MARKET NEWS, DATA AND INSIGHT ALL DAY, EVERY DAY

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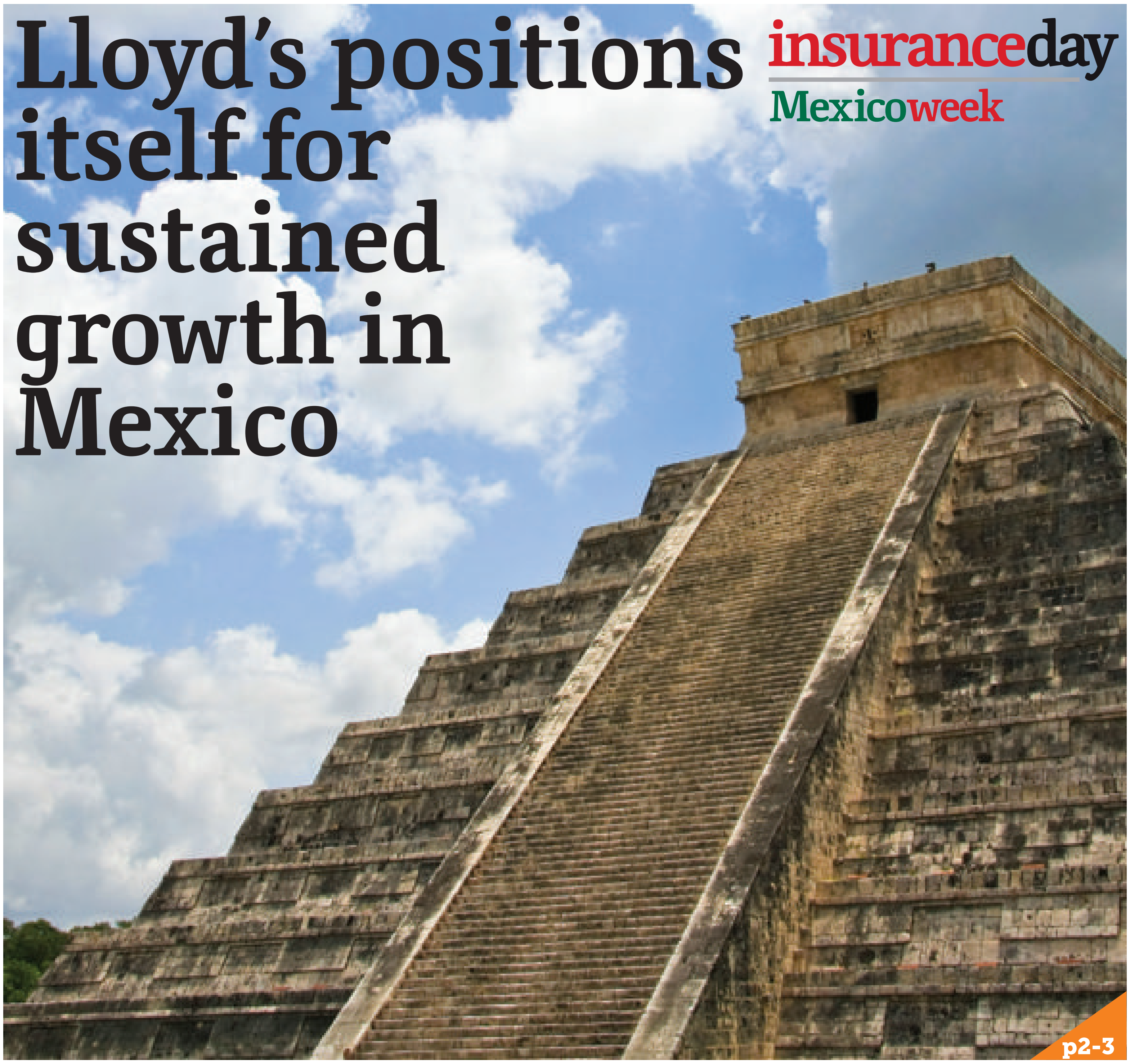
Lloyd's positions itself for sustained growth in Mexico



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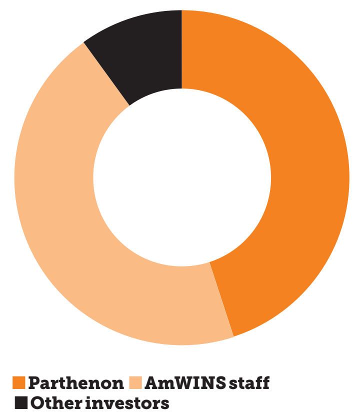

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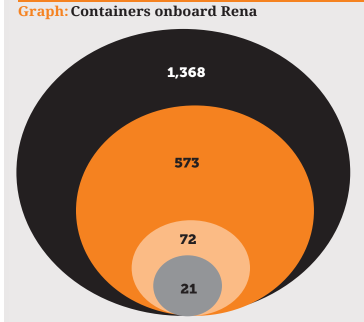

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MEXICO INSIGHT

Lloyd's positions itself development in Mexico

Scott Vincent
Deputy editor

Mexico represents a substantial international market for Lloyd's – the most recent full-year figures for the market indicate an annual premium of $329m for Mexican risks written at One Lime Street.

Much of this is property business, with a large number of government accounts, many of which would struggle to be placed locally owing to their complexity.

Gabriel Anguiano, who manages Lloyd's Mexico desk from a base in London, sees opportunities to grow further in Mexico with Lloyd's well positioned to capitalise on the need for a sophisticated market to place complex risks.

"It would be unfair to describe Lloyd's presence in Mexico as simply a market for distressed business," he told *Insurance Day*.

"There is a lot more distressed business in Brazil, for example. It is catastrophe business, and Lloyd's is an important catastrophe market. Some of those risks can be difficult to place locally as there is a gap in information."

He cited the reinsurance protection for Mexico's Instituto Nacional de Antropología e Historia (INAH) – the country's National Institute of Anthropology and History – as one example.

"INAH has a policy covering every single monument and ruin in Mexico, which is reinsured in part through Lloyd's.

"No-one knows the exact value of all these assets but everything is covered. To be able to write that business without the value of the assets, you need a very sophisticated market. Lloyd's is able to write that property – I wouldn't call that distressed business, I'd call it a complex business.

$415m
Assets of Pemex, the state-owned petroleum company

"The account is tendered – Inbursa, which is owned by Carlos Slim's conglomerate, works with brokers to buy reinsurance, and a big chunk ends up in the international market, with Lloyd's and London having an important element," he added.

Another example of Lloyd's presence in Mexico is in providing reinsurance for Pemex, the state-owned petroleum company with assets of more than $415bn.

"Some people consider it to be the largest risk in the world. Pemex has a captive in Switzerland. That

Local liability market growth targeted

Lloyd's is already an established market for liability cover for Mexican multinationals with US exposure, and Gabriel Anguiano expressed a desire for this to expand to include greater take-up of local liability covers, *writes Scott Vincent*.

"Mexican multinationals with US exposure will typically buy directors' and officers' cover, and will come to Lloyd's. But there are very limited offerings for local liability business.

"We would like to see Lloyd's grow in the non-catastrophe, non-property areas.

"These include Mexican local liability risks, financial lines and term life, personal accident and health," he said.

One area where he sees potential further growth is for public officials cover.

"Lloyd's is already a market for this," Anguiano explained.

"It is cover for when a public official is sued and becomes liable.

"The government has passed on a great deal of liability to individuals in a bid to overcome corruption. Individuals are personally liable so they buy protection.

