and Reinsurance Relocations

Liam Flynn, AIDA Europe Conference, Zurich, 23 October 2009

Implementation of Directive 2005/68/EEC in Ireland

- Ireland became first EU member state to implement Directive in July, 2006
- Implementing Regulations largely follow the Directive, but raise many practical implementation issues
- Issues categorised as:
  - legal/interpretative
  - financial
  - corporate governance/management

Legal/Interpretative Issues

- Directive confines activities of reinsurers to "reinsurance business" and "related operations"
- Irish implementing Regulations repeat this prohibition (Regulation 10)
- What is within/outside this prohibition?
- "Reinsurance business" defined as a business in the course of which reinsurance is provided; "reinsurance" is activity of accepting risks ceded by an insurance or reinsurance undertaking;
- "Related operations" includes acting as a holding company
- Leaves considerable ambiguities – e.g. can a reinsurer provide swap protection, or purchase swaps for speculative purposes?

Legal/Interpretative Issues (2)

- Irish implementing Regulations include special provisions for "finite reinsurance"
- Regulation 62 states that a reinsurance undertaking may enter into a finite reinsurance contract only if the contract:
  - states that it constitutes the entire agreement (i.e. no side letters)
  - discloses any related contracts;
  - states that the cedant agrees to comply with the disclosure rules (if any) in its Member State;
  - states that if the contract has a material impact on the shareholders funds of the cedant, the cedant undertakes to notify its auditors and its regulators of the contract and its effect
- Important therefore to understand the precise ambit of "finite reinsurance"

Legal/Interpretative Issues (3)

- "Finite Reinsurance" means "reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and a timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:
  - explicit and material consideration of the time value of money;
  - contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer

Legal/Interpretative Issues (4)

- But what is a "finite reinsurance"
  - arguably any contract with a limit satisfies first limb of test
  - how does a contract evidence "consideration of time value of money"
  - clearly a "provision to moderate balance of economic experience" is aimed at deficit/experience account, but is every contract with a deficit/experience account "finite"?

Financial Issues (1)

- Was a careful transitional process: therefore, reinsurers were required to lodge a statement of compliance with the technical reserve requirements and admissible asset requirements of the Regulations by 31 January, 2007
- Further statement of compliance with technical reserve requirements, admissible asset requirements, solvency margin requirements and minimum guarantee fund requirements of the Regulations required by 29 June, 2007
- Thereafter, reinsurers were required to submit detailed plan showing how they intended to become compliant by 28 September, 2007 and IFR then discussed and agreed plan

Financial Issues (2)

- Life reinsurance technical reserves must be calculated annually by a Fellow of the Society of Actuaries in Ireland
- All reinsurers must calculate technical reserves must be calculated gross and net of retrocession recoverables
- Retrocessions must comply with Guidelines published by IFR in May, 2003 on Security of Reinsurers
- Non-EU retrocessions are permitted
- Life reinsurance technical reserves must be equal to guaranteed surrender value under relevant contracts, and must cover any break-up penalties, fees or negative reserves required to be paid by the reinsurer

Financial Issues (3)

- Reinsurers are required to evaluate their business as a whole and adopt a "prudent person" approach to investment of assets covering technical reserves
- "Funds withheld" assets are only eligible where asset is ring-fenced from insolvency of cedant
- Inter-company loan assets are only eligible where they are covered by assets of borrower held for benefit of lender and ring-fenced on insolvency – this applies only where intention is to cover reserves with inter-company loan
- Solvency margin for (life) unit-linked, annuity and pension business can be calculated using (Solvency I) life assurance rules, solvency margin for (life) protection business to be calculated using (Solvency I) non-life insurance rules – bifurcation is possible
- Current regulatory capital requirements are based on Solvency I methodology – Financial Regulator generally requires undertakings to maintain their solvency margin at 150% of the Solvency I minimum, with enhanced monitoring if this is breached

Corporate Governance/Management Issues

- IFR requires reinsurers to develop and enforce internal controls that are adequate for the nature and scale of the business and proportional to its size and complexity – policies required to be in place by 30 June 2008
- All reinsurers (except captives) expected to have at least two independent non-executive directors, and to set up an audit committee
- All reinsurers (except captives) must employ a designated senior manager responsible for overall prudent and efficient operation of the undertaking's business
- All reinsurers should establish adequate internal control regime – should set out
  - operational risk management policy
  - business risk management policy
- All reinsurers should be subject to regular internal audit
- All reinsurers must have a designated Compliance Officer

Reinsurance Relocations - Issues

- Taxation – how will the new headquarters operation be taxed? What will be the effect on the group's combined tax treatment?
- Corporate governance – will the new headquarters location facilitate replication of the company's current governance regime? Can current corporate operations be continued seamlessly?
- Regulatory – what regulatory regime will apply to the new headquarters? How does the regulatory burden compare to that imposed currently?

Reinsurance Relocations - Taxation

- What is the jurisdiction's test for establishing tax residence? What level of headquarters substance does this require? Will this be respected by other jurisdictions where "tax risk" exists?
- Rate of tax on corporate profits - is there a difference between the treatment of "trading" and "non-trading" profits? How can the group be (re)structured to permit the bulk of the group's revenue to be taxed in the new tax-beneficial jurisdiction (is it possible to pay dividends up from trading subsidiaries in a tax efficient manner to the new holding company, or does the group's trading need to be reorganised to maximise tax advantages?)
- Deductions from taxable income - what allowances and tax deductions does the jurisdiction permit? For insurance/reinsurance operations, does the jurisdiction permit full tax deductions for reserves? Are technical provisions deductible (IBNR, UEPR)?

Reinsurance Relocations - Taxation

- What is the jurisdiction's approach to capital gains on the disposal of subsidiaries? What will be the base cost of acquisition for the new holding company of the various group subsidiaries to be transferred to the new holding company?
- Can dividends be paid out of the new holding company on a tax-efficient basis? Does the jurisdiction impose withholding taxes on dividends? If so, are there exemptions?
- Does the jurisdiction impose stamp duties on transfers of shares in the new holding company? If so, can this be mitigated?
- Does the jurisdiction impose an "exit charge" if the group should be restructured to alter the headquarters location in the future?

Reinsurance Relocations - Corporate

- How can the transfer of corporate headquarters be achieved? Can the current holding company simply be "redomiciled" or will a scheme of arrangement or corporate reconstruction be required? If the latter, what are the tax consequences of this reconstruction?
- What is the corporate law regime of the new headquarters location and how might this impact the business? For example, does the jurisdiction have corporate law restrictions on the payment of dividends or buybacks of share capital? How might financial assistance rules impact on the business?
- What is the corporate governance regime of the new headquarters location and how might this impact the business? For example, does the jurisdiction require local board members? Does the jurisdiction require the establishment of board committees or the maintenance of internal/external audit functions?

Reinsurance Relocations - Corporate

- What audit standards are legally required in the jurisdiction? If IFRS is the only accounting system recognised in the jurisdiction, but the group's principal operations report under US GAAP, this is likely to cause significant issues in practice.
- What personal liabilities are imposed on directors in the jurisdiction? Does the jurisdiction have rigorous prospectus liabilities on new share issues? Can directors be indemnified by the company in the jurisdiction? Is D&O insurance available/permitted in the jurisdiction?

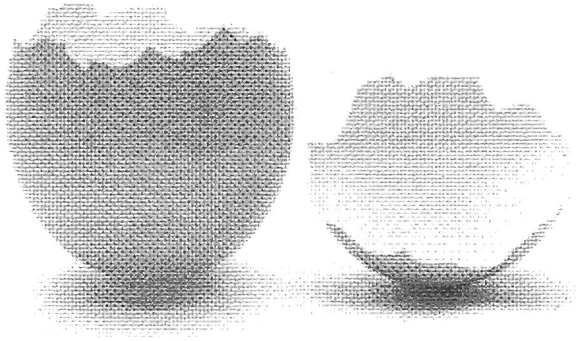
Reinsurance Relocations - Regulatory

- Is the establishment of a trading insurer/reinsurer necessary in the jurisdiction to effect the corporate headquarters move? For example, does tax structuring require this (to permit group business to be reinsured into the jurisdiction)? Is it desirable for tax substance reasons?
- If a trading insurer/reinsurer must be established, what is the process for doing so and what is the likely timetable? Two issues in practice are most significant - capitalisation requirements and substance (management) requirements.
- Whether or not a trading insurer/reinsurer needs to be established, does the jurisdiction impose any level of supervision on insurance/reinsurance holding companies, and if so, what are the likely impacts of this on the group?

Deloitte.

Cross-border Regulation:

Will Solvency II prevent a future financial crisis?



Rick Lester

23rd October 2009

Lessons learned from the financial crisis

Key lessons

Embedding risk and return into decision making

- Inappropriate balance of returns and risk
- Business performance measures and metrics not sufficiently risk or capital focused
- Misalignment between individual risk taking and reward

Risk identification, measurement, monitoring and control

- Lack of understanding of risk exposure relative to appetite
- Risk management processes not sufficiently forward looking
- Risk management processes not adequately integrated into business as usual

Lessons learned from the financial crisis

Key lessons

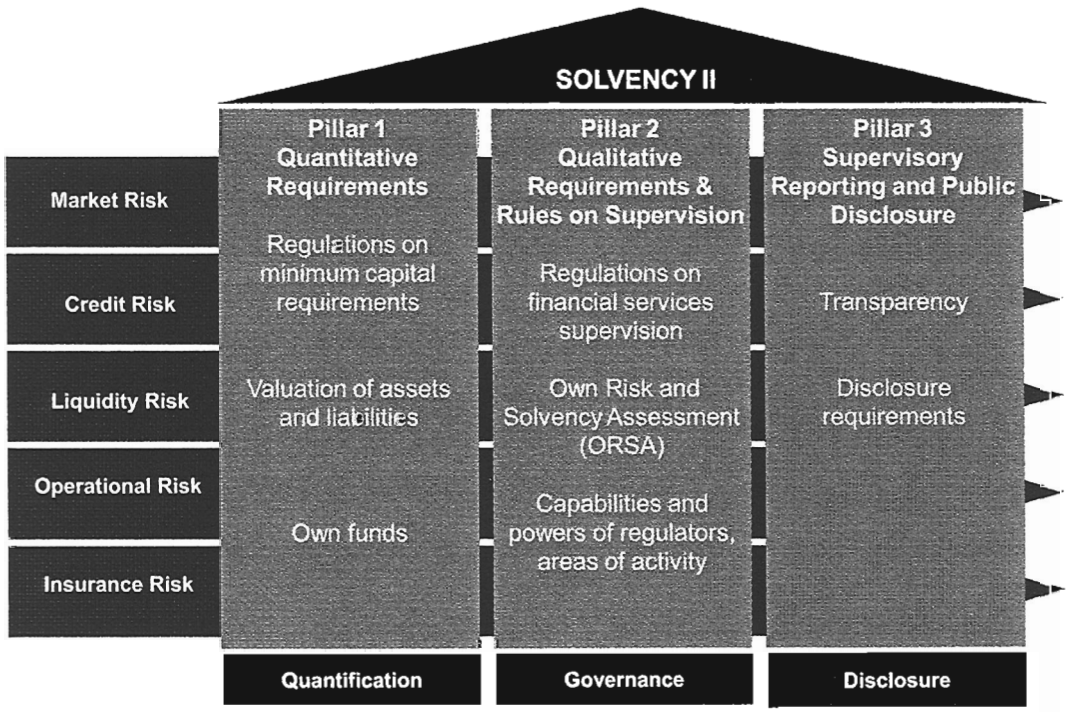
Governance and oversight

- Senior management and board not sufficiently engaged in the role of risk management oversight
- Absence of robust discussions between risk personnel and the business
- Independence of risk functions often compromised by reporting lines and/or reward structures

Communication, transparency and disclosure

- Internal MI not available to support risk based decision making and risk management oversight
- Supervisors lacked depth of information to properly monitor risk and solvency positions
- Investors had unclear view of risks that organisations were taking

What is Solvency II?



Lessons learned from the financial crisis

How will Solvency II help address these?

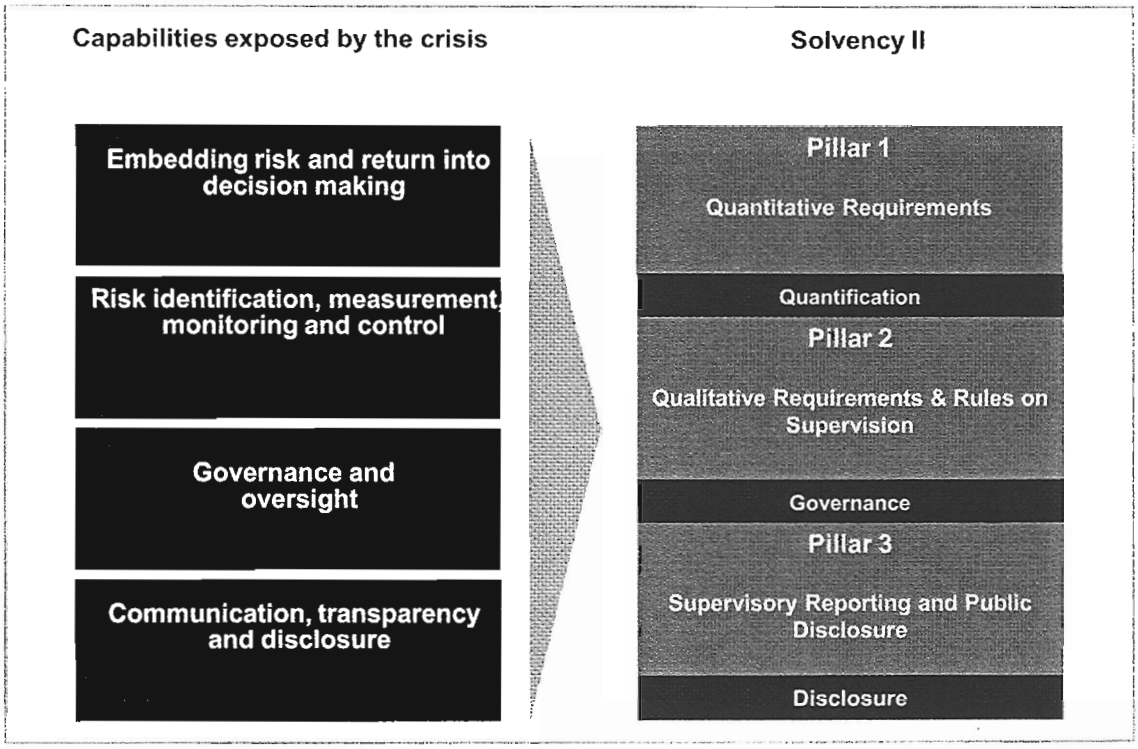
Embedding risk and return into decision making	• Risk and capital considerations in the strategic planning process • Risk based decision making • Risk based performance measures
Risk identification, measurement, monitoring and control	• Setting of risk appetite, tolerance and limits • Development of forward looking ORSA • Risk and capital considerations in pricing and product development

Lessons learned from the financial crisis

How will Solvency II help address these?

Governance and oversight	• Improving risk accountabilities within senior management and the business • Enhanced role and competencies of the Risk function • Clearer delineation between risk management and risk oversight
Communication, transparency and disclosure	• Better information to support key business decisions • Improved supervisor understanding through enhanced private reporting • Improved external stakeholder awareness through public disclosure

Summary



Deloitte.

AIDA Conference 2009

Competition Law and the Block Exemption Regulation

Dave Matcham
Chief Executive
The International Underwriting Association
22 October 2009

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INTERNATIONAL UNDERWRITING ASSOCIATION

Chronology of Events

- Looming expiry of current Block Exemption regulation
- European Commission consultation process – industry arguments for renewal
- European Commission response – partial renewal
- Standard Policy Conditions – key area
- 2010 Block Exemption Regulation
- Substitutes for SPC exemption

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Looming expiry of current Block Exemption Regulation

- Expiry of BER on 31 March 2010
- BER covers horizontal agreements on
  - Joint calculations, tables/studies
  - Co-insurance pools
  - Standard policy conditions
  - Technical specifications for security devices
- Uncertain future due to EC public comment

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European Commission consultation process – industry arguments for renewal

- 2008 consultation document
- Much industry comment on all four sections
- Standard policy conditions – key issue for London and EU markets
- Benefits of SPC's explained
  - Efficiency
  - Cost
  - Market access

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European Commission consultation process – industry arguments for renewal

- Dilution of benefits could result in
  - Increase in legal advice sought by co-insurer
  - Greater cost in business operations
  - Variation in advice sought
  - Contract uncertainty
  - Harder for new entrants to come to the market

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European Commission response – partial renewal

- March 2009 EC report published
- Large parts of BER unlikely to be renewed
- Joint calculations and pools renewed but with tighter rules/more rigorous assessment
- Standard policy conditions/security devices not renewed

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European Commission response – partial renewal

- EC agree that SPC's aid competition and consumers
- EC disagree that this category of agreement is specific to insurance sector
- EC point to banking & other industries with no BER
- Also, reinsurance has no exemption
- Previous aviation enquiry

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Industry Reaction

- "The pressure on the insurance sector to comply with competition law will increase" *(David Strang of Barlow Lyde & Gilbert LLP)*
- "In its desire to improve competition within Europe, the commission may impact London's ability to compete effectively with non-European markets" *(Rob Gillies of Lloyd's Market Association)*
- "The legal costs involved in agreeing a new wording for every similar contract will be uneconomic to both contracting parties" *(Nick Lowe of International Underwriting Association)*
- "Reinsurers that demonstrate agility and innovation will be able to deploy capital efficiently, regardless of any changes to the BER *(William Jewett of Endurance Worldwide Reinsurance)*

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Next Steps

- Draft BER published for consultation by 30 November 2009
- Business operations will be reviewed in light on non-renewal SPC
- Guidance from European Commission – with Industry input
- Continuation of model clauses activity
- Statements of assurance from EC regarding current procedures would be of value

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Shaping a Group Protection in an Era of Climate Change

Wolfgang Wopperer, Head of Retrocession Management Allianz Re

Allianz

Allianz

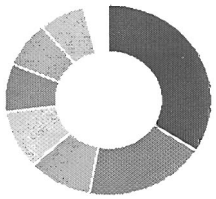
Allianz Re: provides risk pooling mechanism to operating entities

Key facts & figures Allianz Re[1]

- Use full financial strength of Group
  - Group companies benefit from the Group's capacity
  - Optimize use of Group capital
- Organize the group's protection against natural catastrophes
  - Reinsurance
  - Securitization
- Offer central pool of experts sharing knowledge and transferring best practices
- Support new product development e.g. in agriculture business
- Portfolio diversification via third party business (17% of total portfolio)

