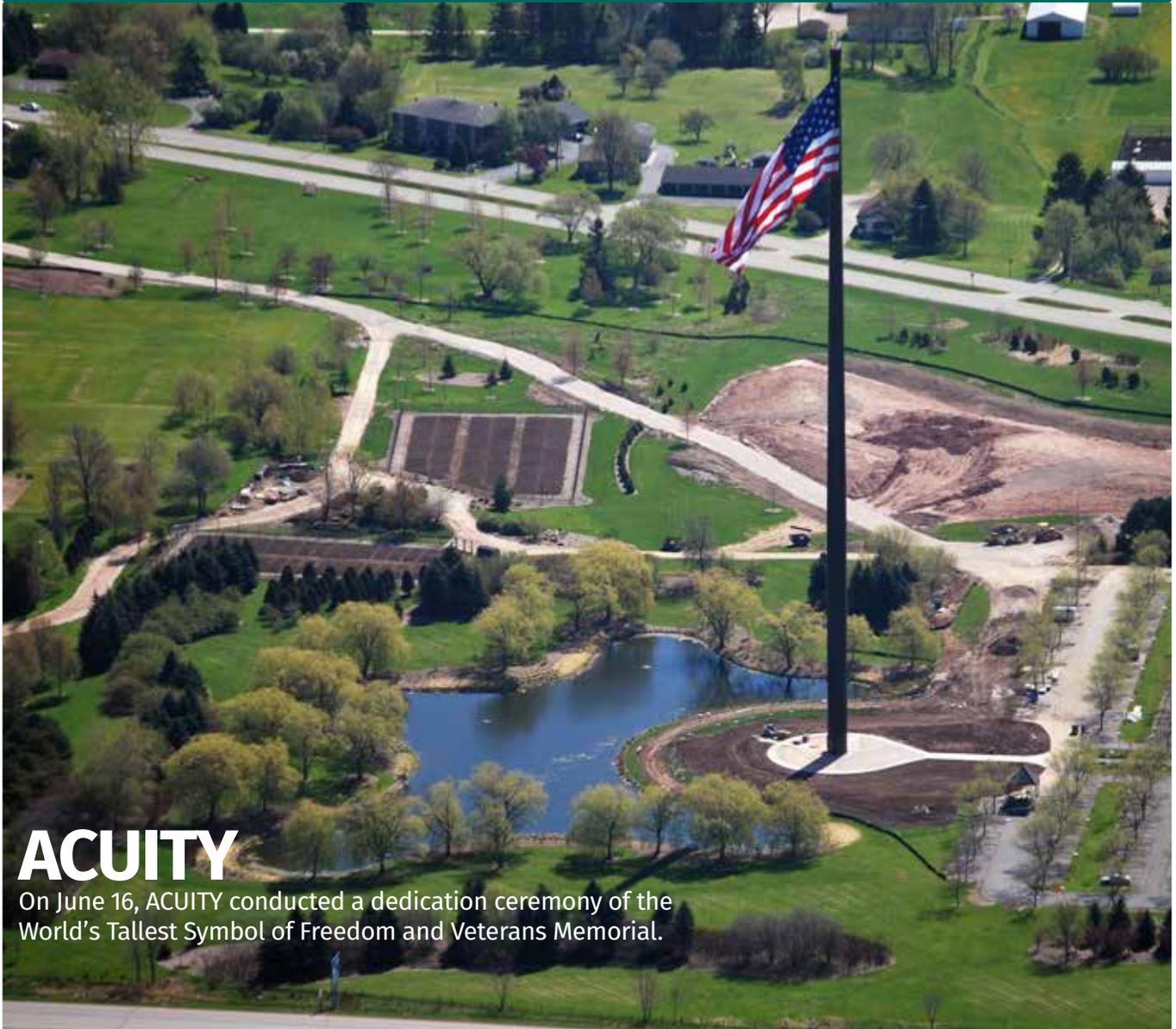


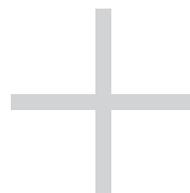
# IRL

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## ACUITY

On June 16, ACUITY conducted a dedication ceremony of the World's Tallest Symbol of Freedom and Veterans Memorial.



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**HIGHLIGHTS****Reinsurance in Argentina: Third Renewal**

**Season under New Rules** – This article is an excellent overview of the reinsurance environment in Argentina. One of several challenges is as payments to foreign beneficiaries must be approved by regulatory authorities “currency exchange differences between the collection of reinsurance premiums and the payment to retrocessionaires generated significant losses for local reinsurers. The exchange risk affected seriously a number of placements. As our local expert says “many players in our insurance industry are concerned with this situation. It’s hard enough now to get foreign currency to pay international reinsurers.” Another concern as we go to press this month is the possible debt default which would be Argentina’s second in 13 years.

**U.S.: The Problem of Relationship Inertia with the Reinsurance Broker** – This is a provocative article intended to educate and get insurance commissioners to oversee and regulate brokers more fully. The focus is the problem of “inertia”. The author wants to paint a broad brush that brokers need to be regulated because of the potential inertia and fiduciary issues, but he does not want to say all brokers would neces-

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**A. B. HODGES**

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PHOTO  
 COURTESY OF ACUITY  
<http://acuity.phanfare.com/flag/2014/>

**In May, ACUITY completed construction of a 400-foot flagpole**, the tallest in the United States, to fly an American flag measuring 60 feet high by 120 feet long.