"This is an established market led at Lloyd's – we have a lot of expertise in that area," he added.

Agriculture: Mennonites plan new reinsurer

Lloyd's has a small but growing appetite for agriculture risks, and one potential opportunity emerging is through a new reinsurer being founded in Mexico by the country's Mennonite community, *writes Scott Vincent*.

"The Mennonites have around 90,000 hectares of irrigation land. The mutuals in Mexico don't hold capital, so the regulator forces them to reinsure most of it," Anguiano explained. "Since the Mennonites began buying reinsurance they have paid $50m in premiums but have never had a claim. So they have decided to set up their own reinsurer."

Representatives from the planned reinsurer have been at Lloyd's for discussions this week.

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Insurance Day is the world's only daily newspaper for the international insurance and reinsurance and risk industries. Its primary focus is on the London market and what affects it, concentrating on the key areas of catastrophe, property and marine, aviation and transportation. It is available in print, PDF, mobile and online versions and is read by more than 10,000 people in more than 70 countries worldwide.

First published in 1995, *Insurance Day* has become the favourite publication for the London market, which relies on its mix of news, analysis and data to keep in touch with this fast-moving and vitally important sector. Its experienced and highly skilled insurance writers are well known and respected in the market and their insight is both compelling and valuable.

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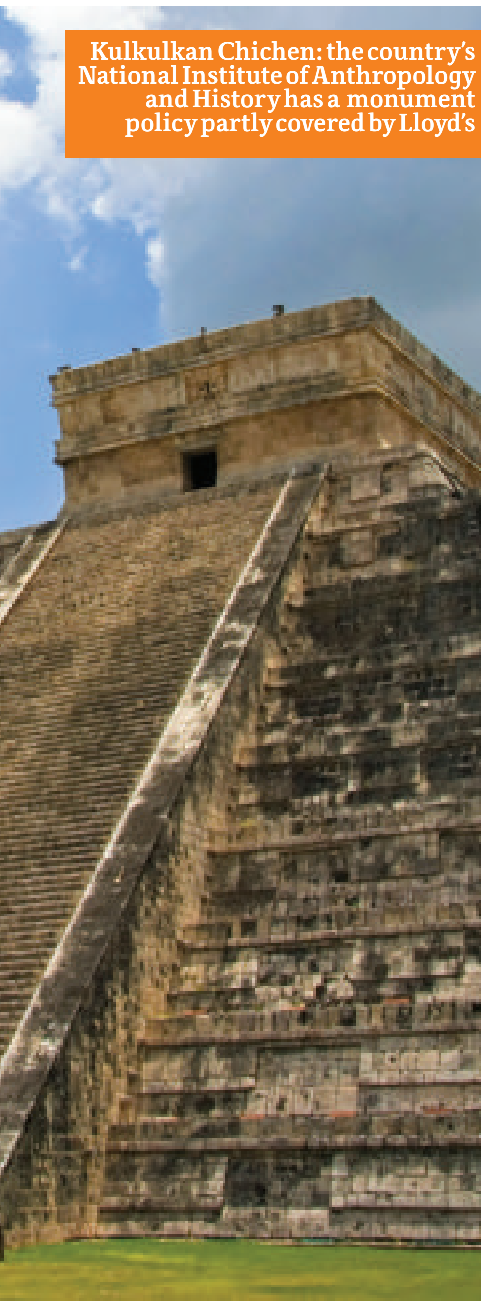

Kulkulkan Chichen: the country's National Institute of Anthropology and History has a monument policy partly covered by Lloyd's

captive buys reinsurance in the London market, including through Lloyd's. That shows Lloyd's standing in the world, and is not distressed business," Anguiano said.

He cited a number of other large Mexican corporates who use Lloyd's extensively, including América Móvil, the telecommunications company, and Groupo Bimbo, the largest baking company in the world.

"Their programme is not government business and not purely cat. There are other examples of Mexican multinationals that use Lloyd's."

While there are a limited number of leaders at Lloyd's for Mexican risks, for very large risks there is considerable participation. "For the Comisión Federal de Electricidad (CFE – Federal Electricity Commission) account, there are something like 50 markets participating in London, including a large number of syndicates," Anguiano said.

Anguiano acknowledged a desire to further diversify Lloyd's business in Mexico, where government accounts form a large chunk of the business.

He described the government accounts as very opportunistic in the way they buy reinsurance, driven by the public tender process that forces them to look purely at price rather than consider quality.

"Government officials are unable to judge which is a better product – this is a weakness in the tender process," he said.

"A lot of Lloyd's underwriters would prefer to have more long-standing relationships, but the source of the problem with achieving this is the tender process."

One government body for which there was no tender process was Fonden, the federal disaster prevention and recovery arm which this week signalled its intentions to further expand its spending on risk transfer instruments.

"The government uses its insurance company to front the risk so as not to require a tender for it.

Four brokers worked together to come up with a solution," Anguiano said.

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"A lot of Lloyd's underwriters would prefer to have more long-standing relationships, but the source of the problem with achieving this is the tender process"

Anguiano aims for more refined understanding

Lloyd's strategy for Mexico is not simply about writing more business, Gabriel Anguiano points out, *writes Scott Vincent*.

"We want Lloyd's underwriters to have a more refined understanding of Mexico – I want to help them see more and better risks, and help them have business access to give them more options," he explained.

"There is no doubt government risks and catastrophe risks will continue to be a big element of the business.

"But there is a desire not to rely so much on government risks and grow in other lines."

He acknowledged there had been some communication issues in the claims process with Mexican cedants, which Lloyd's was working to iron out.

"We will be looking at ways to improve the information we get from Mexico and work to educate the Mexican market so the claims process is less troublesome," he said.

"We want Lloyd's underwriters to have a more refined understanding of Mexico – I want to help them see more and better risks, and help them have business access to give them more options"

Marine and energy: potential growth

Marine and energy represents an area of potential growth for Lloyd's in Mexico, with increased onshore and offshore exploration likely to bring further reinsurance opportunities, *writes Scott Vincent*.

Private investment in oil and gas in Mexico has traditionally been prohibited, but potential opportunities have emerged for private oil and gas companies to capitalise on Mexico's huge resource.

Petrofac, the London-listed energy firm, recently won the first incentivised contract to drill onshore in Mexico. Petrofac will drill on two onshore fields in Tabasco state.

"While the law doesn't allow for private investment in oil and gas in Mexico, if [Petrofac and other firms who win the contracts] meet production targets they will have an upside. This brings more potential clients," Anguiano said.

"For energy business, there will be a lot more oil and gas exploration. Deepwater exploration is only just beginning – there is only one deepwater rig in Mexico. Shallow water activity will also grow considerably. Marine hull is a relatively small market in Mexico, and the growth in exploration will bring more associated marine insurance requirements."

London to remain base for Mexican business

Lloyd's strategy of recent years has seen a number of international representative offices open, and in late 2010, the-then chairman, Lord Levene, indicated an office in Mexico was under consideration, *writes Scott Vincent.*

However, Lloyd's existing set up, with a Mexico desk based in London and managed by Gabriel Anguiano, looks unlikely to change in the foreseeable future.

"The advantage of having a Mexico desk in London is I bring people to London, rather than me going to them," Anguiano explained.

"London wants to attract talent and local knowledge and business we do not get.

So, as part of the internationalisation of the Lloyd's market, it makes sense for people to come here," he added.

Anguiano said most of the Lloyd's risks written in Mexico are so large and complex they come to London naturally.