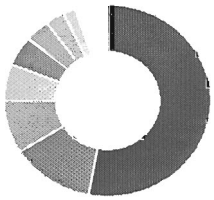
EUR mn	2006	2007	2008
GPW	4,662	3,775	3,777
Operating profit	308	266	495
Combined ratio[2]	89.2%	95.2%	87.8%

Lines of business[3]



Property.	34%	Engineering	8%
Motor:	19%	Personal Accident.	8%
Life/Health	10%	Credit & Bond	7%
Liability.	10%	Marine	4%

OEs/regions[3]



Germany	53%	SC & MC	4%
Asia Pacific	13%	MENA	3%
Germany Life	9%	America	2%
Western Europe.	6%	Rest of World	5%
New Europe	5%		

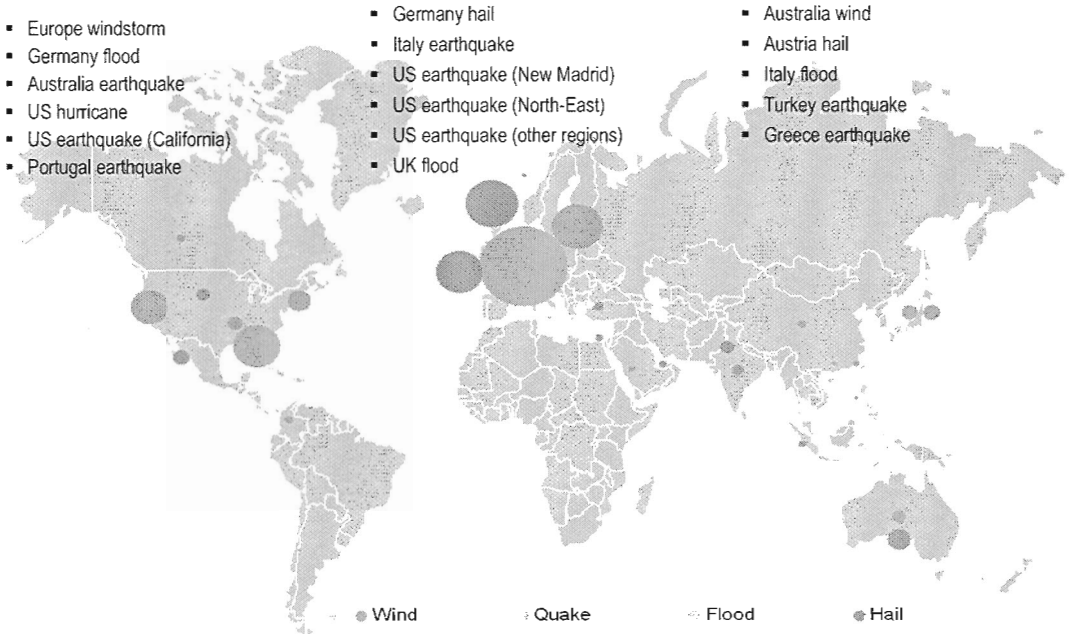
1) IFRS figures of Allianz Re (composed of the reinsurance operation within Allianz SE, Allianz Re Dublin, Allianz Suisse Reinsurance AG and the traditional reinsurance business of Allianz Risk Transfer)
2) P/C business only
3) In terms of NPE 2008. SC = SuperCat; MC = MegaCat; MENA = Middle East / North Africa

Allianz Group: Catastrophe exposure at a glance

- Europe windstorm
- Germany flood
- Australia earthquake
- US hurricane
- US earthquake (California)
- Portugal earthquake

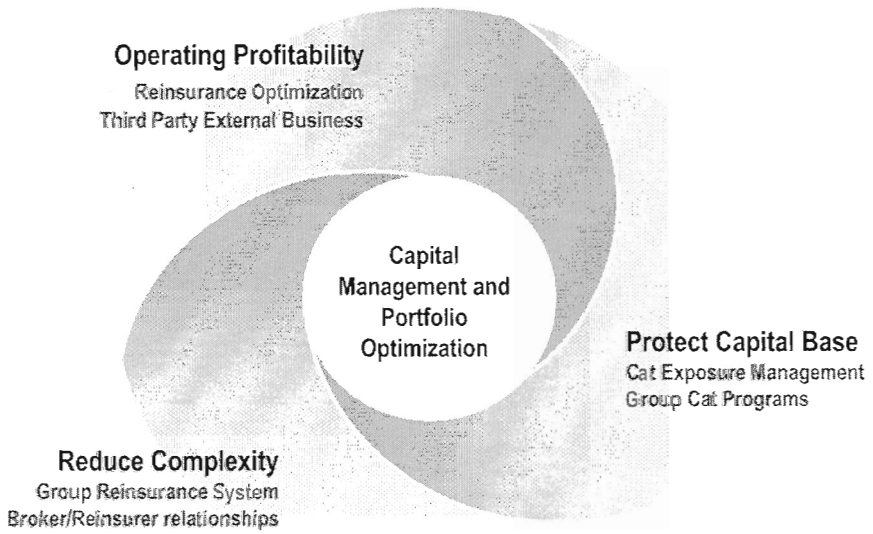
- Germany hail
- Italy earthquake
- US earthquake (New Madrid)
- US earthquake (North-East)
- US earthquake (other regions)
- UK flood

- Australia wind
- Austria hail
- Italy flood
- Turkey earthquake
- Greece earthquake



Note. The size of the bullets represents the allocated VaR. Europe Windstorm consists of the countries Austria, Germany, France, Belgium, the Netherlands, United Kingdom, and Ireland. All allocated values for Europe are aggregated in this plot

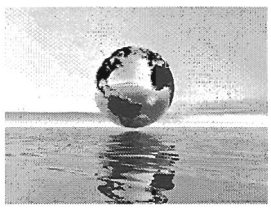
Allianz Re: Supporting Group Strategic Objectives



"Structure follows strategy" - a retro structure supports a predefined reinsurance strategy

	Objective	Rationale
Primary	**Profitability**	▪ Purchase of efficient protection structures
Primary	**Capital protection**	▪ Protect ability to trade ("ensure that Allianz Group's capital base is preserved and Allianz SE is still standing and open for business")
Primary	**Earnings protection**	▪ Manage volatility due to large peak risk ▪ Control risk of loss from frequency events ▪ Mitigate price risk (e.g. cycles, capacities, counterparty dependency) ▪ Optimize diversification effects
Secondary	**Liquidity protection**	▪ Consider economic and accounting effects
Secondary	**Credit risk protection**	▪ Control credit risk
Secondary	**Process efficiency**	▪ Ensure manageability of renewal process, transaction and placement costs

Climate change – Impact on protection structure



Climate change is likely to have an impact on both loss

- severity
- frequency

In order to cope with this challenge it is necessary to review the protection landscape

Dimension:	Frequency	Severity
Challenge:	▪ Calculate and monitor exposure ▪ Agree on risk appetite (protection need) ▪ Manage trade-off between quality of protection and price	
Possible solutions:	▪ Aggregate type of covers ▪ xth event covers ▪ Number of reinstatements ▪ Multi-year covers	▪ Identify and quantify peak exposures that need to be protected ▪ Calibrate placement percentrage and coverage exhaustion point

But: Climate change happens gradually and does not catch us unexpectedly

Allianz Re's Response to Climate Change…

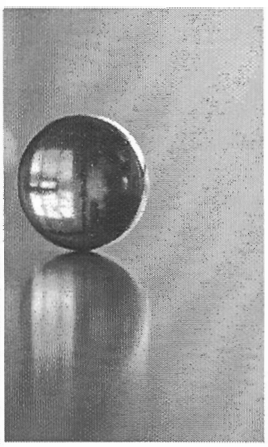
Allianz Re has reacted early

- Central monitoring of cat exposure
- Central steering of group retention
- Bundling of exposures to regional/global covers
- Central purchasing of group cat protection
- Investments in experts and models
- Use of different markets and products
- Efficient organizational set-up

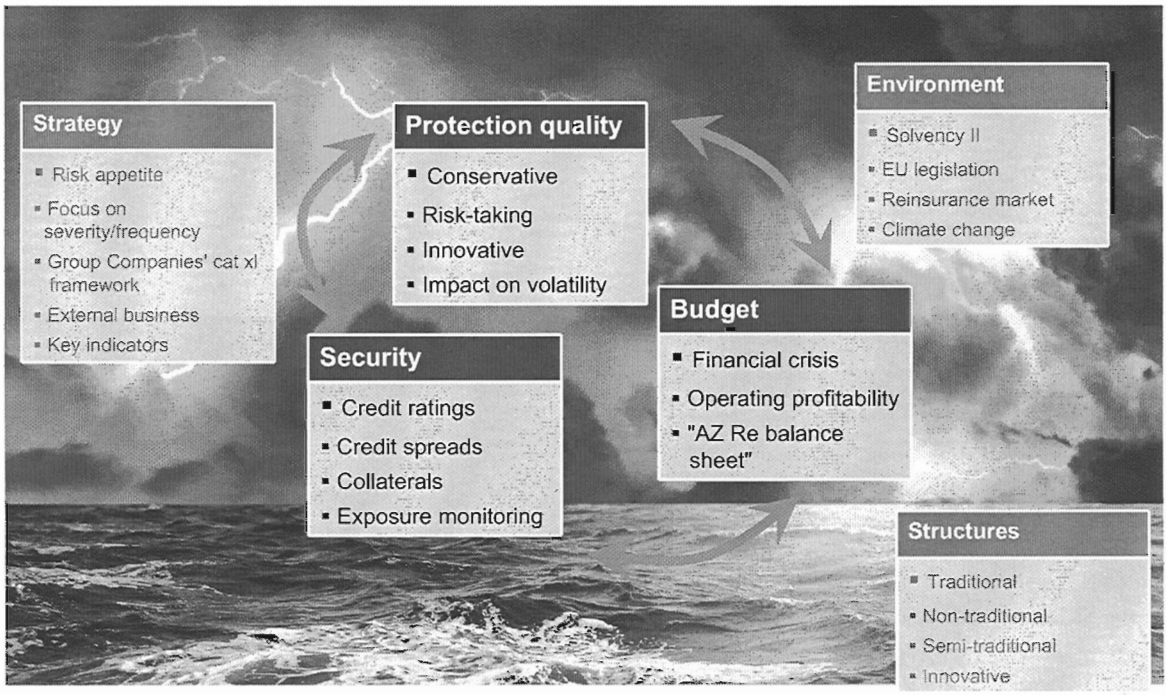
Solution: Holistic and technical approach

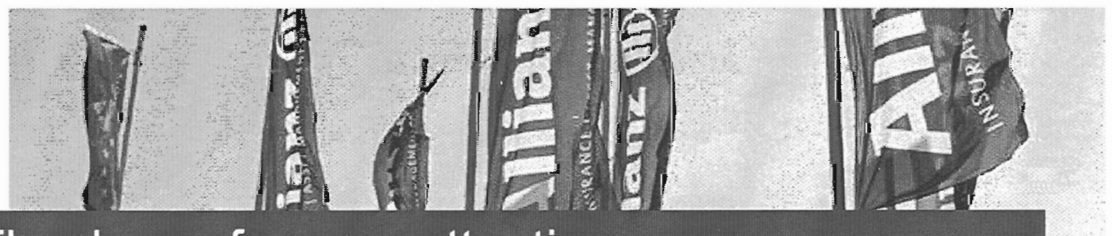
… but there is more needed to meet the challenge of climate change

Who?	What?
Cat modelling companies	▪ Deliver state-of-the-art models that provide a realistic view on exposures
Direct insurance market	▪ Calculate and charge risk-adequate premiums ▪ "Green" insurance products
Reinsurance/ retrocession risk carriers (traditional and non-traditional)	▪ Enhance capital base and provide capacities ▪ Align risk appetite ▪ Follow a technical approach
Legislation / Politics	▪ Create a framework that allows and actively fosters environmental friendly activities
Society	▪ Adopting the protection of the environment as a value as such
Economies	▪ "Green" industries in order to mitigate the impact of climate change



Outlook: Future Challenges for Shaping a Group Protection





Thank you for your attention

Wolfgang Wopperer, Head of Retrocession Management Allianz Re

Allianz

Back-up information on Allianz and its Protection Landscape

Wolfgang Wopperer, Head of Retrocession Management Allianz Re

Allianz

Allianz - A world class company

Largest P/C Insurer worldwide Allianz

Allianz Top 8 Reinsurer

Largest single fund PIMCO

MONDIAL ASSISTANCE Largest provider of Assistance Service

No. 7 in Life business worldwide Allianz

EULER HERMES Worldwide leader in Credit Insurance

No. 27 worldwide in terms of profit[1] Allianz

Reactions GLOBAL AWARDS 2008 Best Global Primary Insurance Company

1) Forbes Global April 2008 (Data for 2007)

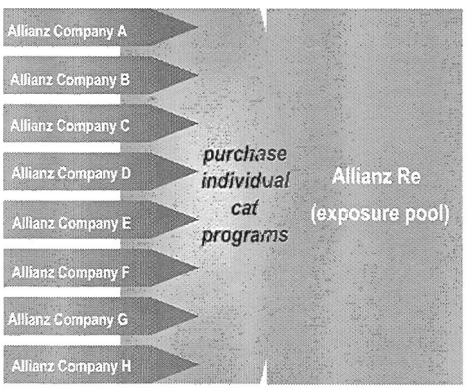
Allianz

Allianz Re – Organizational Structure of Chief Risk Office

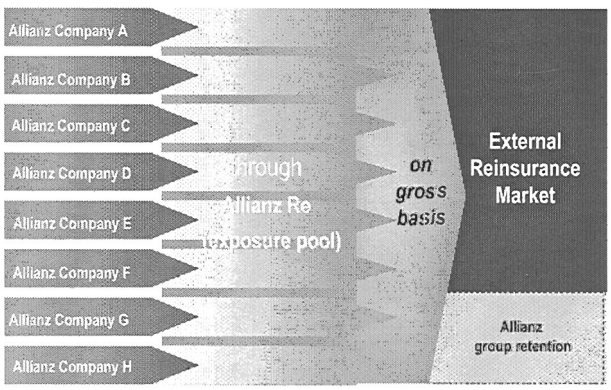
The organizational set-up of Allianz Re fosters the exchange between specialists out of different areas

Allianz

How the SuperCat concept works



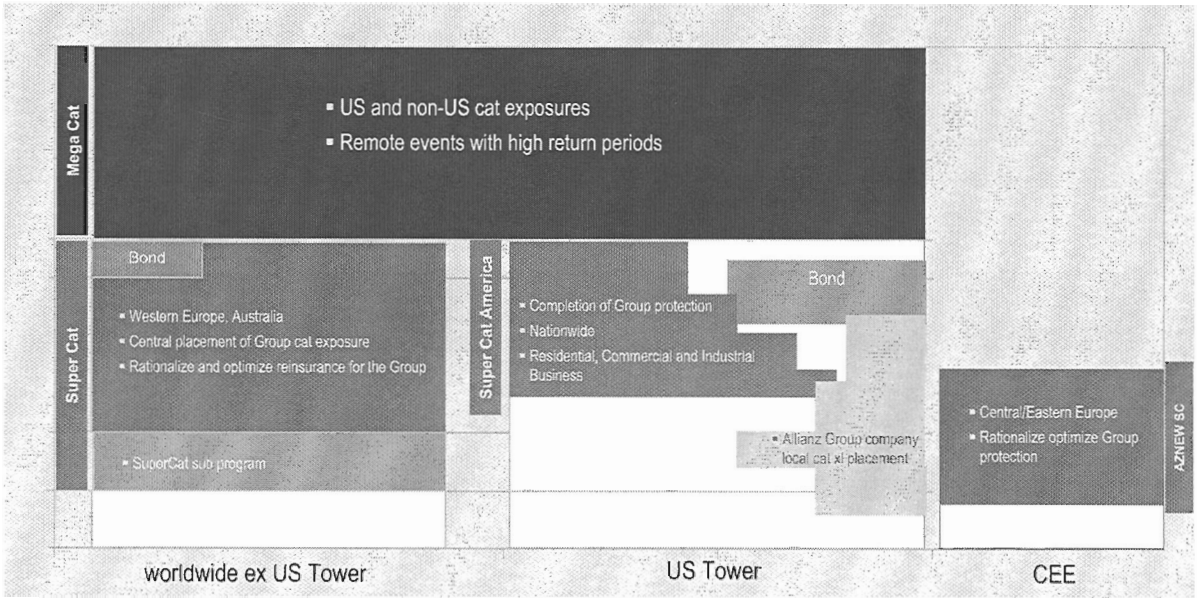
Situation Group companies and Allianz Re



Situation Allianz Group and Reinsurance Market
(Note: Allianz SE is the legal counterparty of the Reinsurers)

Allianz

Allianz Group cat protections – The SuperCat concept



Different covers tailored to match with different risk appetite of markets

Allianz

Mix of different instruments and markets

Example: Allianz US cat protection

Element 1:
Local cat xl placement
- Residential and commercial book
- Placed directly out of the US
- Established program with a long tradition, a stable panel and excellent loss history

Element 2:
SuperCat America
- Residential, commercial and industrial book
- Placed out of Munich
- Continues tradition of SuperCat covers

Element 3:
Cat Bond
- Makes use of the benefits of the non-traditional markets
- Multi-year solution

match with the different risk appetite of different capacity providers

Powerful Group protection landscape

Climate Change
and the
Law of Insurance

Presentation to the AIDA Conference in Zürich
of the
XIIIth AIDA WORLD CONGRESS
(Paris, May 2010)

Prof. M. FONTAINE

AIDA Congress 2010 : Climate Change

- AIDA World Congresses every 4 years
- XIIIth World Congress : Paris, May 17-20, 2010
- Two main themes :
  - Compulsory insurance
  - Climate change

AIDA Congress 2010 : Climate Change

- Focus on the impact of climate change on the law of insurance contracts
  - Changes in existing policies
  - « New products »

AIDA Congress 2010 : Climate Change

- Method
  - Questionnaire
  - National reports
  - General report
  - Contributions on selected issues
  - General discussion

AIDA Congress 2010 : Climate Change

- Main topics
  - Local contexts
  - Insurance lines mostly affected
  - Identification of risks linked to climate change
  - Protective measures
  - New products
  - Reinsurance and ART

AIDA Congress 2010 : Climate Change

- Local contexts
  - Degree of awareness
  - Possible local consequences
    - Floods, tornadoes, draught, diseases, etc...
  - Economic sectors most likely to be affected
  - Measures already taken or envisaged
  - Involvement in international efforts and initiatives

AIDA Congress 2010 : Climate Change

- Insurance lines mostly affected
  - Property
    - Agriculture
    - Buildings
    - Business interruption
    - Others
  - Liability
  - Transport, marine
  - Life, health

AIDA Congress 2010 : Climate Change

Identification of risks linked to climate change

- Problems of causation
  - Interference of human and natural factors
  - Combination of several factors

AIDA Congress 2010 : Climate Change

Protective measures

- Statistics
- Prevention
- Limits of indemnity
- Deductibles
- Exclusions
- Premium increases
- Cancellations
- Withdrawal from market
- Others

AIDA Congress 2010 : Climate Change

- New products
  - New environmental insurance policies
    - New sources of energy (e.g. wind-mills)
    - Liability (D&O, architects, etc...)
    - Others
  - Climate risk management and expertise
  - Incentives to reduce greenhouse gas emissions
    - Pay-as-you-drive motor insurance
    - Green-building insurance
    - Others
  - Initiatives in the carbon market
    - Carbon credit insurance
  - Others

AIDA Congress 2010 : Climate Change

- Reinsurance and ART
  - Impact of climate change on reinsurance terms
  - Alternative Risk Transfer
    - Derivatives
    - Swaps
    - Cat bonds
    - Others
  - Legal nature of alternative products ?