"The situation works very well for Lloyd's. There is no regulatory requirement to have a representative office in Mexico.

"If we had coverholders in Mexico, we'd open an office. There are no Lloyd's coverholders in Mexico at present, even though this is permitted."

Anguiano said the only way he could foresee Lloyd's using the coverholder route in Mexico would be if it was to tap into middle-market business, where locally based subsidiaries of European giants Munich Re and Swiss Re are more prominent.

"If Lloyd's was to tap into middle-market business in Mexico, it would potentially be through the coverholder route," he explained.

"But for that to happen, we would have to work with independent underwriting agencies – not through brokers – that would accept or reject a risk from a broker. "The model of giving the pen to a broker works well in markets such as the US and Australia, but in the past, Lloyd's and other reinsurers have had a bad experience in Latin America when they've given up the pen," he added. "At the moment we don't have interest from the market in establishing coverholders and service companies in Mexico."

"The situation works very well for Lloyd's. There is no regulatory requirement to have a representative office in Mexico. If we had coverholders in Mexico, we'd open an office. There are no Lloyd's coverholders in Mexico at present, even though this is permitted"

NEWS

Hannover Re targets €600m-plus profit for 2012…

Herbert Fromme, Hanover
German correspondent

Reinsurer Hannover Re expects another profit clearly above €600m ($781.49m) for 2012, although chief executive, Ulrich Wallin, avoided mentioning a concrete figure.

"I have been asked by Talanx not to make forward-looking statements,“ said Wallin, who is himself a management board member of Talanx. The German insurance heavyweight controls 50.2% of the world's third-largest reinsurer.

Hannover Re is already listed on the stock exchange, but parent Talanx is just preparing an IPO, and wants to avoid clashes with the tight regulations surrounding this event. Analysts who spoke of a profit of more than €650m "clearly understand their trade,“ Wallin said.

In 2011, nat cat losses came to €981m compared with €662m in 2010. Together with the strains of adverse capital market trends, this led to a 19% drop in profits to €606m. Hannover Re had already released key figures on February 14.

Premium income rose in 2011 by 5.8% to €12.1bn. "Clearly improved rates“ and a focus on specialty business and emerging markets led to growth, Wallin said. "The market is showing a tendency towards hardening.“

For 2012, the company expects premium income to grow by 5% to 7%, both from non-life and life reinsurance. "In North America, we see room for improvement in casualty lines, but the trend has changed,“ Wallin said. "In property, however, the development is very positive.“

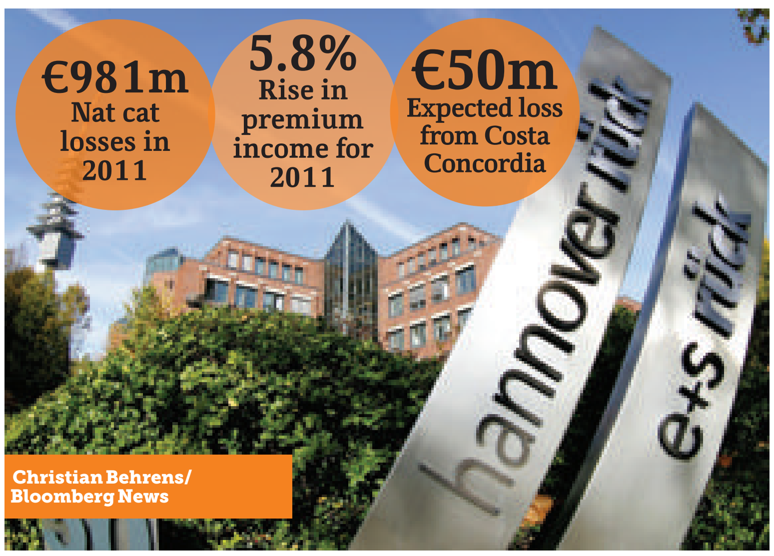
In Germany, primary rates in motor were going up, helping proportional reinsurance business. "We also achieved higher rates in excess of loss“, Wallin said. The loss frequency was declining, so there were good chances of higher profits.

In marine, the market's largest loss so far, the grounding of the *Costa Concordia* should lead to further improvements. Hannover Re expects a €50m loss from the accident, both in property and protection and indemnity.

"Aviation has seen a very good 2011 in terms of losses, and rates are not going up,“ Wallin said. "But especially in emerging markets, there was a lot of growth, which we have seem already on January 1, 2012“.

The UK market would see higher rates, especially in motor, which Wallin said was "badly needed“. Hannover Re expects growth with good profitability.

The company expects reduced volume from Argentina, where it is one of the market leaders and wrote €200m in 2011. "The country has introduced new rules forbidding primary companies from placing reinsurance outside Argentina,“ Wallin said. "We will not lose the premiums altogether, but keep some as retro business.“ The management had pondered whether to set up its own subsidiary in the Latin American country, but decided against it "for a number of reasons“.



Christian Behrens/ Bloomberg News

… while Solvency II prompts move to change legal status

Hannover Re will change its legal status from a German joint stock company Aktiengesellschaft (AG) to a Societas Europaea (SE), a European joint stock company., *writes Herbert Fromme, Hanover*.

The reason is a problem in the implementation of Solvency II that could prevent the reinsurer from setting up its own Solvency II internal group risk model.

With the announcement, Hannover Re is putting pressure on the European legislator and the German government to ensure the new rules fit the company's situation.

Solvency II requires insurers to set aside capital according to the risks they take, both on the insurance and on the investment side. Supervisors have developed a "standard model“ designed to fit most insurers. But specialised insurers and groups, as well as reinsurers, have problems with that model as it would require far too much capital from them. They are developing internal tailor-made models that need to be certified by regulators.

Hannover Re fears, as things stand at the moment, it might not be able to get its internal group model certified.

"With the move, we gain options we don't have as an AG,“ chief executive, Ulrich Wallin, said. "We can freely choose our seat within the EU.“ He said there were no plans to move Hannover Re, "but depending on the way the regulatory development emerges, this freedom could be valuable.“

He pointed to the Omnibus II directive under discussion in the European parliament, which changes the existing Solvency II directive.

"In the Omnibus II directive, it is stated we must not create our own group model if we are controlled by another group in the same country,“ Wallin explained. As Hannover Re is controlled 50.2% by Talanx, which in turn is owned by the mutual HDI VvaG, it might have to use the group risk model of HDI VvaG, rather than developing its own group model.

50.2%
Percentage control Talanx holds over Hannover Re

"If a sub group is based in another country, however, there is no question of its right to develop its own group model,“ chief financial officer, Roland Vogel, said. Thus, if Hannover Re moved to another country, it would have no problems with its own internal model.

Vogel said no figure could be put to the possible financial disadvantage the lack of its own group model would bring to Hannover Re. "It is not even certain that there is a disadvantage, because as Hannover Re we could in any case use an internal company model,“ he said.

But it was very difficult to foresee how investors, analysts and rating agencies would react to the fact Hannover Re has no group risk model of its own. "Thus we want to have the option,“ Vogel said.

There was no tax angle involved, and Hannover Re had not talked to other supervisors, Wallin said: "We are talking to Germany's BaFin about our internal model.“

Talanx prepares to reveal IPO bookrunners

German industrial insurer Talanx is making progress with its initial public offering (IPO), which has been in the pipeline for an astonishing 15 years, *writes Herbert Fromme, Hanover*.

Next week, Germany's third-largest insurance group plans to announce the bookrunners for the IPO, according to market sources. So far, Deutsche Bank is the only player known on the market, with the others to be announced next week, and will take the lead in organising the IPO. Talanx was not prepared to comment. The group holds slightly more than 50% of the reinsurer Hannover Re, which is already listed on the stock market.

Talanx plans its IPO for autumn 2012. The company is being advised through the IPO procedure by the Rothschild investment bank.

The company has been planning a listing since 1997 but had always had to postpone the move because of difficult market conditions or other projects.

The chairman of the supervisory board, Wolf-Dieter Baumgartl, the chairman of the management board, Herbert Haas, and chief financial officer, Immo Querner, are considered the three most important advocates of the IPO.

The group's operative companies are not quite as enthusiastic, it appears. Through HDI Gerling Industrie, Talanx is one of the largest industrial insurers in Europe. Its private customer division is very strong in bancassurance, selling life policies across bank counters.

At present, the entire group belongs to the mutual HDI VvaG, which in turn is controlled by German industry. This mutual wants to hold on to the majority of Talanx.

There is already one major shareholder – Japanese Meiji Yasuda Life, which bought a €300m ($390.48m) convertible bond from Talanx in 2010. This will be converted into shares in the event of an IPO, giving the Japanese company between 5% and 7% of Talanx.

Talanx has always stated the proceeds from the IPO would finance the group's international expansion and, since January 2012, the group has been able to demonstrate how it intends to use the proceeds. It bought the Polish Warta group from the Belgian financial group KBC for €770m, which it financed by means of a bank loan. This purchase now means it is ranked second on the rapidly expanding Polish insurance market. It will pass on 30% of Warta to its partner Meiji.

Talanx intends to launch a maximum of 30% in a first phase of its listing. This should be worth €1.2bn to €1.5bn. However, share prices for insurance companies are wavering at present, which is why Talanx could decide to place a smaller amount and sell more shares in better times. What remains clear is Talanx will have to ensure sufficient liquidity in the market to make the stock attractive to large investors. It seems unlikely it will go with less than 15% to the market.

NEWS

Aviation insurers eyeing emerging markets

AGCS is already active in Dubai

Christopher Munro
Senior reporter

Aviation insurers are eyeing new opportunities in emerging markets, although regulatory issues are creating barriers to entry into these regions, which is making it difficult to get a strong foothold.

International Air Transport Association (IATA) figures show in January, the Middle East, Latin America and Asia-Pacific regions recorded year-on-year traffic growth of 14.5%, 7.9% and 6% respectively.

These increases are indicative of the growth of the aviation industry in these regions over the past few years, and this expansion has been noted by western aviation insurers, many of whom are keen to expand their footprint into these areas.

The majority of these region's major airlines are already placed in the international market, so western underwriters' attention is being drawn to the general aviation (GA) accounts instead, Florian Karner, Allianz Global Corporate & Specialty's (AGCS) global head of aviation for Europe, the Middle East and Africa and Asia-Pacific, said.

"[The Middle East] is obviously a growth region we would not ignore... The question is how do you do it? What will your strategy be?"

Florian Karner
AGCS

"The capacity requirements for GA are reduced, so it doesn't necessarily mean they have to go into London," Karner explained.

With increasing wealth in these regions, as well as the well-established oil and gas industry in both the Middle East and Latin America, much of the GA business emanating from these areas consists of business jets and helicopters.

However, local insurance regulations requiring a certain amount of premium stays within the local market, or a highly competitive domestic insurance industry that has close ties to government mean it can be very difficult to gain a strong position.

The Middle East "is obviously a growth region we would not ignore", Karner said, adding "The question is how do you do it? What will your strategy be?"

AGCS is active in Dubai and Brazil, and Karner said the company would be keen on conducting more business in these regions provided the pricing was attractive.

"We will look at our connections in the region and if we can source the business and the rates are attractive, we will look to write more business.

"It's always a question of price," Karner added.

Asia, and China specifically, is the major market for growth, but strong local insurers means western companies may find it difficult to gain prominence.

"There is a strong local insurance market, and there are some entry barriers in these countries that are not easy to overcome," Karner said.

"You have to build up insurance and reinsurance relationships and take a long term view on this business rather than a more opportunistic one," he added.

AmWINS seeks replacement for private equity backer Parthenon Capital

US wholesale broker AmWINS has drawn up a shortlist of up to four candidates to replace its private equity backer Parthenon Capital, which is looking to realise its 45% investment after a six-year partnership, *writes Richard Banks*.

Frank Murphy, chief executive of AmWINS international division, which incorporates THB and Colemont, described the move as a "normal recapitalisation" noting private equity partnerships of this kind traditionally have a three- to five-year lifetime.

Parthenon owns 45% of the broker, with a further 45% owned by AmWINS staff and the balance held by other investors.

AmWINS is looking for a straight replacement for the Parthenon investment on the same five-year time cycle although whether in the form of one investor or a combination of several is not yet clear.

"There are quite a few people interested. AmWINS has narrowed it down to three or four," Murphy explained.

He will be travelling to AmWINS headquarters in Charlotte, North Carolina to present details on the group's international operations, which have grown substantially following the acquisitions of THB earlier this year and Colemont in 2010, to the would-be investors.

Graph: **AmWINS shareholders**

Boston- and San Francisco-based Parthenon Capital made its AmWINS investment in October 2005 in the wake of the devastating hurricane season that prompted the last major wave of Bermudian insurance company start-ups.

Plans for an AmWINS initial public offering, which were filed in 2006, were withdrawn the following year.

UK leading the Solvency II internal capital models pack

The UK's insurance companies are ahead of the pack when it comes to the internal capital model aspect of Solvency II, according to the head of Europe's insurance supervisory authority, Gabriel Bernardino, *writes Christopher Munro*.

Bernardino, chairman of the Eiopa, said there is some considerable divergence between companies and countries when it comes to the level of implementation of the new regulatory framework, with the UK ahead in one aspect.

"What we see around Europe is some level of divergence in different countries. I would say there's a different situation with the biggest companies – all of them made their processes and timetables. If you then look at the smaller companies there's divergence."

"What we see around Europe is some level of divergence in different countries. I would say there's a different situation with the biggest companies – all of them made their processes and timetables. If you then look at the smaller companies there's divergence. Some countries are already in the implementation stage... "

Gabriel Bernardino
Eiopa

"Some countries are already in the implementation stage... In the UK, you are ahead of internal models. In that sense, you have a higher level of preparation," he added.

Bernardino was speaking at an Insurance Institute of London lecture in the Lloyd's Old Library, and he said part of the UK's leading position in this sense is because the Financial Services Authority has set out dates for implementation, with January 1 next year marking the point when the responsibilities of both supervisors and Eiopa will be switched on.

It is the beginning of 2014 when insurers will have to comply with the regulation.

The UK's preparation for Solvency II comes from "a clear sense of when it will be implemented", Bernardino said, adding: "The push from boards of companies will obviously be greater if you know the implementation date."

WORLD LOSS INTELLIGENCE/ LIABILITY &

$1bn
In damages over the past two years, from just...

7
...Medical liability cases

Healthcare claims: Hiscox warns on payouts

US: Healthcare super-losses are on the rise in terms of both cost and frequency, Hiscox has warned, with juries in the past two years having awarded well over $1bn in damages in just seven medical liability cases.

Hiscox has found more than half of all the largest healthcare claims in history have been paid within the past five years, with the research also showing losses in excess of $5m are increasing at a rapid rate, from roughly 0.25% of all claims in 2000, to 0.7% now, and is expected to reach 1% by 2014.

"That represents a significant change," Nick Williamson, Hiscox's healthcare actuary, said.