AIDA Congress 2010 : Climate Change

- Invitation to attend and contribute
- Paris, May 17-20, 2010
  - Session on climate change : May 20, 9:00 -13:00
  - Registration information

Sub Prime Litigation

Some Underlying Considerations for the Reinsurer

Paul Moss
Montpelier Syndicate 5151

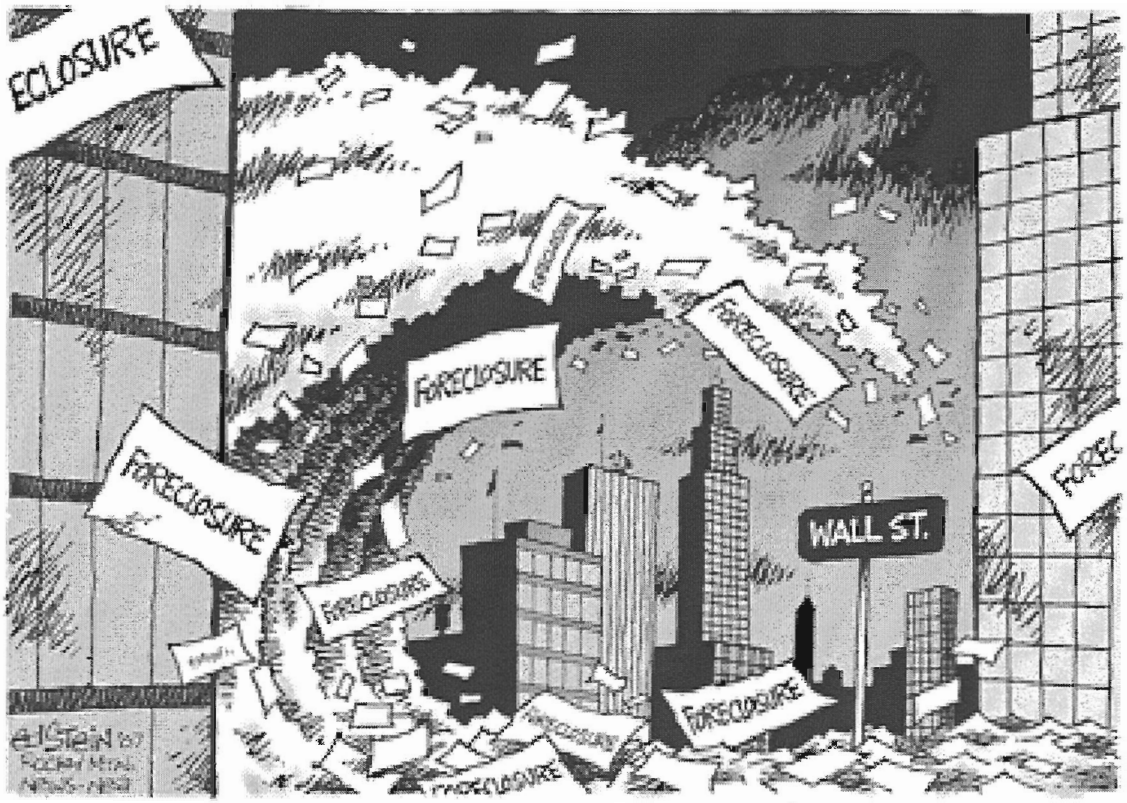
Sound Bites from the US

- "Everyone who helped create this crisis will be held accountable. ... I believe a terrible crime has been committed."

Ohio Attorney General Marc Dann (2007) on Sub prime

- Loosened underwriting standards and novel loan products have resulted in ... "a big problem" with ... "plenty [of blame] to go around."

President George Bush (1989) on the Savings and Loans Crisis



FORECAST: MORE FLOODING IN NEW YORK

Setting the Scene

- Understanding what happened
  - credit crunch
  - sub-prime
- Types and Basis of Claims
- Examples of Actual Litigation
  - But where does it end?
- Regulatory Activity
- Northern Rock
- Reinsurance Considerations

Defining what we are talking about

- Credit Crunch
  - A ***credit crunch*** is a sudden reduction in the availability of loans (or "credit") or a sudden increase in the cost of obtaining a loan from the banks.
  - An economic condition where investment capital is difficult to obtain. Banks and investors become wary of lending funds to corporations, thereby driving up the price of debt products for borrowers. Credit crunches are usually considered to be an extension of recessions.

U.S. sub prime definition

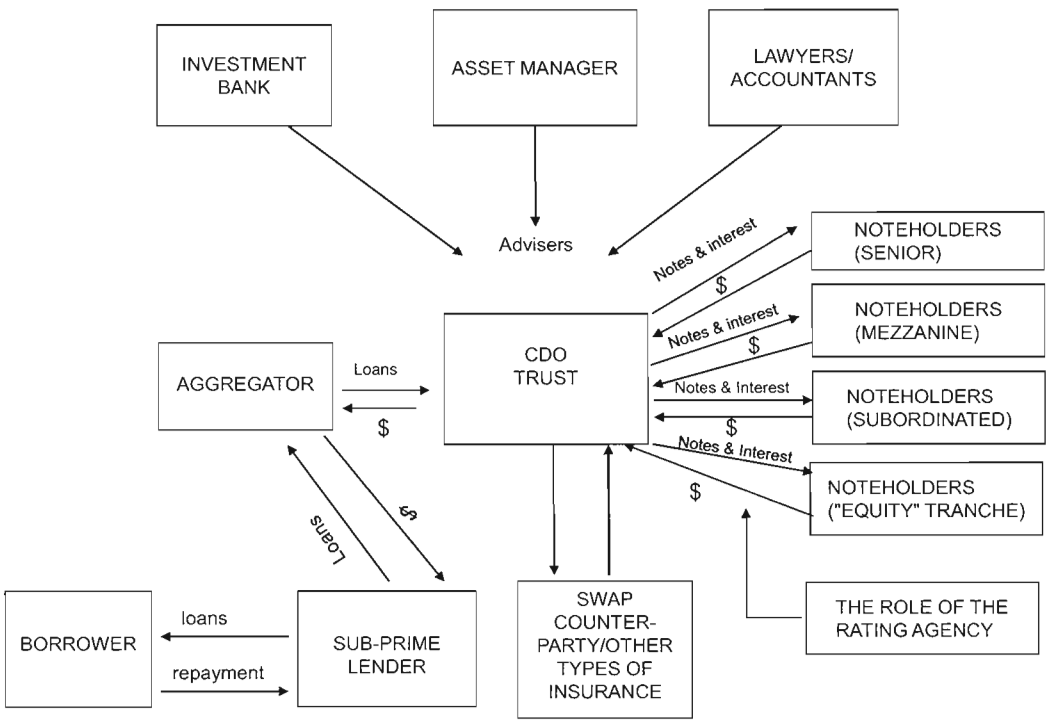
"The term 'sub prime' refers to the credit characteristics of individual borrowers. Sub prime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria that may encompass borrowers with incomplete credit histories."

"Expanded Guidance for Sub prime Lending Programs" by Office of the Controller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, (January 31, 2001)

The London Insurance Market sub prime claims definition

"Claims arising from, relating to or alleging the underwriting, marketing or issuance of High Risk Residential Mortgages, and/or the sale, purchase or securitisation of High Risk Residential Mortgages, including structuring, trading, rating or investing in, or valuation of, mortgage backed securities (MBS), collateralised debt obligations (CDOs), collateralised mortgage obligations (CMOs) or similar financial instruments or products backed by, collateralised by or which are geared to or tied to High Risk Residential Mortgages.

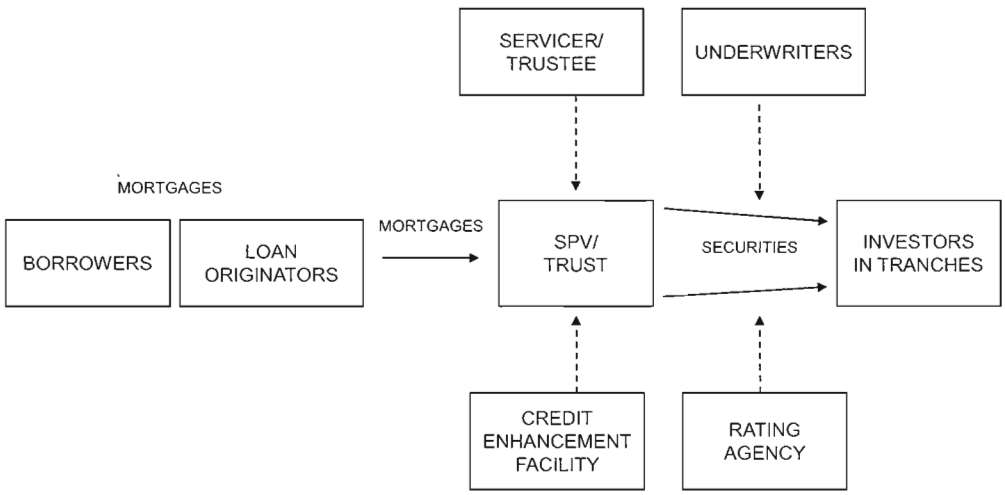
High Risk Residential Mortgages (HRRMs) means fixed and adjustable rate residential mortgages (ARMs) issued to US resident sub-prime or Alternative-A borrowers, or alternative residential mortgage products, including option ARMs, interest-only ARMs, payment-only ARMs and piggyback mortgages, issued on or before 31 December 2007."



Basis of Claims

- Poor advice
- Allegations of mis-selling
- Failure to disclose risks
- Securities fraud (e.g. misleading prospectuses, accounts and annual reports)
  - s90 and s90A Financial Services and Markets Act 2000
  - s150 Financial Services and Markets Act 2000
  - s10(b) Securities Exchange Act of 1934
- Conflicts of interest/breach of fiduciary duties
- Mis-valuation/mis-pricing
- Failure to ensure adequate investor protection (investment advisers/lawyers)
- Defaulting on contracts
- Failure to make interest payments to investors
- Fraud - other

Loan Flow Through Securitisation Structure



Leading Participants in Sub-Prime

Insider Mortgage Finance

Subprime Players

($ in billions)

Rank	Top Originators	Volume
1	HSBC Financial	$52.8
2	New Century Financial	$51.6
3	Countrywide Financial	$40.6
4	CitiMortgage	$38.0
5	WMC Mortgage (GE)	$33.2
6	Fremont Investment & Loan	$32.3
7	Ameriquest Mortgage (ACC Capital)	$29.5
8	Option One Mortgage (H&R Block)	$28.8
9	Wells Fargo Home Mortgage	$27.9
10	First Franklin Financial Corp (Merrill Lynch)	$27.7

Rank	Top Servicers	Year-End Volume
1	Countrywide Financial	$119.1
2	Chase Home Finance	$83.8
3	CitiMortgage	$80.1
4	Option One Mortgage (H&R Block)	$69.0
5	Ameriquest Mortgage (ACC Capital)	$60.9
6	Ocwen Financial Corporation	$52.2
7	Wells Fargo Home Mortgage	$51.3
8	Homecomings Financial (GMAC)	$49.5
9	HSBC Mortgage Services	$49.5
10	Litton Loan Servicing	$49.0

Rank	Top Issuers	Volume
1	Countrywide Financial	$38.5
2	New Century	$33.9
3	Option One (H&R Block)	$31.3
4	Fremont	$29.8
5	Washington Mutual	$28.8
6	First Franklin (Merrill Lynch)	$28.3
7	Residential Funding Corp. (GMAC)	$25.9
8	Lehman Brothers	$24.4
9	WMC Mortgage (GE)	$21.6
10	Ameriquest Mortgage (ACC Capital)	$21.4

Rank	Top Underwriters	Volume
1	Lehman Brothers	$51.8
2	RBS Greenwich Capital	$47.5
3	Morgan Stanley	$36.1
4	Merrill Lynch	$34.3
5	Countrywide Securities	$34.2
6	Goldman Sachs	$29.3
7	Deutsche Bank	$28.6
8	Credit Suisse	$28.0
9	JPMorgan Chase	$26.2
10	Bear Stearns	$22.9

Source: Inside Mortgage Finance

NAVIGANT CONSULTING

Mortgage Providers/Loan Originators:

1. Role

- Provide mortgages to borrowers
- Assess mortgage applicants' suitability for loans
- Sell on loans through an aggregator (may be an affiliate)
- Make representations about quality of portfolio

Mortgage Providers:

2. Claimants

- Borrowers (predatory practices/mis-selling) / State Attorneys General
- Shareholders (securities fraud) / SEC and DOJ
- Employees (loss of value in retirement plans)
- Institutional investors who bought loans from sub prime lenders (often with buy-back clauses which the sub prime lenders now cannot/will not honour)
- Bond insurers claiming the originators of the mortgages underwrote the loans poorly

Mortgage Providers:

3. Claims by Borrowers

- Class actions alleging inadequate disclosure of mortgage terms, including total costs and of the effect of rate resets
- Class actions alleging violations of fair business practices statutes
- *Hennessy v Dawson*: $100 million lawsuit filed in New York claiming that mortgage lenders breached obligations to customers by advising them to take out mortgages they could not afford
- State Attorneys General investigating – especially New York, Ohio and Massachusetts
  - Massachusetts v Fremont General (alleged predatory lending under Massachusetts consumer protection statute)
- Position of brokers

Mortgage Providers:

4. Claims by Shareholders

- Disclosures concerning underwriting standards, loan quality, sources of loans
  - Countrywide: Misrepresented that it "*had strict and selective underwriting and loan origination practices, ample liquidity ... and a conservative approach that set it apart ....*"
  - Accredited Home Lenders: Permitted "*rampant overrides of negative credit appraisals.*"
  - Fremont General: Failed to disclose "*inadequate underwriting criteria*" and "*large volume of poor quality loans.*"

Mortgage Providers:

4. Claims by Shareholders

- Disclosures concerning ongoing condition of portfolios (deterioration of loan quality)
  - Accredited Home Lenders: Misrepresented that it would "*constantly track the factors that impact portfolio quality.*"
  - American Home Mortgage: Failed to disclose it "*was experiencing an increasing level of loan delinquencies,*" and "*increasing difficulties in selling its loans.*"
  - E*TRADE Financial Corp: Failure to disclose rise in default rates, overvaluation of portfolio, failure to reveal losses in timely manner

Mortgage Providers:

4. Claims by Shareholders

- Disclosures concerning adequacy of reserves (loan repurchase obligations)
  - New Century Financial: Did not properly account for loan buy-back obligations where it "*knew that more investors would sell back loans because loan repurchases surged throughout 2006 amid payment defaults.*"
  - Accredited Home Lenders: "*Manipulated*" reserves for bad loans in violation of GAAP
  - NovaStar Financial: Failed to properly account for its loan loss allowance

Mortgage Providers:

5. Claims by Employees

- Fremont General Corp.: employees claiming they have lost money in company stock in their retirement plans as a result of company's actions – 9 directors named as defendants
- Citigroup: alleged violations of ERISA in connection with the loss of value in the Citigroup stock held in plans
- Countrywide: alleged violations of ERISA in connection with retirement plans; allegations that company officers intentionally concealed information about the company's financial health from plan participants

Mortgage Providers:

6. Claims by Loan Purchasers

- Claims by purchasers of packaged loans against mortgage originators for failure to repurchase early default loans:
  - *DBSP v Bayrock Mortgage Corp.*
- Claims by purchasers of packaged loans against originators or aggregators claiming misrepresentation of portfolio quality:
  - *Wachovia suing Ameriquest Mortgage Co. – alleged misrepresentation of borrowers' status and refusal to buy back bad loans*
- NB: Potential conflicts of securitisation participants who are also loan originators

Mortgage Providers:

7. US Government Responses

- US Federal Banking Agencies – attempts to secure voluntary action by lenders
- FDIC – possibly convert "teaser" rates to permanent rates
- US Treasury – where sub prime mortgage is still performing, continue teaser rates for 5 to 7 years or until refinancing or sale
- Proposed legislative reforms to bankruptcy code
- US Federal Reserve – has slashed interest rates and looks set to make more cuts

Sub prime Lenders: FSA Actions

- FSA review of mortgage regulation: 31 March 2008
  - Sub-prime consumers rely considerably on their broker
  - Consumers focus heavily on price with sub-primes concentrating particularly on initial payments
- FSA report on sub prime mortgage market: July 2007
  - Lenders: lending policies failed to cover all relevant responsible lending considerations
  - Brokers: inadequate assessment of customer needs, affordability, self-certification, mortgages into retirement
- Enforcement action commenced against several brokers
- FSA fines The Loan Company and Next Generation Mortgages Ltd and stops Homebuyer Securities Ltd from trading for failings including inadequate assessment of affordability and failure to explain products to customers – November 2007

Valuers/Surveyors/Real Estate Agents

- Role:
  - assessing true value of property against which the loan is made
- Claimants:
  - institutional investors and sub prime lenders (allegations that they were defrauded into lending more than the property was really worth)
  - borrowers claiming that their homes were deliberately over-valued
- Claims made:
  - New York Attorney General Andrew Cuomo filed a lawsuit against First American saying its eAppraiseIT subsidiary gave in to pressure from Washington Mutual to use a preferred list of appraisers who allegedly provided inflated values for homes.

Investment Banks:

1. Role

- Broker-dealer
- Roles include:
  - arranging
  - underwriting
  - managing
  - servicing
  - investing
  - selling
  - trading

Investment Banks:

2. Claimants

- Shareholders alleging securities fraud (inadequate disclosures or misrepresentations) and derivative actions
- Sub prime lenders unable to honour agreements to buy back loans (resulting in insolvency) may make allegations including improper margin calls and incorrect valuation of collateral
- Alleged over or undervaluation of products
- Banks, including Goldman Sachs and Morgan Stanley, have revealed in their annual reports that they are responding to subpoenas and/or requests for information from regulatory and government agencies in respect of the origination, purchase, securitisation and servicing of sub prime residential mortgages, complex financial assets backed by RMBS and related issues

Investment Banks:

3. Claims Made

- Shareholders' derivative action and securities class action lawsuits filed against Citigroup in US
- Claims by investors who purchased mortgage backed securities against issuers and underwriters:
  - *Bankers Life Insurance Company v Credit Suisse*
- Claims by mortgage-backed securities investors against the securitisers who created, issued and underwrote the securities
  - Pension fund has filed a class action claim against Nomura Asset, eight Delaware trusts in which the underlying mortgage assets were held, and six investment banks that underwrote the offerings, including Nomura Securities, Goldman Sachs, Merrill Lynch and Citigroup (Suffolk County Mass. Superior Court 31 January 2008)

Investment Banks:

3. Claims Made

- Luminent Mortgage Capital, a firm that invests in residential mortgage securities, alleges HSBC's U.S. mortgage trading operation placed an improperly low valuation on nine sub prime-mortgage bonds used as collateral for loans and purchased them at a deep discount to their fair value
- Merrill Lynch reportedly agreed to reimburse the city of Springfield (Massachusetts) for nearly $14 million in losses sustained last summer from its holdings in CDOs which Merrill Lynch brokers had bought for the municipality (31 January 2008)

Investment Banks:

3. Claims Made

- *Barclays Bank plc v Bear Stearns Asset Management* (filed New York 19 December 07):
  - Barclays' invested in the Bear Sterns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund Limited
  - The fund is subject to an enquiry by the SEC and Federal Prosecutors in the Eastern District of New York
  - Barclays alleges that:
    - BSAM made misrepresentations to deceive the bank into making and continuing its investment in the fund
    - BSAM knew the fund and its underlying assets were worth less than stated values and at risk of further losses and concealed the fund's falling NAV
    - BSAM used the enhanced fund to unload excessively risky assets which could not be sold to other investors
    - at the same time portfolio manager Ralph Cioffi withdrew millions of dollars he had invested personally in the fund
- *The causes of action are fraud, negligent misrepresentation, breach of fiduciary duties, gross negligence, promissory estoppel, and conspiracy to defraud*

Investment Banks:

3. Claims Made

- *HSH Nordbank AG v UBS AG* (filed New York 25 Feb 08)
  - UBS acted as initial purchaser (underwriter) and arranger of North Street 4 (a CDO invested in real estate backed securities)
  - Complaint alleges "*fraudulent acts, misrepresentations, and omissions, as well as breaches of contract and fiduciary duty*", specifically that UBS misrepresented the nature and risk profile of the collateral, deliberately selected inferior quality reference credits for the Reference Pool and shifted its own risk exposure to HSH, and increased the Reference Pool's exposure to home equity loans at a time when the outlook on sub prime was already negative

Issuer

- Liability to noteholders
  - Information Memorandum
  - insolvency remote
  - proper claimant?
- *IFE Fund SA v Goldman Sachs International* [2007] EWCA Civ 811
- Role of collateral manager

Lawyers and Accountants

- Role:
  - due diligence
  - drafting transaction documents
- Claims:
  - professional negligence claims
  - counter-claims/Part 20 claims where the bank or institution they advised is sued by third party
- May also be implicated in mortgage fraud investigations

Insurers and monolines

- Class action commenced on 27 February 2007 on behalf of an institutional investor in New York alleging that Swiss Re made false and misleading statements about the Company's financial condition, specifically alleged failure to disclose that Swiss Re's Credit Solutions unit had written two credit default swaps which guaranteed certain mortgage-backed securities, including some sub prime and CDOs.
- Class action lawsuits have been filed by shareholders against Ambac and MBIA (the main monolines) alleging the companies issued materially false and misleading statements regarding their business and financial results related to financial exposure on RMBS and CDO contracts
- The FSA has recently written to insurance companies asking for details of their illiquid assets and credit derivatives as it tries to uncover where the risks lie in the financial system.

Credit Ratings Agencies:

1. Claimants

Claims by shareholders against ratings agencies:

- Moody's: for alleged failure to disclose that it assigned excessively high ratings to bonds backed by risky sub prime mortgages
- Claim filed against McGraw-Hill, parent company of Standard & Poor's

Credit Ratings Agencies:

2. Government and Regulatory Responses

- SEC interest:
  - Advisory services (structuring deals). Conflicts (issuer pays). Disclosures about rating process. Rating performance. Meanings of assigned ratings.
  - Expanded SEC jurisdiction Credit Rating Agency Reform Act (2006) provides for: Registration. Disclosure. Record keeping (participants in rating decisions etc). Discipline (censure, suspend, revoke registration).
- CESR published a consultation on the role of CRAs in structured finance on 13 February 2008

Investment Advisers

- Role:
  - advising investors on acquiring investments
- Claims already filed:
  - Unisystems Inc. suing State Street Corp Inc. for investing "conservative, risk-adverse bond funds" in alleged high-risk, mortgage-backed securities. It is claimed that State Street breached the company's fiduciary duties under ERISA
  - MetroPCS Communications suing Merrill Lynch alleging fraud, negligence and breach of fiduciary duty for investing in mortgage-backed CDOs rather than low risk highly liquid assets

Fund Managers

- Role:
  - investing in securities issued by SPV
- Claimants:
  - investors in hedge funds or other investment schemes
- Claims made:
  - collapse of two Bear Stearns hedge funds invested in CDOs backed by sub prime mortgages
  - private suits alleging insufficient monitoring and inadequate credit risk assessment, failure to determine frequency and severity of defaults of the underlying assets, and inadequate hedging techniques to minimise risk.
  - SEC and DOJ investigating

Employees of Financial Institutions

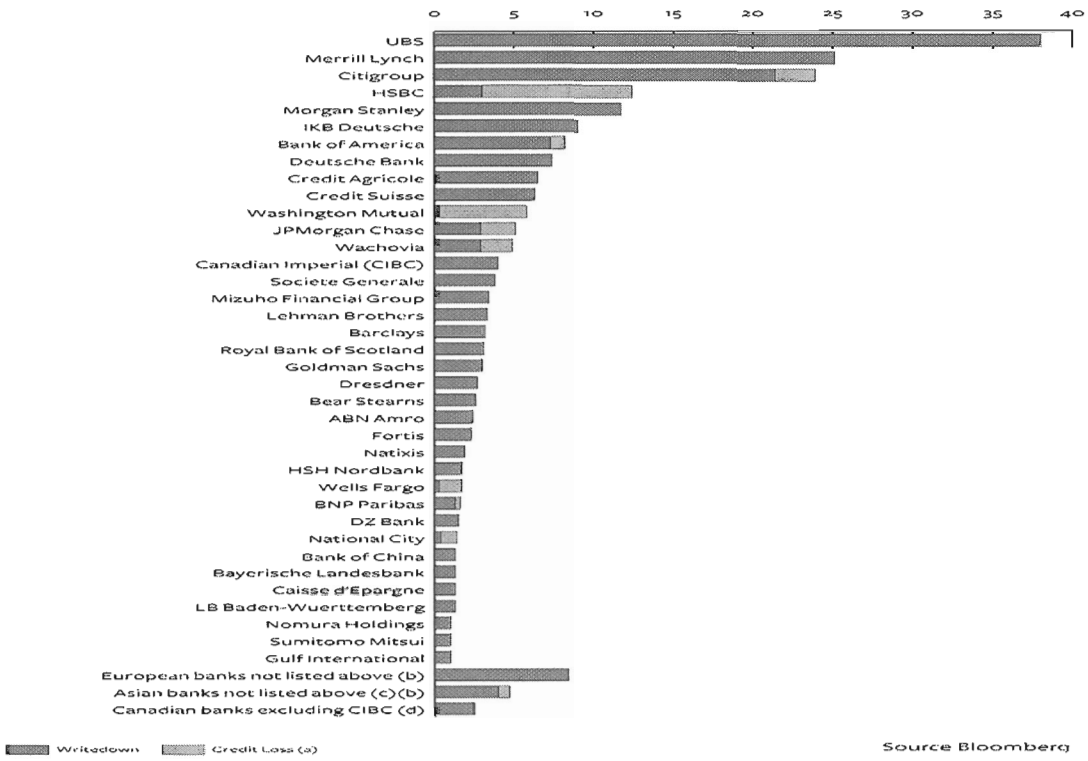
- Possibility of private or regulatory action
- Individual employees of financial institutions who sold stock ahead of reported write-downs may be investigated for insider dealing
- FBI reportedly probing allegations of fraudulent accounting and insider trading at 14 companies linked to the selling of sub-prime mortgages in the United States.
- SEC reportedly investigating Angelo Mozilo, CEO of Countrywide, over stock sell-down
- Bear Sterns' Ralph Cioffi reportedly under investigation for insider trading with one of the Bear Sterns funds
- Shareholder derivative suit filed in Manhattan against Citigroup alleges some executives sold their shares while in possession of "material non-public information" about its exposure to sub prime losses
- Market abuse and insider dealing is a priority area for the FSA

SEC Working Group on Sub prime

- SEC Enforcement Division has created 25-lawyer sub prime working group, based in Washington
- Broad mandate: looking at originators, securitisation participants, credit rating agencies, others
- Similar disclosure and financial reporting issues as in shareholder litigation
- SEC reportedly examining Wall Street banks' accounting and valuation practices
- First case by SEC sub prime working group in July 2008
  - SEC v First BanCorp: Loan purchaser aided and abetted loan originator to get sub prime mortgages off books. Not a "true sale" where oral agreement to extend repurchase obligation beyond original 24 months. (Originator itself settled last year.)

International responses

- Increased cross-border co-operation between regulators
- IOSCO launches sub prime Task Force to review issues facing securities regulators
- IOSCO objective: to ensure implications for securities regulators are reviewed in systematic manner
- Financial Stability Forum interim report to G7 finance ministers and central bank governors (5 February 2008)



(a)THESE VALUATIONS MAY HAVE CHANGED SINCE THEY WERE PUBLISHED

New US defences to shareholder claims

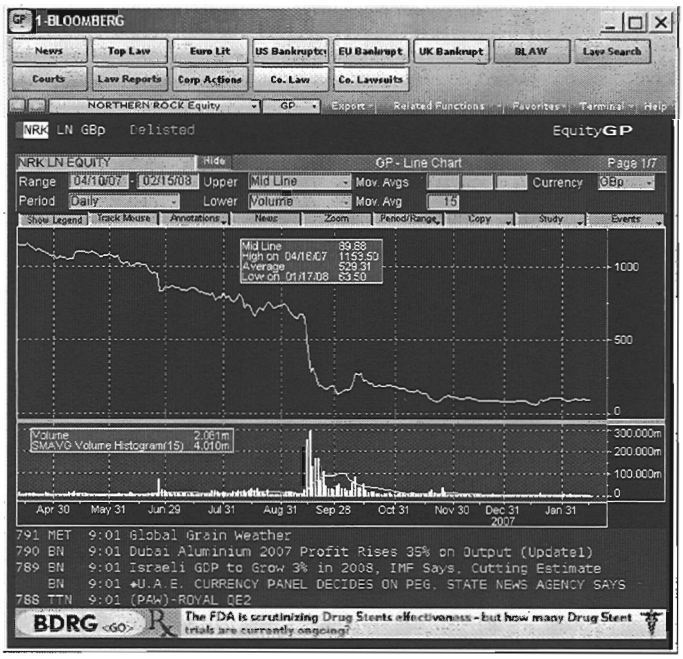
- Specify the misrepresentation – what was deceptive?
- Specify the scienter (intent/recklessness)
- Specify causation (between misrepresentation and loss – not general market trend)

"Scheme liability" theory rejected in US

- *Stoneridge Investment Partners v Scientific Atlanta* (Argued October 2007 in US Supreme Court; ruling 15 January 2008)
- The Supreme Court rejected the plaintiff's argument for so-called "scheme" liability wherein secondary actors could be liable to private plaintiffs for primary violations of Section 10(b) and Rule 10b-5 if they engage in conduct that has the "*principal purpose and effect of creating a false appearance of fact in furtherance of the scheme to defraud,*" even if they do not make any public misstatements or misleading omissions themselves. *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1049 (9th Cir. 2006).
- 22 January 2008 Supreme Court rejects petition by Enron shareholders to overturn previous ruling that investment banks Merrill Lynch, Credit Suisse and Barclays could not be held liable to them, even if they knowingly participated in a "scheme" to defraud those shareholders, because the banks did not make a misstatement to investors
- BUT – plaintiff lawyers engaged in lobbying Congress on private litigation reform

Northern Rock

- First run on retail deposits of UK bank since Victorian times
- Panic over 3 day period Friday 14 September to Monday 17 September 2007
- H of C Treasury Select Committee found that the directors pursued a reckless business model – excess reliance on wholesale funding
- Northern Rock posed a systemic risk to the financial system
- Government guarantee on deposits necessary to stop run
- There was a "substantial failure of regulation"



The Scale of Potential Exposure

- The Lloyd's market has received "about " 950 claim notices on D&O and other FI policies
- 400 Sub Prime Claims of circa $300m
- 15 Stanford Claims to date of circa $8m
- 300 Madoff Claims to date of circa $7m
- 230 Misc Credit Crunch related claims of $6m

This could just be the tip of the iceberg!

The Lag Factor

- Claims take longer to surface in UK
  - pre-action protocol
- Extensive use of alternative dispute resolution procedures and arbitration in England as alternatives to Court litigation
- Shareholder actions less likely
  - class certification not available
  - no punitive damages
  - no contingency fees
  - "loser pays" discourages speculative claims

BUT

- New phenomenon of professional third-party funders

Potential Lawsuits Arising from the Sub Prime Crisis

- **Potential Categories of Lawsuits:**
- Borrowers v Lenders
- Borrowers v Investment Banks
- Lenders v Banks
- Investors v Trustees
- Trustees v Lenders and Underwriters on behalf of Investors
- Individual Investor Suits v Funds, Banks, Lenders and Bond Insurers

Coverage: D & O

Coverage for:

- Claims made against directors and officers for their alleged failure to fulfill their duties to shareholders

No Coverage for:

- Fraud or dishonest acts
- Actions arising from performance of professional services
- Conduct or Business related to a third party entity of which the insured is a member
- Receipt of improper profits (disgorgement)

Coverage: E & O

Coverage for:

- Errors – negligent acts, errors & omissions
- Arguably, coverage for grossly incompetent investments, such as fund manager investing in a corporation without properly investigating its credentials

No Coverage for:

- SEC or DOJ criminal claims
- Dishonest acts
- Fines & Penalties
- Receipt of improper profits (disgorgement)
- Insider trading
- Statutory or regulatory violations and securities fraud

Reinsurance considerations:

- Claims notification obligations
- Reservation of rights
- What are the facts?
- Further information
- Inspection of records
- Understand underlying series of contractual arrangements
- Full review of original and reinsurance wordings
- What is a sub-prime "event"? Aggregation?
- Which law will be applied/which forum?

Market Sound Bites

- Terms and conditions have been tightened since sub-prime crisis began
- Some major insurance players report "no meaningful exposure" to sub-prime. Others have announced $1bn+ write downs e.g. MGIC (monoline), AIG, Swiss Re, XL. Some are involved in litigation about complex financial instruments; this trend is likely to continue.
- Will overall global aggregate losses bring down major financial intuitions or will "the loss lighteth rather easily on many than heavily upon few"?

A history Lesson . . . .

For the second time in seven years, the bursting of a major-asset bubble has inflicted great damage on world financial markets. In both cases--the equity bubble in 2000 and the credit bubble in 2007--central banks were asleep at the switch. The lack of monetary discipline has become a hallmark of unfettered globalization. Central banks have failed to provide a stable underpinning to world financial markets and to an increasingly asset-dependent global economy. - *Stephen Roach, Morgan Stanley*

INSURANCE, REINSURANCE AND THE FINANCIAL CRISIS

THE MADOFF INVESTMENT SCANDAL

AIDA EUROPE CONFERENCE
23RD OCTOBER, 2009

Carolyn Mercer, Munich Re UK General Branch

Münchener Rück
Munich Re Group

Agenda

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- Background
- Warning signs and the SEC
- Madoff's exposure list
- Ensuing litigation
- Expanding scope of the litigation
- Impact on insurance
- Potential issues
- Observations and questions

Background

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- Bernard Madoff was the owner and Chairman of BMIS, a New York based broker-dealer and investment advisory firm
- Following the downturn of the market in 2007, redemption demands by investors increased significantly
- By early December 2008, investors had collectively asked for approximately $7 billion in redemptions, however the firm had only $200 - $300 million
- In December 2008, Madoff admitted to his sons that his investment fund was "just one big lie" and "a giant Ponzi scheme"
- Madoff surrendered to federal authorities in December 2008. He eventually pleaded guilty to 11 federal offences and, in June 2009, was sentenced to 150 years in prison
- In his plea allocution, Madoff stated that he began his Ponzi scheme in 1991. He admitted he had never made any legitimate investments with his clients' money during this time
- Madoff estimated losses at approximately $50 billion; investors worldwide have disclosed exposure of $30 billion

Warning signs and the SEC

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- Between 1992 & 2008, the SEC received 6 substantive complaints from analysts, investors and fund managers that raised significant red flags about Madoff's hedge fund operation, including:
  - Inability to replicate the fund's past returns using historic price data
  - Unrealistic volume of options Madoff represented to have traded
  - Unusually consistent, non-volatile returns over several years
  - The degree of secrecy with which Madoff operated
  - Suspicious fee structure
  - Auditor of BMIS was a related a party
- Following an investigation into the SEC's actions, the OIG concluded:
  - Despite 3 examinations and 2 investigations, a competent investigation was never performed
  - the SEC never verified Madoff's purported trading with any independent third parties
  - numerous private entities conducted basic due diligence of Madoff's operations and concluded that an investment with Madoff was unwise
  - The SEC's investigations actually lent credibility to Madoff's operations