Ian Thompson, senior vice-president within Hiscox's healthcare division, said: "We have real fears the bigger so-called 'super-losses' are getting worse and becoming more frequent."

And Thompson said there are fears batch losses – where the insured has the ability to place losses together under a common aggregating cause – are also growing in size and frequency.

Indeed, a recent case involving the overuse of coronary stents in Maryland is an example of a batch loss that has the potential to become a catastrophic claim for insurers.

Table: Rise of the super-losses, 2010/12

Date	State	Award ($m)	Type
Mar 2010	New York	60.9	Negligence at birth
Jul 2010	California	670.0	Inadequate staffing at assisted-living facilities
Jul 2010	Florida	114.0	Wrongful death suit against a nursing home
May 2011	Connecticut	58.6	Negligence at birth
Aug 2011	West Virginia	91.5	Nursing home negligence
Oct 2011	Michigan	144.0	Negligence at birth
Jan 2012	Florida	168.0	Brain damage following surgery

Source: Hiscox

Lawsuit: Sandusky challenges Federal Insurance

US: Jerry Sandusky, the former Pennsylvania State University assistant football coach who is charged with sexual abuse of minors, has said Federal Insurance has no right to deny paying for his legal defence.

In a joint case management plan filed on Friday in a pre-trial hearing, Sandusky's lawyer also asked for more details on the 40 criminal counts against Sandusky.

Federal Insurance is seeking a court order declaring it has no obligation to pay for Sandusky's defence, partly because certain policy provisions preclude or limit cover, and partly because, Federal claims, to extend cover would be unlawful, "because providing insurance coverage for claims arising from sexual assault, molestation, and/or abuse is repugnant to Pennsylvania public policy".

Sandusky claims the policy, which was bought by his charity foundation, The Second Mile, did not have any exclusions and did not mention public policy concerns.

One of Sandusky's alleged victims is siding with Sandusky in the battle with Federal, claiming his ability to recover compensation would be hampered if Federal Insurance's submission is granted.

Jerry Sandusky (centre) arrives for a preliminary hearing at the Centre County Courthouse in Bellefonte, Pennsylvania

AP Photo/ Gene J Puskar

40
Criminal counts levelled at Jerry Sandusky

Settlement: Former NCB employee awarded £50,0

UK: A former National Coal Board employee has been awarded £50,000 ($78,300) for pain, suffering and loss amenity (PLSA) after being diagnosed with mesothelioma at the age of 92.

The man, who had sought damages for negligent exposure to asbestos, had agreed all damages apart from those for PLSA, which the court was asked to determine, reports QBE's technical claims brief for March.

The defendants argued because of the man's advanced age, he had not suffered much loss of amenity and his activities differed little from before he had been diagnosed with the disease.

Therefore, the defendants said the claimant should be given an award at the bottom of the current (tenth) Judicial Studies Board (JSB) guidelines bracket for Mesothelioma of £35,000 to £40,000.

But the claimant's counsel countered damages should not be reduced owing to his age, as his last few years were precious and he had lost his independence. An award of £60,000 to £65,000 was instead appropriate. The judge ultimately decided on a PLSA award of £50,000.

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Contract dispute: Construction firm contests compensatio

BRAZIL: Energia Sustentavel, the construction firm building and operating Brazil's Jirau hydroelectric damn, is in dispute with insurers about the payment of more than $500m in claimed compensation as a result of damage to the dam caused by a workers' protest in 2011. The newspaper *Estado de São Paulo* reported the reinsurers of the original Brazilian insurers want the case to be heard by a London arbitration panel, the Insurance & Reinsurance Arbitration Society (Arias). Energia Sustentavel fears the London-based operation will be minded to side with the insurance industry, and therefore wants the claim to be heard in the Brazilian courts. The dispute relates to damage caused by workers at the dam, which is being built in the Amazon basin. The workers set fire to their temporary lodgings and to the buses that transported employees to and from the worksite. The insurers claimed the actions were politically motivated and therefore the damages to be paid were limited.

The claimant says the fires were a criminal act. The reinsurers of the primary insurer in Brazil include Allianz, Mapfre, SulAmerica, Itau Seguros and Alianca do Brasil.

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Lawsuit: Insurers avoid significant motor liability payout

UK: Insurers have managed to avoid paying a significant car crash claim after successfully arguing the claim failed because it related to an illegal or immoral act.

QBE's technical claim brief explained the claimant in *Delaney v Pickett and Tradewise Insurance* was severely injured while travelling in the defendant's car. Following the accident, both men were found to carrying what has been termed "commercial quantities of cannabis".

The first defendant's insurers declared the policy void when he admitted to being a habitual drug user.

But the insurers also argued, as the car was being used to supply drugs, and the passenger must have known the car was being used for illegal activities, they could reject his claim under Motor Insurer's Bureau (MIB) Agreement clause 6 (1) (e) iii.

According to QBE, the judge also found the claim failed on the principle of *ex turpi causa non oritur actio* – an illegal or immoral act cannot be the foundation for an action for damages.

The claimant appealed, but the claim's rejection was upheld as the court found the use of the car was for the transportation of illegal drugs and not for the driver to show the claimant his new car as he had alleged.

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Rena disaster: Oil sheen appears near the wreck

NEW ZEALAND: An oil sheen has appeared above the Astrolabe Reef close to the wreck of the fully cellular containership *Rena*.

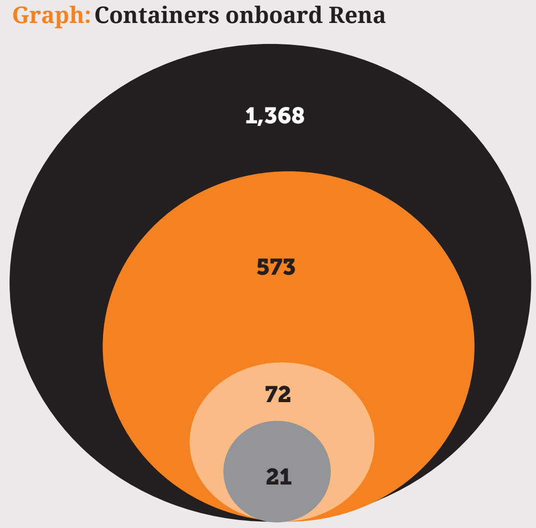
The sheen, which was black oil with brown scum, measured approximately 250 metres by 50 metres and was leading away from the wreck in a northerly direction for about 1 km, *Lloyd's List Intelligence* reported.

New Zealand's government has already been hit with clean up costs for the *Rena* of close to $108m, with the final total expected to increase even further. Much of this cost will ultimately be borne by the vessel's protection and indemnity insurer The Swedish Club.

Salvage of the *Rena* continues to be dogged by poor weather, with Svitzer and other parties involved noting conditions should improve soon.

As of last Friday, a total of 573 containers had been retrieved from the wreck, with another 72 recovered from the sea or shore. Another 21 are located away from the *Rena*, but have not yet been recovered. There were 1,368 containers on board the vessel when it grounded off the coast of New Zealand back in October.

Graph: **Containers onboard Rena**



■ **Total number of containers onboard** ■ **Total retrieved from the wreck**
■ **Total retrieved from the sea** ■ **Total located but not recovered**

LD LOSS INTELLIGENCE:
VELIHOODS

Sector stocks are depressed by volatility

Investor goodwill emanating from successful Greek debt swap did not extend to insurance sector

Rasaad Jamie,
Global markets editor

Sector stocks endured another tough week for the period ending March 8, with further deterioration in share values. There were a few gains by insurance and reinsurance companies, but these were for the most part only by a fraction of a percentage point. But, unlike the previous week, when the poor performance of the vast majority of sector stocks contrasted starkly with a strong sense of recovery in the broader financial markets (the Dow Jones Industrial Average Index closed above the 13,000 point mark for the first time in four years), the background situation during the week under review was significantly more volatile.