Madoff's Exposure List

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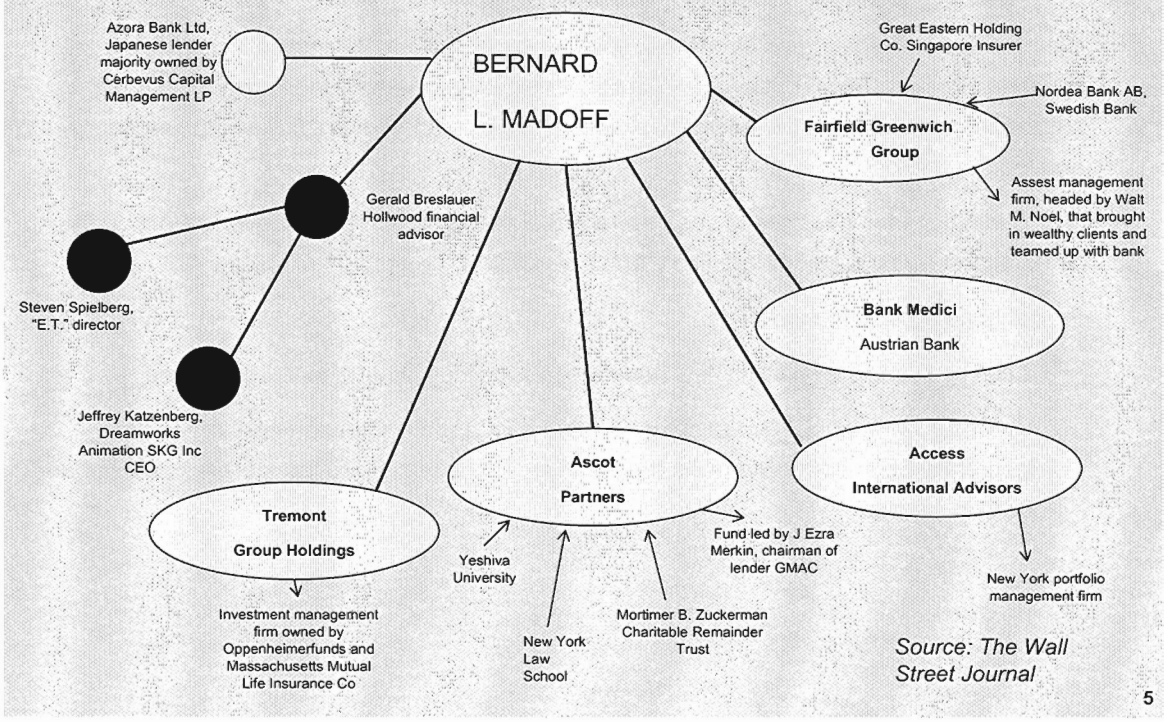

Source: The Wall Street Journal

Ensuing Litigation

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- Class action lawsuits were filed against Madoff and BMIS in the Eastern District of New York and the Central District of California in December 2008
- Subsequently, plaintiffs filed suit against the "feeder funds" that invested clients' money with Madoff e.g. Ascot Partners, Ariel Fund and Gabriel Capital managed by Ezra Merkin
- KPMG, Ernst & Young and BDO Seidman have also been sued for their failure to discover the Madoff fraud in the course of their audits of feeder funds
- A NY law firm has filed nine administrative claims accusing the SEC of negligence in relation to it's investigation of Madoff. It is likely the SEC will be shielded by sovereign immunity

Expanding scope of the litigation

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- Claims are now targeting an ever-broadening array of individuals/entities including US and European banks, Cayman Island and British Virgin Island hedge funds, Irish investment custodians, private Gibraltar based banks, investment management firms in Luxembourg and fund auditors
- A high incentive for investors to sue - no tangible assets to sell, and recoveries, although being aggressively pursued, are likely to fall well below the amount of losses
- First actions against insurers :
  - 2 claims by individuals with AIG homeowners' polices, where coverage denied
  - MassMutual Financial Group suing Continental Casualty Co and Great American Insurance Co in connection with the insurers' alleged failure to pay defence costs under D&O insurance

Impact on Insurance

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- Estimates of insured losses vary with a best estimate of $2 - 4bn spread over policy years 2007 – 2008. This may not take into account all 'creative' approaches to claiming
- The greatest impact is like to be on D&O/E&O policies but there may also be scope for FI, Fiduciary Liability, Professional Liability, Fidelity Bonds and Homeowner's policies to be affected
- Claims received to date: banks, hedge funds, investment managers and lawyers

Potential Issues

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- Are reports of circumstances may/likely to give rise to a claim sufficient to constitute a notification? Warranties/exclusions in renewing contracts mean Insureds forced to identify potential Madoff exposures
- Disclosure – What did the insured actually know or should it have known at time of placement?
- Liability - Is this just the operation of the market or were investment advisers in reckless derivation of their duties to their clients?
  - What type of investment mandate did they have?
  - Who were the investors?
  - What percentage of funds were invested with Madoff?
  - What level of due diligence was conducted – reasonable to outsource?
- Fraud or dishonesty exclusion - wilful blindness or fraud on the part of the feeder funds?
- Personal profit or advantage exclusion
- What is the definition of a 'claim' or 'loss' (fines/penalities excluded?; Does restitution or disgorgement constitute 'damages'?)

Observations and questions

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- Is insurance the answer to a problem like this?
  - The losses far outstrip the available coverage
  - Companies keen on maintaining relationships at an economically difficult time will be looking at low key, commercial deals with customers
- To what extent will any mitigation activity be covered by insurance?
- Liability will have to be proven on a case by case basis
- A good opportunity to strengthen wordings and look at Insureds' risk management
- Can we have confidence that the regulatory bodies have sufficient resources and expertise to prevent fraud on this scale in the financial markets?

'It's only when the tide goes out that you find out who's been swimming naked'

Warren Buffett

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Credit insurance & legal issues arising

Jérôme Kullmann, Professor University of Paris- Dauphine, Université Paris 1 Panthéon-Sorbonne, Director of the *Institut des Assurances de Paris*, Paris
Louis Habib-Deloncle, Chairman, Garant, Vienna

AIDA Europe Conference
Zurich - 23 October 2009

Role of the credit insurance

- A protection against payment default and insolvency
- A leverage for corporate to maximize short term financing capacities
- A tool for national economies to support their Foreign trade export, notably through commercial and political risk insurance
- A tool for better corporate risk control and management

Credit insurance is not an UNIVERSAL INSURANCE

The credit insurance represents only 5% of the domestic and export exchanges

Garant

The crisis effect

- Increasing loss and claims expectations for underwriting years 2008 and 2009 due to the rise of bankruptcies and insolvencies figures in credit turnover business, less in single risk insurance due to the rationale of this type of business;

- For the first time, credit insurance is recognized as crucial for the wealth of the national economies: numerous state-backed initiatives in Europe to aid the availability of credit insurance cover (CAP+ in France, reinsurance agreements in Denmark, top-up schemes decided by the Dutch government, etc...)

AIDA Europe Conference - Zurich

Garant

Outcomes

- Reshaping the relationships between the publics Export Credit Agencies and the private market

- Reassessing the supervision and control process - failures of the mathematical models

- New reinsurance capacities are requested to address the domestic and international trade opportunities

Garant

THANK YOU FOR YOUR ATTENTION

QUESTIONS?

ZURICH

AIDA EUROPE CONFERENCE
Zurich October 22/23, 2009

Bancassurance
Crossover between banking and insurance

Dr. R. Gassmann, Att. at law
General Counsel Europe, Zurich Financial Services

Bancassurance ….. a great menu!

ZURICH

Bancassurance
Customer's wishlist

ZURICH

- Enjoy investment profit („upside")
- Enjoy security („guarantees")
- No counterparty risk
- Influence investment decisions
- Right to flexible withdrawals
- Advantages of insurance products
  - Protect assets in bankruptcy
  - Protect assets in inheritance
  - Choice of beneficiary
  - Etc.

Bancassurance
Impact of the financial crisis in a concrete example:

ZURICH

- Facts
  - Unit linked life insurance
  - Funds provided by X
  - Guarantee of invested sum included
  - X becomes insolvent, funds' value collapses
- Frequently asked questions
  - Did the customer understand the product
  - Who is the guarantor
  - Can customer change funds / when
  - Obligations of insurer / fund manager / bank /custodian
  - Eg can insurer/fund manager change funds / does he have to
  - Can customers act together / what legal remedies
  - Who is responsible for evaluation and management of counterparty risk (guarantor, fund manager, …)
  - Etc.

Bancassurance
Some observations and conclusions

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- Insurance and other financial services will continue to
  - converge / complement each other
  - depend on each other / break up the value chain

  but will remain different
- Respect differences between insurance and other financial services
- Deal with predefined breaking points
- Balance specialization and whole picture view
- Increased complexity means increased vulnerability
- Actuaries, underwriters, lawyers, etc. need to work even more together … do they understand each other?

Bankassurance
Outlook

ZURICH

- Importance of bancassurance products will increase as they cover a customer need
- We will see even more innovation
- Complexity will increase
- Product access:
  - Can complex products be fully explained to all types of customers?
  - Each customer must have access to these products anyway
- Financial crisis increased focus on additional regulation – but regulation is not the solution

'NEW LIGHT THROUGH OLD WINDOWS?'

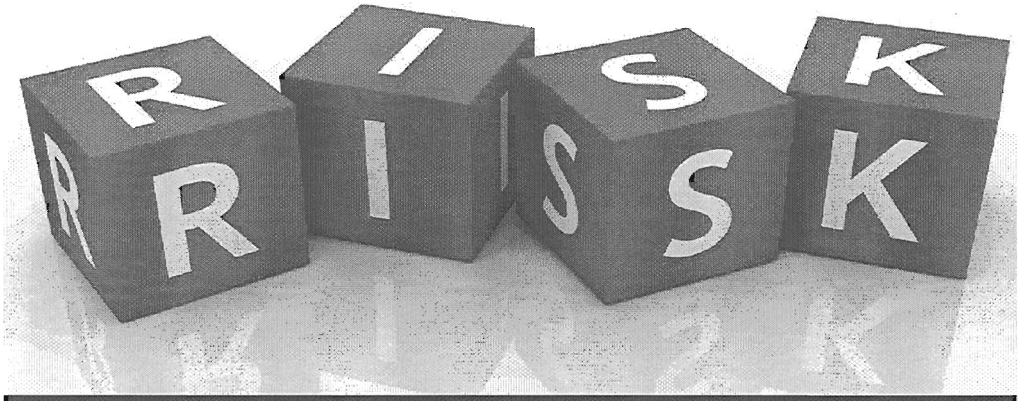
Current Trends for Reassessing the Potential of Capital Market Instruments to be Insurance Products

1. **LONGSTANDING REGULATORY CONCERNS**

- Legal Issues
- EU Reinsurance Directive

2. **EFFECTS OF FINANCIAL CRISIS - GLOBAL**

- International Association of Insurance Supervisors - Midyear Market Report
- United States - Credit Default Swops



ART – Alternative Risk Transfer

AIDA Europe Conference, Zurich 22/23 October 2009:
Financial Risks and Structured Insurance

Allianz

Crucial Question

Allianz
Allianz Risk Transfer

What is Alternative Risk Transfer?

- Transfer of insurable risk outside of the traditional insurance market utilizing insurance, reinsurance and capital markets tools and alternative structures

Risk Spectrum

Allianz
Allianz Risk Transfer

Shareholders bear risk for very low frequency / high severity exposures	
Traditional insurance (annual risk transfer for limited range of exposures)	High Risk Transfer
'ART' and mezzanine risk financing (unacceptable annual volatility managed over 3-10 yr period)	Low Risk Transfer
Captive & corporate net retentions (volatility that is predictable/tolerable on annual basis)	Formal Self-Insurance

Tools of the Trade

Allianz
Allianz Risk Transfer

What are Alternative Risk Transfer products?

(Re-)Insurance Solutions:	Financial Solutions:
Multi-Line / Multi-Year Policies	Securitization (Cat Bonds/ 'ILS')
Multiple Trigger Policies	Contingent Capital
Industry Loss Warranties	Swaps
Finite Risk / Profit Sharing	

...but, the last 18 months!

Allianz
Allianz Risk Transfer

U.S. files new lawsuit in UBS bank secrets case

The government is seeking the identities of thousands of possible U.S. tax cheats who hid billions of dollars in assets in Swiss accou... government lawsuit filed Thursday seeks ... identities of tens of thousands of possi... tax cheats who hid billions of dollars ... the Swiss-based bank UBS. A defi... ident pled...

February 20, 2009 -- Updated 2037 GMT (0437 HKT)

Best, Fitch downgrade XL Capital units

Posted On: Jan. 25, 2008 3:53 PM CST

Roberto Cenicceros

NEW YORK—A.M. Best Co. Inc. and Fitch Ratings Ltd. have down... strength rating of Bermuda-based XL Capital Ltd.'s proper... reinsurance units on Thursday to A from A+.

The rating agency downgrades apply to ...

The Societe Generale Scandal

What were the main causes?

...ed on easily thwarted controls and ...an inferiority complex ...unique ...rds of...

BusinessWeek GLOBAL OUTLOOK

Stanford scandal spreads

U.S. Agrees to Raise Its Stake in Citigroup

By ERIC DASH 56 minutes ago

The Treasury Department announced on Friday that it ... increase its ...

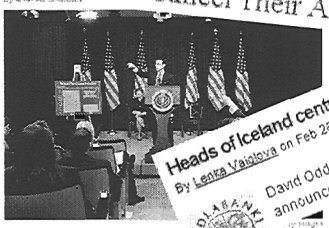
Big Madoff investors targeted

The trustee charged with tracking down money to repay victims of Bernard ...al Madoff's alleged $50bn Ponzi scheme will target big investors that pulled ...what he termed substantial amounts of false profits out of the broker's ...

Obama Plans Ma...

By ...

New York - American Express To Give $300 to Cardholders Who Cancel Their Account



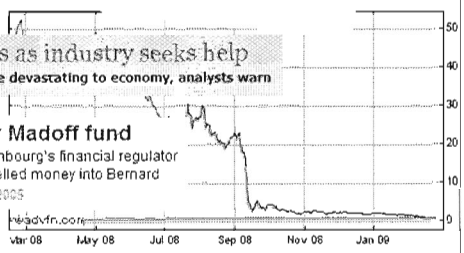
Heads of Iceland central bank resign

By Lenka Vaisova on Feb 28, 2009 in Iceland, UBL, Politics | 60...

David Oddsson and Eirikur G... announced their resignation ... the governors o... ...ar today, MBL ...

GM staring into abyss as industry seeks help

Bankruptcy a possibility, would be devastating to economy, analysts warn



Luxembourg attacks UBS over Madoff fund

Swiss bank accused of 'serious failure' by Luxembourg's financial regulator over its custodianship of a $1.4bn fund that funnelled money into Bernard Madoff's alleged $50bn 'Ponzi' scheme - Feb 26 2009

...ident Obama's budget plan tries t... ...ull a deficit estimated at $1.75 trillion for 2009 as it redirects wide streams of spending.

Impact on Alternative Risk Transfer

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What is the lesson learned?

- Much stronger focus on credit risk management, including much stronger scrutiny of the counterparty!

Let's talk about…

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Credit Risk Management!

Industry Focus

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Most companies are focusing on the following three areas:

- Quality of financial information received
- Level of legal protections
- Type and quality of collateral

What to do?

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Improve the quality of the financial information received!

‚Know your Customer'

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- Because the credit assessments by (complacent) rating agencies are no longer reliable, companies perform their own in-depth credit analysis, considering all sources of information available…

'Know your Customer'

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- … and will increasingly benefit from a changing regulatory environment which makes financial information more reliable:
  - Solvency II will strengthen (re-)insurers financial stability and will create more publicly available and reliable financial information on (re)insurers
  - European Regulation on Credit Rating Agencies will promote greater transparency and enhanced reliability

What to do?

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Strengthen the level of legal protections!

Raising the Bar

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- Incorporate credit risk mitigation tools into (re-)insurance contracts
- However, structural mitigants may preclude insurance and reinsurance companies to take full benefit of the effects of the (re-)insurance contract under Solvency II, if there is no effective risk transfer (see CEIOPS Consultation Paper No. 52).

Wide Range of Credit Mitigating Clauses

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Example of clauses in (re-)insurance contracts that are susceptible to risk mitigation:

- Reps & Warranties Clause (include more detailed financial information)
- Material Change Clause (add financial changes)
- Notice Clause (require periodic reporting on financial matters)
- Downgrade Trigger Clause (link rating changes with termination or other rights)
- Collateral Warranty Clause (provide conditions for payment)

Wide Range of Credit Mitigating Clauses

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And more examples…

- Payment Clause (require pre-payment of the (re)insurer)
- Offset Clause (allow for setoff of mutual debts)
- Cut Through Clause (create access to a third party debtor)
- Assignment of Rights (create access to a third party debtor)
- Acceleration of Premiums Clause (link financial triggers to acceleration of premiums)
- Reduction of Aggregate Limit Clause (link financial triggers to reduction in limits)

What to do?

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Improve the type and quality of collateral!

Things to Consider

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- Credit risk of issuing bank/trustee/custodian
- Systemic risks
- Dovetailing (re-)insurance and security documents
  - Amount and nature of collateral required („eligible assets“)
  - Release of collateral
  - Limitation of draw rights
  - Applicable law

Collateral: Which One?

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Each collateral has its advantages and disadvantages (certainty to collect, systemic risk, cost, etc). Hence, collateral requires a careful analysis of all issues!

Possible universe of collateral:

- Letters of Credit
- Trust
- Predged and Charged Accounts
- Funds Withheld
- Parental Guarantee
- Credit Insurance
- Credit Default Swap

Conclusion

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- Demand for alternative risk transfer products is back
  - *"Investors are once again looking to enter the insurance-linked securities market, following a downturn in interest at the end of last year owing to the financial crisis."* (Insurance Day, September 8, 2009).
- Products have become more transparent
- Counterparties have become more reliable due to credit risk mitigation techniques
- Regulatory initiatives have and will continue to strengthen the (re)insurance and in particular the alternative risk transfer market

Thank you for your attention.

Allianz Risk Transfer AG, Lavaterstrasse 67, 8002 Zürich
Contact: rolf.staub@art-allianz.com

Allianz

'NEW LIGHT THROUGH OLD WINDOWS?'

DLA PIPER

Current Trends for Reassessing the Potential of Capital Market Instruments to be Insurance Products

1. LONGSTANDING REGULATORY CONCERNS

- Legal Issues
- EU Reinsurance Directive

2. EFFECTS OF FINANCIAL CRISIS - GLOBAL

- International Association of Insurance Supervisors - Midyear Market Report
- United States - Credit Default Swops

ROBINSIMIS

AIDA Europe Conference, Zurich: 22/23 October 2009

"Insurance and Reinsurance in Europe: The Future Challenges"

Unscrambling the Madoff mess: the legacy left for insurers

Handout to accompany the panel discussion on the effect of the financial crisis on insurance and reinsurance

Bernie Madoff's activities have wreaked unprecedented devastation across the financial and professional world. His mis-deeds have the potential to reach far beyond the investors who entrusted their money to him.

Robin Simon LLP London partner, Jacquetta Castle, considers the legal issues raised by these events.

On 29 June 2009 Bernard Madoff was sentenced to 150 years[1] in prison for masterminding the largest Ponzi-scheme fraud in history which left investors across the world with some $65 billion in losses. This followed a guilty plea to 11 charges of fraud and money laundering.

As Bernard Madoff faces the rest of life in gaol, the long process of unscrambling the devastation he has caused is starting to get fully under way - recovering assets and claiming against any third parties that can conceivably take some blame.