This volatility manifested itself by sharp falls in stock values during the early part of the week prompted by a number of issues, not least the ongoing concern not enough private sector creditors (including banks and insurers) would participate in a debt swap with the Greek government. But the markets also came under pressure after an announcement by the Chinese government it was setting an economic growth target of only 7.5% for 2012 rather than the 8% target that has been in place for the past eight years and was, more often than not, exceeded. China's impressive economic growth and the demand for the raw material, capital equipment and other resources to support it has shored up the global economy for the past four years. In addition, data from the most recent composite Purchasing Managers' Index for Europe suggested business activity in the region had contracted by more than expected in February.

€1.9bn
Impairment charge Allianz took on its Greek sovereign debt and holdings in 2011

The successful conclusion of the Greek debt swap saw financial markets recover slightly after a difficult start to the week

AP Photo/Petros Giannakouris

Disorderly default warning

Despite another flow of positive US economic data that indicated an expansion in orders and jobs in the country's services sector, US stocks suffered their sharpest fall this year during the week under review. The downturn was mainly prompted by fresh doubts about the outcome of the Greek debt swap negotiations. Indeed, European stock markets saw their worst decline in the three months after a Reuters new report referred to the existence of an Institute of International Finance (IIF) document that warned a disorderly Greek default could cost the eurozone up to $1.4trn, including $150bn in bank recapitalisation costs. The fact the IIF (which represents all private sector creditors in their negotiations with the Greek government) did not immediately deny or qualify the report only further increased the level of distress in the market.

The successful conclusion of the swap (whereby private sector creditors effectively wrote off 70% of the value of their bond holdings) is one of the last remaining pre-conditions for a second bail-out for Greece by a consortium of European Union institutions and the International Monetary Fund. It is, however, an area where the insurance sector, mainly in the form of Allianz, has taken a lead role. For example, two of the financial sector companies that intervened on an individual basis (rather than through the IIF) to reassure the markets of their participation were Munich Re and Allianz, which, after the swap, will retain Greek bond holdings valued at €1.6n ($2.1bn) and €1.3bn respectively. Allianz, an early supporter of the idea of a private debt swap as a necessary supporting measure to ensure financial stability in the eurozone, took an impairment charge of €1.9bn on its Greek sovereign debt holdings and investments in 2011.

Credit event

The broader financial markets recovered later in the week when it became clear at least 80% of private sector bond holders would agree to the swap and the news the US Federal Reserve Bank was considering maintaining the momentum of the

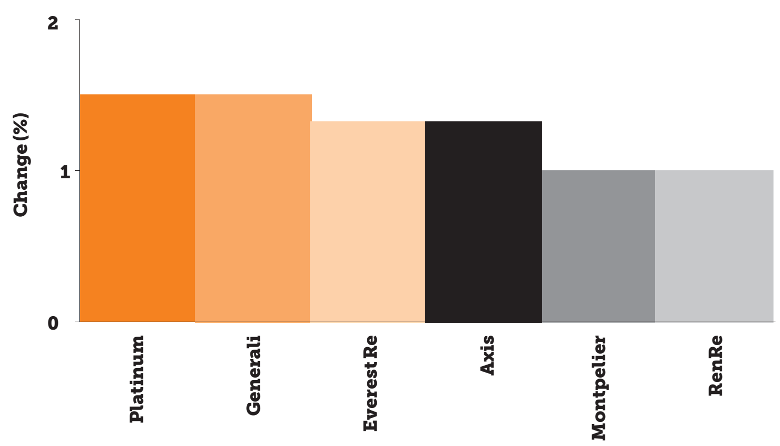
Table: Share prices as at close March 8, 2012

Company/group	Currency
Ace	US dollar
AIG	US dollar
Alleghany Corporation	US dollar
Allianz	Euro
Allstate	US dollar
Alterra	US dollar
Amlin	Pence
Arch Capital	US dollar
Aspen	US dollar
Aviva	Pence
Axa	Euro
Axis Capital	US dollar
Berkshire Hathaway (A)	US dollar
Catlin	Pence
Chubb	US dollar
CNA Financial	US dollar
Endurance Specialty	US dollar
Everest Re	US dollar
Generali	Euro
Hannover Re	Euro
Hiscox	Pence
Insurance Australia Group	Australian dollar
Korean Re	South Korean won
Montpelier Re	US dollar
MS&AD Insurance Group	Yen
Munich Re	Euro
NKSJ Holdings	Yen
PartnerRe	US dollar
Platinum	US dollar
QBE Insurance Group	Australian dollar
RenaissanceRe	US dollar
RSA	Pence
Scor Paris	Euro
Scor Zurich	Swiss franc
Swiss Re	Swiss franc
The Travelers Companies	US dollar
Tokio Marine Holdings	Yen
XL Group	US dollar
Zurich Financial Services	Swiss franc