THE CLAIMS

In the USA, Irving Picard, has been appointed as trustee to oversee the liquidation of Madoff's broker-dealer entity Bernard L Madoff Investment Securities LLC (BLMIS) and to deal with the claims under the Securities Investor Protection Act of 1970 (SIPA). The deadline for filing claims was extended to 2 July 2009 and a last minute rush has pushed the number of claims to over 15,000. The fact that BLMIS does not have enough assets to go around coupled with the US$ 500,000 per "customer" limit imposed by SIPA means that most, if not all, investors will be left wanting. In the UK (where Grant Thornton has

[1] Madoff's sentence truly dwarfs other US corporate sentences. Enron's Jeffrey Skilling is currently serving a 24 year sentence and Enron's Bernard Ebbers received 25 years in 2006.

been appointed Provisional Liquidator) much of the attention is focusing on Madoff Securities International, the London business controlled and chaired by Bernie Madoff. US prosecutors are currently eying the London entity's £117 million of net assets.

With a shortfall on recovery being inevitable, investors are seeking to recoup their losses against intermediaries and advisers. Where the investment was made via an investment management fund or with a fund of funds or feeder fund, the managers of those funds are squarely in the firing line.

Proceedings have already been brought in numbers of jurisdictions across the world including USA, England, France, Switzerland, Spain, Luxembourg, Ireland, South America, South Africa and the Middle East together with various offshore jurisdictions.

Claims are being made against:

- Investment advisers
- Hedge funds and feeder funds
- Accountants
- Lawyers
- Auditors of hedge funds
- Custodians
- Fund administrators and asset managers

The claims being brought plead a variety of causes of action including fraud, negligence, negligent misrepresentation and breach of fiduciary duty.

The coverages impacted are mainly:

- E&O
- Fidelity
- D&O
- Bankers' Blanket Bond
- Excess of Loss

LEGAL ISSUES

So far as the development of English insurance law is concerned, the litigation being generated by Madoff will raise, and indeed is raising, a number of interesting issues.

Notification of circumstances

Hard on the heels of the *Kidsons*[2] decision, claims managers are being faced with laundry list notifications from institutional investors – along the lines of "we have a client who had money in Madoff so there might be a claim". *Kidsons* set out high level law but the claims managers in the front line are still faced with the practical issue of how to respond in any case. Insurers are entitled to reject notifications in the absence of sufficient objective justification for the view that there is a real prospect of a claim arising (depending, of course, on the precise wording in the policy). A decision has to be made in every case whether to accept the notification; reject the circumstances; reserve the position and/or send the insured back to investigate further.

Duties owed by managers of investment funds and nature of duties owed by intermediaries

The central question is whether a reasonably skilled investment advisor should have realized that the Madoff scheme was a fake. Madoff was, of course, a former Nasdaq Chairman at the very heart of the financial establishment so many otherwise savvy investors, who one might think would have known better, took him on trust. He even had the US regulators fooled; the 2006 SEC investigation launched after allegations had been made failed to find evidence of fraud.

Courts will be scrutinizing the level of due diligence carried out. How diligently did parent companies oversee the activities of hedge funds and what duties did they have in this respect? Duties will be assessed in the light of all the circumstances including the level of sophistication of the investor, which varies widely between the institutional investors and the private individuals. Where the due diligence of intermediaries is under the microscope, the issue may turn in any case on the relationship between the intermediary and the feeder fund. There will be many other questions along the way such as the proper diversification of portfolios and selection, the role of regulators, fee disclosures, reliance on third parties and the concentration of investment functions in one place.

Causation and reliance.

The fact also remains that investors were queuing up to join Madoff's exclusive club and it is certainly possible that whatever advice had been given, they would still have gone ahead.

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[2] *HLB Kidsons (a firm) v Lloyd's Underwriters (Subscribing to Lloyd's policy No. 621/PK1D00101) & Ors* [2008] EWCA Civ 1206

Claw-back

Some investors made a profit and those investors who redeemed early are now facing claw-back claims under the USA bankruptcy legislation for preferential and fraudulent transfers. What degree of knowledge did any investor have before withdrawing funds? To what extent is knowledge necessary? Should there be a return of principal as well as profit?

Damages

The measure of damages suffered in any case will call for detailed expert evidence on the performance of the investment and the performance of alternative funds. If the investor had not been in Madoff, how would he have invested his money?

Legal liability and settlement

Some institutions have been settling early on to preserve reputations. The Geneva-based fund arm of Banco Santander, for example, has settled outstanding claims of over $235 million against BLMIS. In such cases is there the required element of 'legal liability' for PI, and even more obviously D&O, coverage to be triggered? And again, what of reinsurance and follow the settlements clauses if the original settlement was voluntary?

Madoff exclusions

Insurers are introducing or are considering introducing Madoff exclusions. Though this would seem only to affect business going forward, there is clear potential for insureds to be caught between two years. If year 1 is notified of circumstances but they are not accepted, year 2 may have a Madoff exclusion.

Aggregation

As with any fraud, there will be questions of aggregation. The House of Lords in *Lloyds TSB v Lloyds Bank Insurance*[3] ruled on aggregation issues in the pension mis-selling scandal. Much will depend, as it did in the *Lloyds TSB*, case on the precise wording of the aggregation clause.

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[3] *Lloyds TSB General Insurance Holdings Ltd & Ors v Lloyds Bank Group Insurance Co Ltd: Abbey National Plc v Alan Godfrey Lee & Ors* [2003] UKHL 48

Jurisdiction disputes and conflict of laws

It is certainly anticipated that there will be trans-Atlantic tussles, particularly over claw-backs from non-US investors and recoveries against non-US entities.

Other Issues

A host of other issues relating to insolvency, data protection, regulation and restitution are already being thrown up in the proceedings under way and no doubt this will continue.

THE FUTURE

Bernie's Madoff's life expectancy has been stated to be just 13 years and it is certainly likely that while he sits out what remains of his life in gaol, stripped of his yacht, his cars and all the other trappings of his previous wealth, the legal battles will continue to reverberate for many years to come.

The legal precedents that will undoubtedly come out of these complex issues will have an important role in shaping our insurance law in the future. New laws will also be passed in an attempt to address the regulatory and corporate shortcomings that at least partly enabled Madoff to do his damage. That said, whatever steps governments and regulators take to plug the gaps, humans can be very gullible and there will always be another Bernie Madoff round the corner.

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ROBINSIMON

AIDA Europe Conference, Zurich: 22/23 October 2009

"Insurance and Reinsurance in Europe: The Future Challenges"

Panel discussion: the effect of the financial crisis on insurance and reinsurance law

A brief guide to the issues from an English law perspective

Jacquetta Castle, Partner, Robin Simon LLP

We have been asked to produce a note to accompany the panel discussion on the effect of the financial crisis on insurance and reinsurance law. The panel has identified certain areas for discussion. This note is designed to provide as clear and simple a summary as possible of the basic position in English law on each of these areas, rather than exhaustive treatise on every aspect of our insurance law[1]. Many of those attending the conference are not English lawyers and this note is primarily aimed at them. I have prefaced what I say on each issue by setting out the question that has been raised by the panel chairman.

Disclosure

Question: "Faced with potentially large claims, one of the first things (re)insurers will want to do is to examine what information they were given about the risk giving rise to the claim. What are the parties' disclosure obligations at the pre-contractual stage in your jurisdiction? What is the (re)insurer's remedy for non-disclosure?"

English insurances are contracts of utmost good faith. An important aspect of this is the insured's duty of pre-contract disclosure. The scope of this is set out in the Marine Insurance Act 1906, and applies to all types of insurance. The insured must disclose to the insurer every "material circumstance", i.e. something that would influence the judgment of a prudent insurer in fixing the

[1] See, for example, The Law of Insurance Contracts by Professor Malcolm Clarke

premium, or determining whether or not to accept the risk[2]. The insured has to proffer information, not just answer questions; this contrasts with most Continental jurisdictions[3], which take a questions-only approach.

If an insured fails to reveal a material circumstance (non-disclosure) or gives an incorrect answer to a question (misrepresentation), the insurer may be able to avoid the policy *ab initio*. England is again almost unique[4] in having a remedy of avoidance *ab initio*, i.e. it puts the parties in their pre-contract position. This is so even in the case of innocent or negligent non-disclosure, though in practice this will usually be modified by the policy terms (most insurance policies contain an innocent non-disclosure clause limiting the remedies according to the prejudice suffered.) Avoidance is effectively the only remedy for a breach of the duty of utmost good faith, despite several judicial attempts to find a basis for a right to damages for breach of this duty (see: *HIH Casualty & General Insurance Ltd & others v The Chase Manhattan Bank and others*[5]).

If, however, there has been a fraudulent misrepresentation, it is believed the insurer will have the right to avoid and also to claim for damages in the tort of deceit[6]. The Misrepresentation Act 1967 may also apply to insurance contracts. Under Section 2(2) of the Act, a party can be awarded damages in lieu of rescission at the discretion of the court, for example, where the misrepresentation is found to be inadvertent. However, in practice, most insurers when given the right to avoid for misrepresentation will either choose to avoid or waive that right.

Another problem regarding avoidance arises in those rare instances where it is the insurer who has breached its duty of utmost good faith. The recent cases of *Brotherton v Aseguradora Colseguros SA*[7] and *Drake Insurance Plc v Provident Insurance Plc*[8] have tentatively explored the nature and extent of the insurer's duty of utmost good faith in deciding to avoid a contract and in handling claims. The Court of Appeal in Drake a ruled by majority that the right to avoid for breach of the duty of utmost good faith was restricted by the continuing duty of good faith, contrary to the views expressed in *Brotherton v Aseguradora Colseguros SA*[9].

An insurer seeking to avoid a policy must be able to prove, first, that the alleged non-disclosure or misdescription would have influenced a prudent underwriter and, secondly, that it induced the

[2] Pan Atlantic Insurance v. Pine Top Insurance [1995] 1 AC 501
[3] E.g. Spain
[4] Sweden has avoidance for fraud
[5] HIH Casualty & General Insurance Ltd & others v The Chase Manhattan Bank and others [2003] UKHL 6
[6] HIH Casualty & General Insurance Ltd & others v The Chase Manhattan Bank and others [2003] UKHL 6
[7] [2003] EWCA Civ 705
[8] [2004] 1 Lloyd's Rep 268
[9] [2003] EWCA Civ 705

actual underwriter to enter into the contract on those terms[10]. There are no specific time limits for the insurer to avoid but if he does not act within a reasonable time of knowing of the breach he will be taken to have affirmed the contract.

Compared to Continental Europe, brokers tend to play a key role in the London market, at least so far as commercial risks are concerned. This relationship has had an important impact on the developing shape of our insurance law over the years. A broker is, of course, generally the agent of the insured, not the insurer[11]. Any non-disclosure or misrepresentation by the broker will be treated as a breach by the insured, as the broker's principal[12]. In addition, the broker has an independent duty of disclosure similar to that of the insured[13].

Notification

Question: "The proper notification of claims will undoubtedly be a key issue in the context of the global financial crisis. What is the law in your jurisdiction?"

Insurers need to know about claims or potential claims on the policy for the purposes of the investigation and defence of claims as well as setting reserves. The insurer will decide what "trigger" is appropriate for the policy, and reflect this in the terms. Therefore the exact obligation on the insured to notify the insurer of losses/claims/circumstances depends on the terms of the policy, and a timescale for notification is also usually stipulated. In England, if a notification term is an ordinary term of the policy, then breach of the notification clause by the insured will only entitle the (re)insurer to damages if it can prove that the late notification caused additional loss. However, notification clauses are often drafted as conditions precedent to liability (i.e. a condition in a contract which calls for the happening of some event, or performance of some act, before the agreement becomes binding on the parties). In these cases, breach of the notification clause will result in the claim being declined, regardless of any prejudice suffered by the (re)insurer. It is important to ensure compliance with notification condition precedents as the English courts have, in recent years, reconfirmed that such terms will be enforced[14].

[10] Pan Atlantic Insurance v. Pine Top Insurance [1995] 1 AC 501
[11] This is currently under discussion in the Law Commission review
[12] Hazel v. Whitlam [2005] Lloyd's Rep IR 168 (CA)
[13] Marine Insurance Act 1906, s.19.
[14] HLB Kidsons v Lloyd's Underwriters and others [2008] EWCA Civ 1206

The recent case *HLB Kidsons v Lloyd's Underwriters and others* [2008] EWCA Civ 1206 ("*Kidsons*") involved a detailed consideration of a notification clause in a professional indemnity (PI) insurance policy, which was a condition precedent to liability. Kidsons, a firm of chartered accountants, claimed under their PI policy in respect of claims made by clients in relation to activities of a company called "Solutions @ Fiscal Innovations Limited" ("S@FI"), which was managed by Kidsons. They brought proceedings on the basis that they were entitled to be indemnified in respect of all claims brought against them by S@FI's clients.

In August 2001, an employee of the insured started to raise extensive concerns about tax avoidance schemes marketed by the insured and the implementation of such schemes. These concerns were brought to the attention of the underwriters by four separate presentations in September and October 2001, April 2002 and July 2002.

The first, in September 2001, followed Kidsons' letter of 31 August 2001 voicing the employee's concerns and stating that "*this might be regarded as material information for insurers*". In October 2001, a copy of Kidsons' August letter together with a claims file and bordereau was presented. Following this, an investigation ensued and, in March 2002, Kidsons sent a further letter to insurers stating that the "technical efficiency" of the products was accepted, "*but in some instances there might be procedural difficulties involving the trustees for each scheme*". The letter was accompanied by a claims bordereau referring to "*possible tax errors in fiscal engineering work*". This was shortly followed by the April 2002 presentation. In July 2002, material from the April 2002 was presented to the following Lloyd's market.

In a later policy year, a number of substantial claims were made against the firm by their clients as a result of the invalidity of the tax avoidance schemes. The issue arose as to whether or not the firm had validly notified insurers of circumstances which they had became aware of during the policy period, as required by the notification clause of the PI policy. At first instance, the judge found that the third presentation in April 2002 was an effective notification of the problems with the implementation of the scheme but that earlier attempts were not.

On appeal, the court held that the first presentation was ineffective; the second (October 2001) and third presentations were effective to notify problems with tax products generally, and that despite the August letter not being sufficient notification, it satisfied the objective criteria for a notification of circumstances; and the fourth was ineffective because it was too late. Kidsons' appeal was therefore dismissed but it is the reasoning underlying these rulings that is significant:

1. a notification is to be interpreted objectively, i.e. by reference to what it would mean to a reasonable third party;
2. but the insured must be subjectively aware of circumstances that may give rise to a claim; and
3. the effect of the notification clause was to make it a condition precedent.

Following the *Kidsons'* decision and in the wake of the Madoff scandal, notification remains a contentious issue. Claims managers are being faced with so-called "laundry list" notifications[15] from institutional investors on the basis that they have a client with money entrusted in the Madoff scheme so there may be a potential claim. *Kidsons* sets out high level law but the claims managers in the front line are still faced with the practical issue of how to respond to such notifications. Insurers are entitled to reject notifications in the absence of sufficient objective justification for the view that there is a real prospect of a claim arising (depending, of course, on the precise wording in the policy). A decision has to be made in every case whether to accept the notification; reject the circumstances; reserve the position and/or send the insured back to investigate further.

Fraud

Question: "A large percentage of the global financial crisis related claims involve fraud. What is the legal definition of fraud/dishonesty in your jurisdiction? How is this likely to impact on policy coverage?"

In England, coverage problems almost always arise if fraud is alleged against the insured (except for fidelity policies which are designed to provide cover against that very risk). As a result, even where a claimant suspects fraud, it will often avoid specifically alleging it in the claim against the insured. As well as being hard to prove, the claimant knows that alleging fraud may result in insurers withdrawing coverage, so that the claimant is less likely to be able to recover damages and costs

Under English law, a statement is fraudulent if it is "made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false[16].

[15] Lengthy lists trying to cover every potential notifiable situation, rather than only those notifications that the insured genuinely believes it has an obligation to notify.
[16] Derry v Peek (1889) 14 App Cas 337

In *Twinsectra Ltd v Yardley*[17], the court considered whether the requirement for dishonesty in a claim for dishonest assistance in a breach of trust. The court concluded that not only must the person's acts be dishonest by the ordinary standards of honest people, but that he must have realised that by those standards his acts were dishonest. Further a professional, such as a solicitor, should not be branded dishonest if he did not know that what he was doing would be regarded as dishonest by ordinary people.

In the earlier case of *Arab Bank Plc v Zurich Insurance Co* [1999] *1 Lloyd's Rep 262* the court considered whether the knowledge of a fraudulent agent is to be imputed to a principal claiming under a professional indemnity policy. It was held that the policy should be composite and not joint. Each director needs to have a separate interest in the insurance, which would not be tainted by the fraud or misconduct of another director, for themselves or for the company.

The scope of the law of vicarious liability for deliberate and/or dishonest acts was extended by the court in *Dubai Aluminium Co. Ltd v Salaam & Ors* [2002] UKHL 48. It held that, although the allegedly dishonest conduct was not authorised by the partners, it was nevertheless done "in the ordinary course of business of the firm" in that the drafting of agreements for a proper purpose would be within the ordinary course of business of a firm of a solicitors.

HIH Casualty and General Insurance Limited & Ors v. Chase Manhattan Bank & Ors[18] concerned the construction of a provision in certain "time variable contingency (TVC)" policies, which sought to limit the scope of the duty of good faith and the right to damages for non-disclosure and/or misrepresentation. The issue considered by the court concerned the proper construction of certain elements of a" truth of statement" clause which was incorporated into the insurance policies.

"The court held that innocent or negligent non-disclosure by on of the defendants gave HIH no right to avoid. Since an agent to insure was subject to an independent duty of disclosure, the deliberate withholding from the insurer of information, which the agent knew or believed to be material to the risk, if done dishonestly or recklessly, could amount to fraudulent misrepresentation. If HIH established non-disclosure of that kind, there was nothing in the "truth of statement" clause that would deprive HIH of their ordinary right to avoid the policy and recover damages from the defendants. Whether on the facts of this case HIH could establish any deliberate and dishonest or

[17] [2002] 2 All ER 377
[18] [2003] UKHL 6

reckless non-disclosure by the defendants which did not amount to a misrepresentation was doubtful"[19].

The introduction of "recklessness" in HIH could provide insurers with ready ammunition when seeking to apply dishonesty exclusions. It seems that the test applied to "fraud" in HIH (including mere recklessness) is lower than that for "dishonesty" in Twinsectra.

We are all seeing a significant increase in the number of fraud claims and it is certainly worth making the point that it is not just frauds of the order of Madoff and his multi-national Ponzi scheme but many lower value frauds at national and local level, sometimes perpetrated by professionals and more often simply allowed through by a professional turning a blind eye. In England, for example, we are experiencing a glut of conveyancing and valuers' claims, many of which involve fraud to some degree.

Aggregation/one event

Question: "With multiple frauds to be considered, aggregation issues are likely to come to the fore. What types of aggregation clause are common in your jurisdiction and what is their legal effect"?