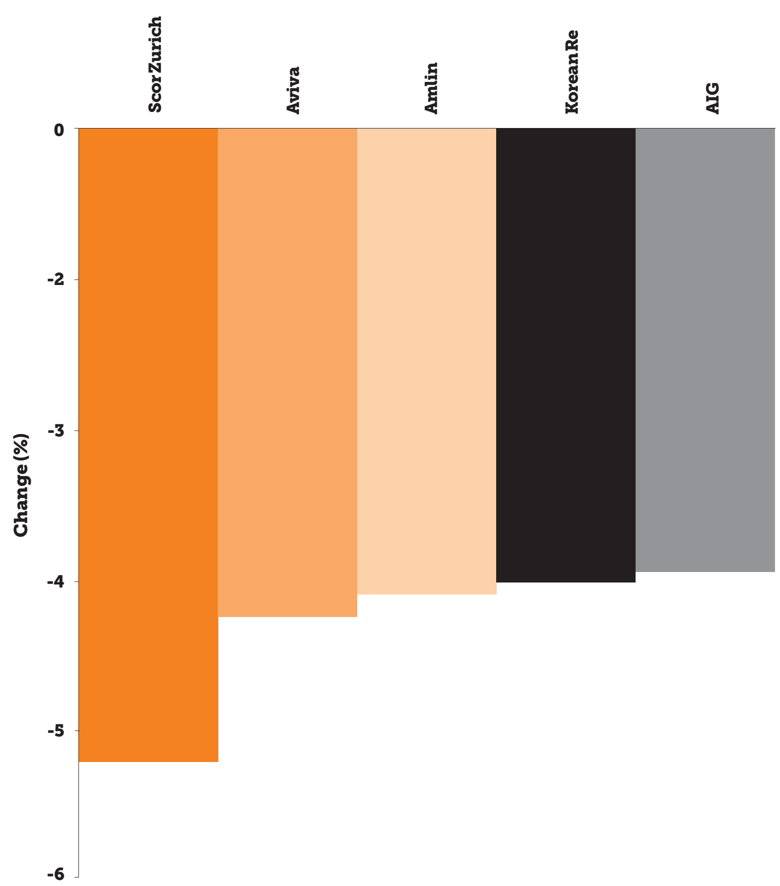
Source: Insurance Day

Dec 31, 2011	Mar 1, 2012	Mar 8, 2012	Change from Mar 1 (%)	Capitalisation ($ m)
70.12	72.41	71.49	(1.3)	24,103
23.20	29.45	28.31	(3.9)	53,700
285.29	322.85	323.31	0.1	2,765
73.43	91.26	88.60	(2.9)	53,475
27.41	31.28	31.24	(0.1)	15,567
23.63	22.99	23.00	0.0	2,399
313.90	352.60	338.60	(4.0)	2,659
37.23	37.59	36.83	(2.0)	4,942
26.50	26.84	26.76	(0.3)	1,894
300.80	373.00	356.80	(4.3)	15,846
10.05	12.33	11.98	(2.8)	36,431
31.96	31.36	31.68	1.0	4,145
114,755.00	118,360.00	118,430.00	0.1	110,850
398.70	418.40	420.30	0.5	2,389
69.22	67.63	67.35	(0.4)	18,260
26.75	28.25	28.38	0.5	7,644
38.25	38.31	37.66	(1.7)	1,526
84.09	89.17	90.35	1.3	4,855
11.63	12.59	12.78	1.5	26,262
38.30	41.50	41.29	(0.5)	6,613
373.50	412.70	410.00	(0.7)	2,469
2.98	3.17	3.20	0.9	7,064
15,000.00	14,550.00	13,950.00	(4.1)	1,422
17.75	17.80	17.97	1.0	1,093
1,426.00	1,725.00	1,706.00	(1.1)	8,806
94.59	110.00	108.25	(1.6)	28,376
1,510.00	1,899.00	1,912.00	0.7	37,009
64.21	63.85	63.29	(0.9)	4,139
34.11	35.91	36.44	1.5	1,295
12.95	11.98	11.96	(0.2)	13,138
74.37	71.69	72.40	1.0	3,729
105.20	110.80	109.00	(1.6)	5,952
18.06	20.14	20.20	0.3	4,940
21.50	24.40	23.10	(5.3)	4,777
47.87	54.10	54.40	0.6	22,212
59.17	58.42	57.10	(2.3)	22,444
1,705.00	2,197.00	2,189.00	(0.4)	21,123
19.77	20.97	21.00	0.1	6,629
212.50	230.10	231.00	0.4	37,501

Graph: This week's winners...



... and losers



country's economic recovery through the novel strategy of a long-dated bond-buying programme. But the investor goodwill generated by these developments did not extend to the insurance sector or for that matter the banking sector, as it has often done in the recent past. That banking stocks should come under pressure was no great surprise. Although the voluntary participation level was short of the 90% rate ideally favoured by the Greeks, it is just enough for the government to be able to force the terms of the deal on the rest of the private sector creditors. But the move prompted the International Swaps and Derivative Association Committee to declare a "restructuring credit event", which immediately triggered around $4bn in default payments on Greek debts swaps issued by other banks.

The prospects of insurance and reinsurance companies, heavily affected by catastrophe losses last year, did not look a lot better during the week under review with heavy flooding in the Australian states of New South Wales, Victoria and Queensland and a series of storms and tornadoes tearing through the central US wiping out an entire town and causing widespread damage across an area stretching from the Gulf Coast to the Great Lakes. ■

LAW & ORDER

The challenge of growing societal risk

Local markets are enhancing their products to meet the increased risk as incidents of political violence rise across the globe

Hermes Marangos, head of international and the Latin American team
DAC Beachcroft LLP

Luis Alvarez Marcén, property/casualty director
AMIS

Across the world we are seeing incidents of political violence on a greater scale, both in terms of severity and frequency. Local insurance markets are enhancing their products in an attempt to meet the increased risks to infrastructure, property and business.

One of the latest developments relates to societal risks posed by political violence, in relation to which the Mexican Association of Insurers (AMIS) proposed a new approach during a panel session held during The Mexican British Chamber of Commerce event, Mexico Week, run jointly with Lloyd's, which took place this week.

The demand for these new wordings is a result of new levels of phenomena such as organised crime or unrest confined to particular geographical locations, the panel heard. While such phenomena may be akin in some respects to looting, burglaries and syndicated crime, they are not all explicitly within the enumerated perils in standard wordings whether in exclusions such as NMA2918 or covers such as LMA3092.

At the moment, there is a lack of consensus as to how overlapping or competing provisions in various policies may or may not operate, although ultimately one or another of the policies may be called upon to pay for all the losses flowing from these conflicts.

The Mexican market is working on new exclusions and coverages, where all such manmade losses including riots, vandalism, organised crime, and terrorism, will be excluded from insurance policies, and the market will be offering coverage on an individual basis for those willing to have these perils covered.

However, the debate continues regarding losses falling between the gaps where all-risks insurers refuse to pay for political violence whereas the war/terrorism insurers do not consider their policies to be triggered by incidents which they treat as traditional riot related.

Relevant issues, such as determining coverage when an included event such as a riot becomes an excluded event like a popular uprising and the importance of identifying and understanding the relevance of the circumstances surrounding a particular event, were also highlighted.

The lead taken by AMIS was welcomed by the industry as a response to the challenges of a world facing growing societal risks and part of a continuing attempt to expand the products available, while accepting greater clarity may be needed when it comes to determining what is a covered or excluded risk. ■

The long arm of US import-export laws

Bradford Glassman, partner, and Claire DeLelle, counsel
Lewis Baach, Washington DC

The recent extradition of UK businessman Christopher Tappin to the US has reinvigorated interest in both the US-UK extradition arrangements and the arms export laws Tappin allegedly violated.

Those laws, which require registration and licensure for the export of defence items and services from the US, have also become a topic of concern to the insurance industry, as the US State Department has proposed amendments expressly placing insurers within their reach.

Tappin, a retired London businessman, is charged in an alleged conspiracy to export missile batteries from the US without a license.

The batteries are said to have been destined for Iran. Tappin, who was extradited on February 24 and denied bail on March 12, faces a fine of up to $1m and up to 20 years' imprisonment. The same export law, the Arms Export Control Act, and its implementing regulations, known as the International Traffic in Arm Regulations, also apply to certain ancillary players engaged in "brokering activities," a phrase the State Department now proposes extending to insurers in some circumstances.

The existing rules already sweep broadly to include "financing" and "any other action that facilitates" the import, export, or manufacture of covered items.

But the existing regulations do not mention insurers explicitly and only reach persons who act as an "agent" in arranging the transaction. This has provided some comfort to insurers, who are not generally considered agents for their insureds.

The rule change proposed by the State Department on 19 December 2011 may upset, or at least complicate, that sense of comfort. The new rule would expressly encompass the provision of insurance to "facilitate" a regulated defence transaction and would drop the traditional requirement that the facilitating party act as an agent in order to be covered.

The proposed rule contains exemptions for persons "exclusively in the business of" insurance "whose activities do not extend beyond" that, but there is no guidance as to what additional involvement might cause a covered insurer to lose this exemption. The proposed amendments could thus draw non-US insurers within the compass of the rule, including its harsh enforcement provisions. Although we believe the risk to insurers should not occasion alarm, caution is warranted – and legal advice a must – if there is any possibility the insurer's actions may be characterised as facilitating a covered transaction. ■

UK Consumer Insurance Act receives Royal Assent

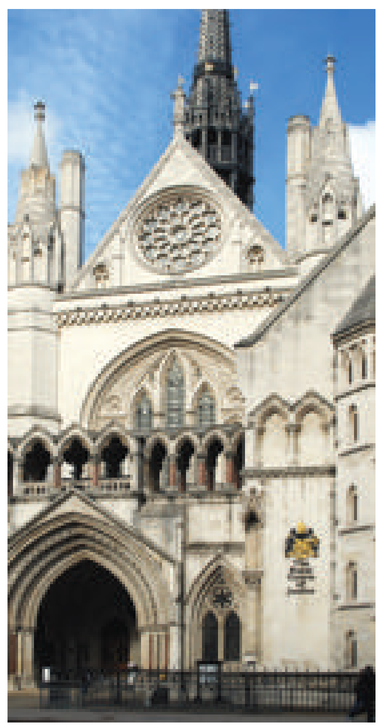
The UK's Consumer Insurance (Disclosure and Representations) Act 2012 received Royal Assent last week and is expected to come into force in 2013.