In any case where there multiple frauds or acts of negligence, it will be necessary to consider whether the individual claims/losses can be aggregated together. This question will depend on the wording of the aggregation clause, if any, and common formulations include, "*each and every loss, each and every risk*", "*any one event*", "*any one occurrence*" or "*each and every loss arising out of one event*". The clause must be construed in its own context, so that the meaning may not be the same in different policies. The following wordings have been interpreted in the case law.

Lloyds TSB General Insurance Holdings v Lloyds Bank [2003] UKHL 48 – arising from pensions mis-selling claims. No single claim exceeded £35,000 but the TSB companies paid out more than £125 million in total in compensation. Their bankers' composite insurance policy was subject to a deductible of £1 million "each and every claim", and the aggregation clause provided that a series of claims resulting from "*a single act or omission (or related series of acts or omissions)*" would count as one claim for the purposes of the deductible. The House of Lords held that for there to be a series of acts or omissions which resulted in a series of third party claims within the clause there had to be a common causal relationship. The claims might have arisen from the same underlying

[19] Lawtel

cause and were of a very similar nature, but these factors alone were not enough to bring them within the aggregation clause.

Axa Re v Field [1996] 1 Lloyds Rep 26 - Three underwriters wrote hundreds of risks negligently. A huge loss was suffered, and they claimed on their E&O insurance which had a limit of indemnity for each "originating cause". The reinsurance had a limit of indemnity for "any one event". Lord Mustill held that, "*an event is something which happens at a particular time, at a particular place, in a particular way. A cause is to my mind something altogether less constricted. It can be a continuing state of affairs, it can be the absence of something happening.*" The E&O policy aggregated the losses into three claims, because the three negligent underwriters were the "causes" of the loss. By contrast, the reinsurance treaty's "any one event" language was narrower and the losses could not be aggregated together. Axa Re v Field followed an earlier case, *Caudle v Sharp* [1995] LRLR 433. A Lloyds underwriter negligently wrote 32 run-off reinsurances and they all made a huge loss. He was successfully sued and his insurers in turn claimed the total loss from their reinsurance. The reinsurance had "one event" language, and the court held that there had been 32 "events". The underwriter's negligent ignorance itself could not be an "event", so the 32 occurrences of his negligence (writing the run-off covers) were the events.

Some reinsurances effectively delegate the decision of aggregation to the direct insurer; "*the reinsured to be the sole judge as to what constitutes "each and every loss...and their decision in this connection shall be binding on reinsurers...*". Provided that the direct insurers act in good faith in exercising this discretion, the decision cannot be challenged (Brown v GIO Insurance Ltd [1998] Lloyds Rep IR 201).

These cases demonstrate how disputes over aggregation can arise between insured and primary insurer, and between a primary insurer and its reinsurer. However, very similar disputes could arise between primary and excess insurers on the same risk, because insurers on different layers may have an interest in arguing for a different interpretation of any aggregation clause. The large financial crisis related cases are already causing significant aggregation problems and whether insured or (re)insurers, it is difficult at these early stages of the claim to know what line to take in order to achieve the most advantageous outcome when the fact patterns are not yet clear. But decisions do have to be made as regards the defence of the claim and the advancement of costs, which cannot simply be left in abeyance until all aggregation issues are settled.

Follow the settlements

Question: "Reinsurers will be concerned at whether they are obliged to 'follow the settlements' of their reinsureds. What is the effect of a 'follow the settlements' clause on the reinsured's right to recover? And is settlement binding on a reinsurer in the absence of any such clause?"

Many insurers may have to pay out large sums to settle the various claims arising out of the current financial crisis. Some insurers may even decide to make *ex gratia* payments for commercial and reputational reasons. Equally, some financial institutions are making ex gratia settlement for reputational reasons and seeking payment from insurers. The insurers are then likely to wish to claim on their reinsurance.

In England, "follow the settlements" is not the same as "follow the fortunes", although some commentators incorrectly use the phrases interchangeably. In England, "*there is no authority on the meaning of a follow the fortunes clause of this or any other kind, through the use of such clauses is commonplace in the business of reinsurance and retrocession...it is clear from the text book writers that there is or appears to be very considerable uncertainty (not to say confusion) as to what is intended to be meant and agreed by the use of the phrase...*" (*Hayter v Nelson* [1990] 2 Ll Rep 265).

If there is no follow the settlements clause the reinsured has the burden of proving every element of its claim on the reinsurance treaty. The settlement is only binding on the reinsurer if the reinsured proves that it was contractually liable to pay the underlying loss and that the payment falls within the terms of the reinsurance policy. Where there is a "follow the settlements" clause, the problems that arise were summed up in *Hill v Mercantile & General* [1996] LRLR 341. "*There are only two rules, both obvious. First, that the reinsurer cannot be held liable unless the loss falls within the cover of the policy reinsured and within the cover created by the reinsurance. Second, that the parties are free to agree on ways of proving whether these requirements are satisfied. Beyond this, all the problems come from the efforts of those in the market to strike a workable balance between conflicting practical demands and then to express the balance in words.*"

In the 19th Century there were attempts to formulate wordings to try to bind the reinsurer to pay any claim without further enquiry, such as by using the phrase "follow the settlements" alone. However, court decided (*Insurance Company of Africa v Scor* [1985] 1 Lloyds Rep 312) that there are two implied conditions: a) as a matter of fact the reinsured acted honestly and took all proper business-

like steps in making the settlement, b) as a matter of law the claim paid by the reinsured to the original insured falls within the risks covered by the policy of reinsurance.

More recently, policies have often contained follow the settlements clauses that set out more explicitly what the reinsured has to prove. For example, "*All loss settlement by the reassured including compromise settlement and the establishment of funds for the settlement of losses shall be binding upon the reinsurers, providing such settlements are within the terms and conditions of the original policies and/or contract...and within the terms of this agreement*" *(Hill v Mercantile).* This clause requires the reinsured to provide that the original payment was within the terms and conditions of the original policy and that it is within the terms of the reinsurance treaty. The reinsured takes all the burden of proving those two matters, but once that is done the reinsurers are bound by the payment without any further enquiry.

As a result, unless the wording clearly states that the reinsurer is obliged to follow ex gratia payments, a reinsured would be unlikely to be able to recover for ex gratia payments it made to the original insured, because it was never under a legal liability to make that payment.

The question of what happens if the inwards policy is governed by a different law and jurisdiction from the reinsurance policy has recently been considered by the House of Lords in *Wasa v Lexington* [2009] UKHL 40. Lexington entered into a three-year insurance without a specified choice of law. Wasa's reinsurance of that risk was subject to English law. Lexington was held liable to indemnify for the cost of cleaning up environmental damage caused over a period of more than 40 years. The 'follow the settlements' dispute was whether Wasa had to indemnify Lexington against all the losses it had suffered, despite the three-year period clause.

The court reiterated that there will be a strong presumption that liability under a proportional facultative reinsurance is co-extensive with the underlying insurance. However, where the insurance and reinsurance contracts are governed by different laws, it remains a question of construction under each contract under its applicable laws as to what risk was assumed. There are no special conflict of laws rules which govern the consequences of inconsistency (if any). In 1977 when the contracts were concluded, there was no identifiable system of law applicable to the underlying insurance, and this was a crucial factor in interpreting the reinsurance policy. In this case the reinsurance period clause was to be given its English law meaning, so that Wasa was only liable for three years' worth of clean up costs, not 40 as Lexington was.

By contrast, in *Vesta v Butcher* [1989] AC 852 (cited in *Wasa v Lexington*) a clause in the English law reinsurance was held to have the same significance as it had in the underlying Norwegian policy, because the policies were intended to be "back to back" and the parties could identify that Norwegian law applied at the time the English reinsurance was entered into.

Question: "Even as coverage issues are being worked out, insurers and the insured will have the same interest (at least until such time as coverage is withdrawn!) in ensuring that the third party claim against the insured is properly defended. What defences against third party claims may be relevant to claims arising from the financial crisis? For example, how will the questions of causation, contributory negligence, the scope of the duty of care, loss of a chance and quantum of damages be dealt with?"

The scope of the duty of care

Whether or not a duty of care exists on given facts is a question of law and establishing duty is crucial to proving negligence. If there is a contract between a professional person and his client, it is generally an implied term that the professional person will exercise reasonable skill and care in fulfilling its contractual duties. The standard of reasonable skill and care is the standard that would be met by an ordinarily competent professional in that field, in the circumstances as they existed at the time. Failure to fulfil this duty can give rise to a potential liability in tort, but the "ordinarily competent professional" standard of care means that not every error of judgment is necessarily a breach of duty. Furthermore, the standard of the duty of care should not be judged in hindsight.

The duty to prevent economic loss was considered in the case of *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 where the claimants suffered financial losses as a result of acting in reliance on favourable references given by bankers. The court held that the bankers owed no duty to the claimants only because the references had been given "without responsibility". Thus the court recognised, in principle, "that a person making a statement could owe a duty to the recipient (with whom he has no contract) to take reasonable care and that, in the event of breach, he could be liable for economic losses suffered by the recipient"[20].

In *South Australia Asset Management Corp v York Montague* [1997] AC 191 ("*SAAMCO*") the court held that the scope of liability under the Hedley Byrne principle and the type of damage which

[20] Jackson & Powell on Professional Liability

falls within that scope is determined by the purpose of the duty broken. As a result, two rules emerge from *SAAMCO*:

(1) Whether the duty owed is tortious or an implied contractual or statutory duty, it is necessary to ask which kind of damage falls within the scope of the duty broken (general scope rule);

(2) Where the breach of duty, either in contract or tort, is one of a specific type (i.e. negligent failure to provide accurate information to the claimant) then the defendant will be liable only for damage which would not have occurred if the information which he or she has provided had been accurate (the information scope rule).

The general scope rule is relevant to all cases of breach of tortious duties or implied contractual duties, or statutory duties, whereas the information scope rule applies to many or most professional negligence cases outside the realm of clinical negligence.

Scope of duty and the global financial crisis

In the wake of the Madoff scandal, one of the central questions is whether a reasonably skilled investment advisor should have realized that the Madoff scheme was a fake. Madoff was, of course, a former Nasdaq Chairman at the very heart of the financial establishment so many otherwise savvy investors, who one might think would have known better, took him on trust. He even had the US regulators fooled; the 2006 SEC investigation launched after allegations had been made failed to find evidence of fraud.

Courts will be scrutinizing the level of due diligence carried out. How diligently did parent companies oversee the activities of hedge funds and what duties did they have in this respect? Duties will be assessed in the light of all the circumstances including the level of sophistication of the investor, which varies widely between the institutional investors and the private individuals. Where the due diligence of intermediaries is under the microscope, the issue may turn in any case on the relationship between the intermediary and the feeder fund. There will be many other questions along the way such as the proper diversification of portfolios and selection, the role of regulators, fee disclosures, reliance on third parties and the concentration of investment functions in one place.

Causation

The insured is only liable for losses proximately caused by the breach of duty. A proximate cause is defined as the dominant, effective or operative cause of the loss.

There are two types of causation in the law, factual causation and proximate (or legal) cause. Factual causation is determined by the "but-for" test: but for the action, the result would not have happened. Consideration should be given to whether an intervening act on the part of the claimant or a third party can be shown to have broken the "chain of causation". Often, in order to ascertain whether an action of an insured caused the result in fact, it is necessary to consider how the claimant hypothetically would have acted. For example, if it is alleged that the insured should have given different advice to the claimant, the claimant will have to show what he would have done if he had been given that different advice. When dealing with what the claimant would have done, the court will usually assume that he would have acted in the way most advantageous to himself.

The claimant will also have to show that the insured's acts caused the loss in law – that the acts were the proximate or effective cause of the loss. For example, if the insured is a financial adviser, its acts may have in fact caused the claimant to lose his life savings and therefore suffer a nervous breakdown. The insured is likely to be liable for the lost life savings, but it is much less likely that the insured will be liable for the nervous breakdown, because it is not usually the responsibility of a financial adviser to protect the client's mental health. In English law, the nervous breakdown would probably be considered to be too 'remote' from the original breach of duty to be actionable.

Loss of a chance

The law on loss of a chance is still a somewhat controversial and developing area. It is controversial because it necessarily involves asking the court to apply some hindsight when deciding a claim.

The loss of a chance doctrine applies when a claimant can properly describe his damage as the loss of a chance or the loss of an opportunity. For example, there may be cases where the claimant would allege that by investing in the investment recommended by his adviser, he lost the opportunity to invest in a non-fraudulent and profitable scheme.

The claimant has to prove (on the balance of probabilities) what he would have done if the professional had advised properly *Allied Maples*[21]. The claimant will almost certainly allege that he would not have invested in the scheme that proved to be fraudulent. He may not be able to show what specific alternative investment he would have made, but could allege that he would have invested in one or more of the other investments open to him at the time. Since the value of investments can go down as well as up, the value of the lost chance depends on the hypothetical chance that the claimant would have received a return on his investment if he had invested in one or more of the alternatives available at the time. The claimant has to show that there was a real or

[21] Allied Maples v. Simmons and Simmons [1995] 1 WLR 1602

substantial (not a speculative) prospect of making a profit with the alternative investments. If the prospects of success are not real or substantial, the court will ascribe no value to them.

If there is more than a speculative chance that a profit would have been made, the court will put a value on the lost chance to make a profit. The court will not simply award the claimant the amount of the profit allegedly lost. The court will use the amount of the profit allegedly lost as a starting point, and apply a discount by reference to the percentage chance that the claimant could actually have made that profit. Therefore if the court decides that the claimant had a 40% chance of making a profit of £100,000 out of the alternative investments, damages of £40,000 will be awarded. The highest discount reported is 80%.

However, in the sort of claims that may arise out of the financial crisis, it is likely that many of the alternative investments that would have been open to the claimant at the time will now have matured. The claimant will be able to ascertain which were in fact profitable. It appears very possible that Claimants will attempt to allege that they would, as a matter of fact, have invested in specific schemes which, with the benefit of hindsight, were profitable.

Quantum of Damage

In England, damages for breach of contract are designed to compensate the claimant for their actual loss as a result of the defendant's breach rather than to punish the defendant. A court generally awards a sum that would restore the claimant to the economic position they expected from performance of the contract. If no loss has been occasioned by the claimant, only nominal damages will be awarded.

When it is either not possible or desirable to award damages measured in that way, a court may award money damages designed to restore the claimant to the economic position they occupied at the time the contract was entered.

A claimant will not necessarily recover every loss which flows from the breach by the defendant. In order to recover any damages, the losses suffered by the claimant must be caused by the defendant, and not be too remote. Further, the claimant has a duty to mitigate his losses.

Damages in tort are generally awarded to place the claimant in the position he/she would have been had the tort not taken place and are quantified under two headings: general damages and special damages.

In a claim for professional negligence against solicitors, the measure of damages will be assessed by the loss suffered by the client due to the negligent act or omission by the solicitor giving rise to the loss. The loss must be reasonably foreseeable and not too remote. Financial losses are usually simple to quantify but in complex cases, the instructing solicitor will usually employ a specialist expert actuary or accountant to assist with the quantification of the loss.

The fallout from the Madoff fraud highlights the difficulties courts may face in quantifying damages. It is inevitable that detailed expert evidence on the performance of the investment and the performance of alternative funds will be needed. Questions will also be raised regarding how investors would have invested their money if they had not invested in the Madoff schemes.

Measuring damages in such cases will be further complicated because some investors made a profit from their investments. Those investors who redeemed early are now facing claw-back claims under the USA bankruptcy legislation for preferential and fraudulent transfers. It will also be important to consider the degree of knowledge the investor had before withdrawing funds.

Contribution and contributory negligence

Question: Contribution between professionals is likely to be a significant feature of litigation arising out of the financial crisis. If the claimant had employed a solicitor, an accountant and a financial adviser, and they all breached their duty to the claimant so that the were all partly responsible for the loss, the claimant is entitled to claim 100% of his damages from only one of the professionals. He does not have to sue all three as co-defendants to recover his full loss. The professional that is sued is then likely to want to bring a contribution claim against the other two, to recover a contribution to reflect their part in causing the overall loss. Is the position the same in your jurisdiction?

Question: If the claimant himself failed to take reasonable steps to protect his own position, then the professional or professionals may try to argue that he was contributorily negligent, and the total damages should be reduced to reflect the fact that he partly caused the loss as well. Is the position the same in your jurisdiction?

Contribution is only available between defendants who are liable to the claimant in respect of the same damage. Section 1(1) of the Civil Liability (Contribution) Act 1978 ("the Act") provides that: "*any person liable in respect of damage suffered by another person may recover contribution from any other person liable in respect of the same damage, whether jointly with him or otherwise*".

According to Section 2(2) "*the amount of the contribution recoverable by any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage in question.*"

It is important to note the influence of potentially different measures of loss. For instance, if a valuer negligently estimates the market value of a property, a lender may lend on the basis of this negligent valuation. The claimant's (i.e. the lender's) claim is limited to the difference between this negligent valuation over the true market value[22].But in a case where he sues the valuer and also joins a lawyer as a co-defendant, the measure of loss as against the lawyer may differ from the measure of loss as against the valuer. The negligence of the lawyer may have caused the lender to enter into a transaction which was fatally flawed (e.g. in a case which ought to have been discovered to be a dubious sub-sale). In such a scenario, the solicitor is liable for all of the reasonably foreseeable losses flown from the claimant's entering into it. This is different from the valuer's measure of loss, as described above.

If claimant himself is contributorily negligent, the court deals with the situation by firstly, assessing the degree of contributory negligence; and secondly, by apportioning liability between the co-defendants in relation to the damages recoverable net of contributory negligence. Therefore, if the claimant is 50% negligent and the court takes the view the defendants were equally responsible to the claimant, the court: (1) removes the 50% contributory negligence; and (2) divides the remaining 50% equally between the defendants so the defendants each pay 25% of the total claim.

Important considerations when assessing contributory negligence are:

1 Impact – whose mistake had the greater causative effect?
2 Involvement – who was the most concerned with the transaction or part of the transaction which went wrong and had the greater opportunity to avoid or correct the error?
3 Instructions – where a second defendant is brought into the matter by the first defendant, what was second defendant instructed to do and what was he told about the facts?
4 Expertise – who had (or ought to have had) the greater knowledge of the matters in question?

Final Thoughts

We are looking forward to taking part in the AIDA the Panel discussion on 23 October. As well as considering the various legal questions that have been raised, we will also be addressing some of the practical issues that are being thrown up in the current financial crisis. What type of claims are

[22] South Australia Asset Management Corp v York Montague [1997] AC 191

being raised; by whom and against whom? How many claims are there? What policies are responding and how are the policy exclusions operating? Then looking to the future - How are underwriters approaching disclosure post Madoff and what questions should they be asking?