Lawyers at CMS Cameron McKenna say the act has received the backing of consumer groups, regulators and the insurance industry.

It provides a long overdue update of consumer insurance law, shifting the balance of the law in favour of the consumer. It results from the Law Commissions' 2009 report on consumer insurance law, which set out to ensure the law is clear, straightforward and fair.

The act abolishes a consumer insured's duty to volunteer information to the insurer.

A consumer's duty will be limited to making sure it answers questions raised by insurers honestly and reasonably.



- Insurers will have to ask for any information they need to assess the risk being insured;
- If a consumer acts honestly and reasonably the insurer will have to pay the claim;
- Where a consumer acts carelessly a proportionate remedy will be applied; the test will be what the insurer would have done had it known the full facts;
- An insurer will only be able to refuse to pay a claim if a consumer acts deliberately or recklessly in making misrepresentations;
- An insurer will need to prove on the balance of probabilities a consumer knew: a) a deliberate or reckless misrepresentation was untrue or misleading, or did not care whether it was or not; and b) the matter was relevant to the insurer, or did not care whether it was or not. If a misrepresentation does not pass this test then it will be a careless representation and must be treated accordingly;
- If the intermediary is an appointed representative of the insurer or is acting as the insurer's agent, they will be considered as acting for the insurer. In all other cases the intermediary will be presumed to be acting for the consumer;
- Insurers will be prohibited from contracting out of the act;
- The act abolishes basis of contract clauses. Therefore, statements made by the consumer will not automatically be transformed into warranties;
- For group schemes, if a group member makes a misrepresentation, this will only have consequences for the particular individual concerned;
- If a consumer takes out life insurance on the life of another and the insured makes a careless or deliberate misrepresentation, the insurer will have the normal remedies; and
- The application of the act is limited to individuals.

Stephen Netherway, a partner at CMS Cameron McKenna, said: "The act finally brings the law into step with market practice already adopted by the Financial Ombudsman Service and Financial Services Authority rules, providing clarity and consistency between regulators and the courts.

"Insurers will now have one year to implement the necessary changes before the Act comes into force in 2013." ■

Collective action in Latin America

Insurers need to understand the growing use of collective actions in the region and keep an eye on the changing regulations across the region


Liliana Veru-Torres, partner
Clyde & Co

With proper knowledge and awareness of how laws and regulations in a particular Latin American jurisdiction operate and a good flow of communication between the insured, insurer and reinsurer most problems can be handled before the insurer or reinsurer becomes locked into long-term collective action litigation.

With the significant growth and development of the economies in various Latin American countries and the sophistication of their markets, consumers and lawmakers alike have been looking for solutions to provide effective access to justice to those that have fallen victim to unfair practices.

One such solution, which is on the rise, is the use of collective or group actions in situations where multiple victims have been affected by unfair consumer practices or environmental hazards. Increased development of the legal and regulatory systems governing these actions has been pioneered by countries like Brazil, Colombia and Argentina.

As with existing collective action and group action law in other jurisdictions, this development that has gradually gathered momentum in Latin America is not without faults, some inherited from wholesale adoption of procedures from countries such as the US and some developing from the lack of synergy between the common law systems that designed collective action mechanisms and civil law Latin American countries that adopted them.

Legislation exists in Brazil, Chile, Colombia, Argentina and Mexico giving some form of collective rights; however, in many of these countries and others that do not have specific legislation, individual judges are using their judicial authority to allow claims to take on a group element even when not sanctioned by legislation.

While the insurance industry is not immediately vulnerable to any gross fluctuations in risk as a result of the introduction of collective action measures, there are some elements of the change likely to have an effect on the market. This will be particularly noticeable at a regulatory level.

Regulators in countries like Argentina have a broad spectrum of powers encompassing not only aspects of financial regulation, but insurance as well. As they attempt to open avenues of redress for groups wronged by misrepresented financial products, they are prone to make quick changes that are not mirrored in existing legislation. This creates fundamental procedural problems when the existing civil code is not designed to accommodate large group action claims.

While procedures are gradually developing, their impact on the insurance industry may not be significant for a number of years. Practices and traditions in Latin America are very different from those elsewhere.

Each jurisdiction has its own regulators, and in countries like Argentina and Brazil, the regulators play a significant role not only in authorising, but also creating collective redress for the relevant group they are created to protect. Thus, local regulators will often blur the lines between their regulatory role, the legislature and the judiciary.

The multiple roles of the regulator can be misleading, however, as in many countries regulators are effectively creating group actions and regulating their passage through the judicial system in conflict with previously enacted legislation.

For example, in Argentina, recent legislation has come into direct conflict with limitation periods created by previous legislation. The impact of this is claims are being placed in a state of limbo while issues such as these are determined by the courts.

It should also be noted change in Latin America is unlikely to be uniform as each country has it sown priorities largely driven by consumer and environmental interests particular to that country.

Brazil's collective action legislation has a large focus on environmental harm because of internal and external pressures that seek to curb the rapid industrialisation of the country. Argentina's collective actions, driven by the insurance and financial regulator, have become more prominent as actions arise from investments affected by the currency collapse almost a decade ago.

Comparisons are often made with the US and the flaws inherent in their collective action legislation. It is important to note, however, while the US model for collective action has influenced and encouraged the recent rise of group action in Latin America; its development in the 20 judicial systems present in the region is not likely to mirror the development of collective action in the US.

However, insurers must be aware not only of long-tail risk associated with certain industries as a result of the development of collective action, but also the increased costs consequences associated with any claim that is brought relating to a collective action.

The civil codes in many (if not all) the Latin American jurisdictions are simply not equipped to deal with situations where there are large numbers of claimants and defendants in the same claim.

The civil system is inherently a one-to-one dispute resolution mechanism. As such, group action claims can take a very long time to be resolved in the court system, increasing legal costs, interest on any damages awarded and long term exposure for specific policies.

Additionally, some Latin American jurisdictions attach insurers and reinsurers to litigation by law, further eliminating insurers or reinsurers' ability to limit their risk on a particular claim or book of related insurance.

Our own experience in countries like Brazil also shows interest and monetary correction can have a very damaging effect on exposure with damage awards doubling, tripling or worse in a short period of time. For a reinsurer or insurer locked in litigation, for whatever reason, this could have a significant effect on their overall loss exposure.

The situation is not necessarily hopeless though. With proper knowledge and awareness of how laws and regulations in a particular Latin American jurisdiction operate and a good flow of communication between the insured, insurer and reinsurer most problems can be handled before the insurer or reinsurer becomes locked into long-term collective action litigation.

Where the reinsurer or insurer is attached to a collective action, it is important to understand how this works in the particular country where the litigation is taking place to get reasonable estimates on costs and loss reserves. ■

Buenos Aires, Argentina: one area where the increasing use of colllective actions could have an impact on regulation