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AIDA Europe Conference, Zurich: 22/23 October 2009

ROBINOWIS

Madoff and Stanford Notifications to the Lloyd's Market

Presentation by Robin Simon LLP

23 October 2009

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Madoff and Stanford Notifications to the Lloyd's Market

Stanford Notifications to the Lloyd's Market

As at 31 May 2009

Class of Business		Open	Closed
Directors and Officers		2	-
Professional Indemnity		6	3
Political Risks		1	-
Grand Total		***9***	***3***

Stanford Notifications to the Lloyd's Market

As at 30 September 2009

Class of Business		Open	Closed
Directors and Officers		2	-
Bankers' Blanket Bond		2	-
Errors & Omissions - Accountants		3	
Errors & Omissions - Misc		1	-
Professional Indemnity		11	6
Political Risks		1	-
Grand Total		***20***	***6***

Madoff Notifications to the Lloyd's Market

As at 31 May 2009

Class of Business	Open	Closed
Bankers' Blanket Bond	17	5
Directors & Officers	29	2
Errors and Omissions - Legal	18	0
Errors and Omissions - Accountants	6	-
Errors and Omissions - Misc Professional	5	-
Professional Indemnity	125	16
Excess of Loss	31	-
Grand Total	***231***	***23***

Madoff Notifications to the Lloyd's Market

As at 30 September 2009

Class of Business	Open	Closed
Bankers' Blanket Bond	27	5
Directors & Officers	39	2
Errors and Omissions - Legal	25	0
Errors and Omissions - Accountants	14	-
Errors and Omissions - Misc Professional	10	-
Professional Indemnity	172	26
Excess of Loss	34	1
Grand Total	***321***	***34***

Analysis of the Madoff Notifications

Direct Book – 66 individual Insured's noticed claims to the Lloyd's Market

Jurisdictions affected:

England & Wales
Switzerland
Offshore domiciles
U.S
Rest of Europe
South America
South Africa
The Middle East

Analysis of the Madoff Notifications

Direct Book – 91 individual Insured's noticed claims to the Lloyd's Market

Jurisdictions affected:

England & Wales
Offshore domiciles
Switzerland
U.S
Rest of Europe
The Middle East
South America
South Africa

Analysis of the Madoff Notifications Cont.d

The matters currently noticed to the Lloyd's Market can be broken down as follows:

28% - claims presented by third parties

20% - in litigation

52% - notice of a circumstance only

Analysis of the Madoff Notifications Cont.d

The matters currently noticed to the Lloyd's Market can be broken down as follows:

23% - claims presented by third parties

18% - in litigation

59% - notice of a circumstance only

ROBINOWIS

With thanks to Xchanging Claims Services Ltd

Panel Discussion – Written Paper

by

Prof. Dr. Ioannis Rokas – ***IKRP*** *(Athens) Law Firm*

The topic "*Insurance, Reinsurance and the Financial Crisis*" gives rise to the following comments.

1. The core issues

The current financial crisis affects the insurance industry and practice variously. Thus, it effectively (de facto) alters the **implementation of insurance supervision and contract rules. It makes the industry business practices** change in order to adapt to the **new risks** deriving from the crisis. Even **supervisor rules** are sporadically launched to tackle the respective turmoil in the insurance sector. Tangible examples of the crisis effect constitute the movement towards a **stricter brokers' duty of care** to the insureds, the distinct nature of risk undertaken by the insurers (e.g. the increase in **PPI, D & O, E & O,** the **hesitation to accept credit insurance**), the **increasing threat of fraud and moral hazard** together with its effect on disclosure/ due diligence mechanisms, a considerable **rise in insurance claims**. The rationale behind all these is the financial crisis.

2. Liability and solvency issues

a. Brokers' duty of care

There is a tendency to attribute greater responsibilities to insurance intermediaries by acknowledging a general catch-all "duty of care" of the insurance broker. A breach of this duty could justify the client's claim of damages against the broker. An example from my country: a manufacturer of meat products, who was CAR insured, raised a claim against the broker for the fire damages of his plant, requesting the whole insurance money, because the broker didn't renew the insurance contract that was terminated eight days before the materialisation of the risk. The manufacturer alleged that the broker should have renewed the contract, although that was a non-renewable one-year CAR policy, the construction of the plant was almost totally finished at the time of the fire and the broker was not specifically charged with the obligation of the renewal. To be noted is that the manufacturer had never given a blank order, or any other order whatsoever, to the broker to take care of his insurance needs. Notwithstanding this, according to local business usages, the mandate to an insurance broker does not tacitly include the taking care of such needs. Irrespective of what the Court might judge, such claims were not known in the near past and we can assume that they result from the financial crisis. Thus, the insured raised a claim that in all probability he wouldn't have raised in the past, but we cannot exclude the possibility that the Courts might find this behaviour to constitute a breach of duty of care nowadays as opposed to the past.

Further claims were recently raised against brokers who had placed risks with insurance undertakings belonging to a large local insurance conglomerate, the license of which was withdrawn by the Supervisor a month ago. Prior to this, during the last year. the Supervisor imposed sanctions on the same insurance undertaking, and measures were taken for its financial recovery. The claimants alleged that the brokers should not have placed risks

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with that specific undertaking (though still working legally at that time) at least as per insurance classes whereby no Guarantee Fund existed (that would secure the insureds in case of insolvency). For the past 25 years many insurers' licenses have been withdrawn, but no claim against brokers who placed risk with such insurers, has been ever reported.

The above mapping of the local situation regarding brokers' liability shows that crisis can also help: Damaged persons and entities seeking for indemnity more often than in the past, come up with new bases for legal actions that have not been activated before. At the same time, the awareness of the insureds is considerably enhanced, the quality standards of the brokers' services are more demanding and the brokers' E & O coverage increases. As a result, the broker' role weighs more.

b. Solvency issues

The financial crisis can further affect the solvency of insurance companies (severely). This is effected both indirectly and directly. The indirect influence refers to the dilution of (re)insurers' investments particularly those ones in stocks, bonds and other securities. As mentioned, the Supervisor recently withdrew the licence of a big life insurer and other four insurance undertakings due to a considerable deficit in the insurance investments and solvency margin. No doubt, one of the (indirect) reasons for such deficit is the financial crisis.

The reaction of Greek insurance industry to the above five withdrawals is yet to be seen. So far, high controversy has been noted. On the one hand, the insurers (competitors) welcome the decision, since this will clear the market from players who used to adopt questionable practices in order to attract new clients and safeguard their sustainability. On the other hand, the insureds of insurance classes for which there is no Guarantee (Auxiliary) Fund in case of insurers' insolvency, could be affected at most through such decision. In August 2009 an «express», albeit obscure, law was adopted. According to this, in case of a license withdrawal, the life insurance portfolio of an insurance company is not liquidated; instead, a receiver is appointed to manage the portfolio further and transfer it to other insurers unless he cannot find one. In both cases, the State guarantees by the above law the deficit to the insured or to the transferee insurer (depending on the case). The latter possibility raises State aid law issues. MTPL victims are secure enough because a Guarantee (Auxiliary) Fund exists in this regard, but this is not the case with other classes of insurance.

The practical implementation of the above rule is not quite clear yet. An example: a big hospital based on the common practice in the country has concluded a frame contract with the above mentioned life insurance company, the licence of which has been withdrawn. According to this contract, the hospital provides services to the insurer and after the lapse of some weeks it can claim its invoices. A question that remains open according to local law is whether this claim enjoys the privilege which the insured has on the insurance money.

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c. D&O, escalation of claims, fraud, BBB reinsurance issues.

The financial crisis is responsible for the escalation of insureds' claims against the insurers including the phenomenon of fraudulent claims. This tendency occurs upon traditional bases of law (by means of interpretation) and is not accompanied by a respective legal reform. In this context, the example of D&O insurances should be illustrated. More and more claims are raised against the directors and officers of major Greek corporations (mainly against those classified as "public welfare enterprises"), which subsequently trigger claims under the D&O insurance. We have recently tackled such a case, whereby a private Telecommunication Firm (TF) sued the General Provider (GP) of telecommunication services in Greece and its CEO, alleging a breach of law because the second had stopped offering connection-network services to the first. The new element of this case was that TF argued that GP's CEO was personally liable against TF for knowingly initiating actions (or at least having knowingly participating in the decision-making process of taking measures) such as the disruption of network services against it, which made the company sustain loss (tort law legal basis). TF's claim against the CEO has to date caused a high portion of the defence costs to be covered through the D&O insurance.

Such cases that allege personal liability of Directors and Officers and activate the D&O coverage would neither have emerged nor would have had an increasing occurrence, but for the financial crisis. It's the crisis which factually "widens up" the interpretation of the current law and makes such claims feasible. In view of the imminent frequency of such phenomena, insurers and reinsurers of Greek risks see themselves forced to draft new, highly-sophisticated D&O insurance contracts (with specific focus on large enterprises of public welfare business activities) in order to avoid the increased claims under the D&O insurance. Insurers should react towards a more careful risk assessment, which will, however, increase expenses and premiums, but also the D&O demand.

There is a tendency in the last year for the reinsurers to be more involved in claims handling and in related investigations. More so than in the past, reinsurers examine whether the losses are covered under policy terms, if the direct insured has somehow contributed to the occurrence of the insured event, whether the insured has complied with its pre-contractual and post-contractual duties of disclosure. In a very recent case, a Bank covered under BBP, discovered the fraudulent behavior of one of its directors and promptly notified its fronting first insurer. The reinsurer conducted the investigation of the claim based on a claims' control clause. The investigation found out an inaccuracy during the pre-contractual phase: the questionnaire answered by the Bank contained a question about the conduct of regular internal audit in the Bank's branches and the Bank answered that such audit takes place every 1 ½ years. As it was proven, no internal audit had ever been conducted at the branch where the fraud took place, but only external ones had. Since internal audit was viewed as material for the prevention of fraud, the lack of it constituted a negligent violation on behalf of the Bank. However, the time elapsed since the beginning of the coverage, which included at first the obligation of an annually internal audit, was only six months. We could say that such exhaustive investigation by the reinsurer is related to the financial crisis.

Panel Discussion – Written Paper
by
Prof. Dr. Ioannis Rokas – ***IKRP*** *(Athens) Law Firm*

d. Regulatory and business response

The dilution of insurance investment due to the crisis has caused great actuary deficits to the insurance undertakings in Greece. In this content, the Supervisor, by deviation of the law, extended the deadline towards the companies so that they would be able to cure their actuary deficits. Further, by an "express" law -in August- it was provided that in case of withdrawal of a life insurance license by the Supervisor due to actuarial deficits, the State guarantees the deficit. In some US States relief measures have been adopted in favour of life insurers in order to help them alleviate their financial strains. Specifically, it is reported that a great financial State subsidy is provided. However, on the grounds of contract level, Regulators cannot do much as regards to life insurers who have given guaranteed interest rates to their customers, while the interest rates are at their historical lowest level.

The financial institutions have contributed significantly to the increased demand in PPI coverage from retail clients. In fact, more and more financial institutions tend to require a PPI policy from the applicant as a condition for granting loans in the retail market. As known, PPI products cover the risk that a person would be unable to service their debt towards the bank because of accident, sickness or unemployment that has occurred in the meantime. But PPI booming, results in the known competition distortions, which caused the concern of the UK Competition Commission. Further, the FSA published a Consultation Paper ("The assessment and redress of payment protection insurance complaints") and the period for consultation responses closes on 30 October 2009. From that day on, the new measures will reopen and reassess against guidance some 185,000 previously rejected PPI complaints. PPI products are just one of the aspects that have been subject to regulatory changes in the insurance industry.

3. Closing Remarks

The above analysis has described the crisis' effect on the solvency/ financial robustness of the insurance companies, the insureds' tendency to raise exaggerated or dishonest/ fraudulent claims, the PPI products.The interaction between financial crisis and insurance is likely to lead to a tight and thorough risk assessment on behalf of the insurers, in order to avoid incidents that could harm their solvency. At this stage, it should be remarked that the interaction between financial crisis and insurance could prove beneficial to the insurance industry in the long-run.

LS LevitanSharon & Co
Advocates & Notaries

World Wide Financial Crisis
The Israeli Perspective

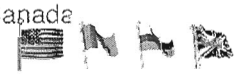
Peggy Sharon, Adv.
Levitan, Sharon & Co.

AIDA Europe Zurich Conference, October 2009

Worldwide Real Estate Crisis impacting Israeli Companies

Israeli companies invested in:

- Former Soviet Union countries such as Georgia and Kazakhstan.
- Eastern European countries – mainly Romania and Bulgaria
- The West - the United Kingdom, mainly non-residential properties in London, the United Stated and Canada



The financing:

- Debentures raised on the Israeli capital market
- Loans from Israeli banks

The main investors:

- Provident funds, pension funds of the Israeli public

The Risk:

- Many companies have announced inability to pay the annual payments of the debentures (e.g. Africa Israel).

The outcome:

- Immediate reduction in rating of the companies.

Final result:

- Active loans/debentures will be called.

4

Potential Plaintiffs:

- Provident funds, pension funds and the public in general

The potential defendants:

- Directors & Officers of the companies
- Prospectus underwriters
- Trust companies (held mainly by the top five C.P.A. firms)

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Potential Claims due to the Financial Crisis - Insurance Implications

- Relevant policies: B.B.B. and D&O
- Class actions against D&O's, securities underwriters, trustees (mainly accounting firms), cause: underlying transactions were not properly checked.
- Class Actions due to decrease of shares values as a result of bad investments.

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Class Action Act 2006 - Consequences

- Previously: class action allowed only under specific laws.
- Changes: Class Action Suits Law 2006 sets the procedure for filing as Class Action suit for any cause of action (not limited to a specific law).
- The outcome: thousands of consumer class actions. Fewer claims based on the Securities Law and the Companies Law.

The main changes which influence the amount of settlements:

1. Settlements require the Attorney General's agreement and are subject to the court's approval.
2. A settlement can be in favor of a public cause rather than for the indemnity of the specific class members.

Level of the Risk

Class actions

Average settlement amount:

Before class action approval: $150,000-$500,000

After approval: $500,000-$2.5 million

Effects of the Crisis on the Insurance Market

- Certain D&O Insurers have ceased to insure banks
- Premium increase by 50%
- Increase of deductibles
- Banks seek an increase of limits of liability

Effects (Contd)

- **Claim by Receiver/Liquidator**
- Short proceeding initiated in the insolvency court against D&Os after the company's collapse.
- Clal v. Dr. S. Ness, the D&O insurer may be adjoined to the proceedings, as the coverage dispute is relevant to the litigation.

Legal Expenses in Israel

Example: Securities Class action Suits

- From $150,000 to $300,000 until a decision is given whether to approve the claim as a class action
- Appeal on the District Court's decision, up to $100,000
- From $250,000 to $400,000 if a full trial is held

Policy Limits - the Commerce Bank

Who is entitled to insurance benefits?
- The **directors** to cover legal expenses or
- The **liquidator** to compensate of the loss due to the collapse of the Bank.

•Total Loss: over $60 million.
•Settlement with the D&O Insurers: $3 million.

Full policy limits were paid to the liquidator.
Legal costs above policy limits - $400,000 were paid to the directors. The balance of legal costs – borne by the directors.

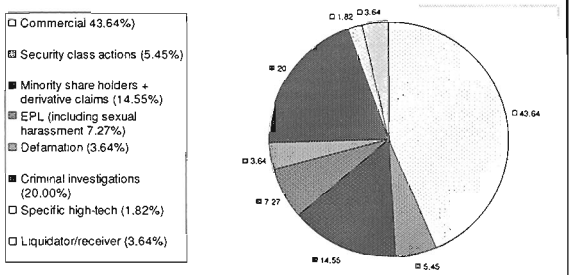
The Commerce Bank (Cont'd)

Additional developments:

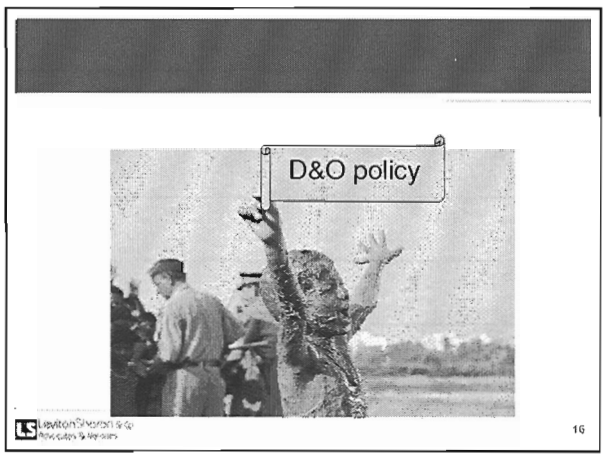
The Attorney General started indictment proceedings against the D&O's of the bank.

The first time in Israel that directors who were not part of the fraud, but mainly failed to supervise, face criminal charges.

Overview of the Claims Environment



* Number of claims (not amount) not including claims in the US against Israeli companies


D&O policy
16

Legal issues related to insurance claims in Russia

22-10-2009
Zurich

Insurable event

— When?
  - Damage caused
  - Peril arose
— Three elements:
  - Peril
  - Damage
  - Causal link between peril and damage

Failure to notify

- Does not automatically release from liability
- Releases if it is proved that:
  - Insurer has prior knowledge; or
  - Lack of information could NOT affect its obligation to pay indemnity
- Burden of proof:
  - General rule: burden of proof on interested party
  - Paragraph 2 of Article 961:
    - prior knowledge – onus on insured;
    - insured should also prove that lack of information could not affect insurer's obligation to pay indemnity
  - In practice:
    - Insurer must prove that lack of notice negatively affected its obligation to pay indemnity

Deliberate misrepresentation

- Not a ground for refusal to pay indemnity, but a ground for claiming invalidity of insurance contract
  - Misrepresentation must be proved to be deliberate
- Burden of proof on Insurer
- Valuation of risk
- Silence
  - Narrow interpretation of paragraph 1 of Art 944 – explicitly named circumstances (questions) only
  - No answer – contract still valid
- Proposal – important part of insurance contract

Risk increase

— Not a ground for refusal to pay indemnity, but a ground for termination of insurance contract
  - Substantial changes, material influence
  - Narrow interpretation of paragraph 1 of Article 959 – explicitly named changes only
  - Causal link with insurable event

Average

— International practice
  - Applies by default
  - Pro rata sum insured to insurance value as of the time of loss

— Civil Code
  - Does not apply by default
  - Pro rata sum insured to insurance value at inception
  - No evaluation prior to inception – no right to challenge insurance value

Reinsurance

- Follow the fortunes
  - Reinsurer is entitled to challenge both the loss and the quantum under the original policy including when it agreed to follow the fortunes of the original insurer
- Layers or multiple reinsurers
  - A court decision on a dispute with one reinsurer has no prejudice over a dispute with another reinsurer

Thank you!

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