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 JULY 2014

# SYNOPSIS

## COMPANIES • NEWSBRIEFS

**ACUITY**, in business since 1925, is the 62nd largest insurer in the nation. **ACUITY** is headquartered in Sheboygan, Wisconsin, is a property and casualty insurer that operates in 22 states, generates over \$1 billion in revenue through 1,000 independent agencies, and manages over \$3 billion in assets. On June 16 **ACUITY** conducted a dedication ceremony of the World's Tallest Symbol of Freedom and Veterans Memorial. In May, **ACUITY** completed construction of a 400-foot flagpole, the tallest in the United States, to fly an American flag measuring 60 feet high by 120 feet long. The flagpole is one of the most visible landmarks on the Interstate 43 corridor, and the flag is being raised as a symbol of gratitude to our country and those who defend it. At the base of the pole is a Veterans Memorial, which features the names of every Sheboygan County Veteran killed in the line of duty.

**Ergo**, the insurance arm of **Munich Re**, seeks growth in South East Asia with Singapore acquisition. The ERGO Insurance Group is entering the Singapore insurance market by acquiring 100 percent of the property-casualty insurance company **SHC Insurance**.

This acquisition is an important milestone for ERGO in expanding its presence in Southeast Asia. ERGO aims to make more acquisitions in the region and steer the individual companies acquired through a regional management team in Singapore. (Asia Insurance Review)

**Ironshore Inc.**, the insurer led by executives who left **American International Group** in the financial crisis, filed for a \$100 million initial public offering so that its backers can reduce their stakes.

## PEOPLE

**ACE** has appointed **Cassie Chen** as regional property & terrorism underwriting manager for Asia. She will be based in the Singapore regional office and will report to **Jason Keen**, head of property for Asia. Chen joined ACE in 2011 as the property & technical lines manager in the Singapore branch. She was responsible for growing the property, terrorism and technical lines portfolios. Prior to joining ACE, she was an assistant manager with **AXA** tasked with underwriting, reviewing and quoting for the property and casualty insurance business. (Intelligent Insurer, June 20, 2014)

**American International Group** announced

continued on page 28



PHOTO  
JANUARY 2, 2014:  
Panama City

#### ABC NEWS

**Marsh** has agreed to acquire a majority stake in **Seguros Morrice y Urrutia S.A.**, an insurance broker based in Panama City.

**Marsh** has launched a directors and officers program that gives clients faced with securities litigation access to defense counsel on a preapproved basis, the New York-based brokerage said.

**Mercer**, the wholly-owned benefits consulting subsidiary of **Marsh & McLennan Cos.**, announced that it has agreed to purchase a 34 percent stake in **Alexander Forbes Ltd** as Forbes prepares for an initial public offer-

ing on the Johannesburg Stock Exchange on July 24. Mercer is to take a 14.9 percent stake in Forbes at the time of the IPO and another 19.1 percent share following regulatory clearances. Readers will recall that Marsh acquired the Insurance Broking and Risk Management Consulting business from Alexander Forbes (AF) with effect from January 2012 (some of the African acquisitions only took place after this date and Marsh did not acquire all of the AF short term businesses for differing reasons). This largely left AF with their Financial Services (Pension Fund Admin, Actuarial, Asset

Management, Health Care) and Personal Lines (Insurer License) businesses in the Republic of South Africa. There are Financial Services businesses in several other countries such as Namibia, Kenya and Botswana. (Guardrisk Insurance Company, the Cell Captive Insurer, was quite recently sold to MMI, the large SA Life Assurer. There is also the Investment Solutions (Asset Multi-Manager) business which still forms part of AF Group. Alexander Forbes Financial Services is to our knowledge the largest firm of its kind in Africa.



### ABC PEOPLE

Industry veteran **Geoff Bromley**, a leading figure on the reinsurance broking stage for more than 25 years, has died following a battle with illness. Bromley, president for international business at **Aon Benfield**, was a well-known industry figure who began his insurance career in 1978 at Swiss Re's Australian operations. **Dominic Christian**, chief executive of Aon UK and executive chairman of Aon Benfield International, paid tribute to his friend and colleague's "extraordinary kindness, great elegance and enormous charm."



Willis has appointed Alistair Lester as CEO of its facultative and wholesale reinsurance arm, Faber Global, Willis announced.





**Beecher Carlson Insurance Services** has named **Olga Collins** as international practice leader. Collins will be responsible for managing the international needs of Beecher Carlson's clients and expanding international relationships on behalf of the Company. She will report to **Scott Davis**, President of Casualty and Property. Collins spent 15 years working for **UPS** prior to joining Beecher Carlson. For the last six years she served as their Risk Manager where she managed the Global Property Program and the International Casualty Program. In this

role, she was responsible for the global insurance placements in more than 220 countries.

**Marsh** said that Directors' and Officers' expert **Ann Longmore** will join its FINPRO unit in New York as its new multinational practice leader effective July 7.

**Marsh** has appointed **Chris Lay** as president of its global captive solutions business with a focus on driving growth.

**Willis** has appointed **Alistair Lester** (pictured) as CEO of its facultative and wholesale reinsurance arm, Faber Global, Willis

announced. Lester will report to **Steve Hearn**, Chairman and CEO of Willis Global. The current Faber CEO, **Jason Howard**, will become CEO of the newly-formed Acapella Group Holdings Ltd. Both appointments take effect July 1, 2014. Lester joined Willis in 2004, initially as Head of the European M&A practice and subsequently International Head of M&A. He then held positions as a member of Willis's FINEX Global Executive Committee, CEO Willis Global Solutions and most recently as interim CEO of Willis Netherlands. **ISN**

## RECENTLY PUBLISHED

### **MIDYEAR RENEWAL MARKET CONVERSATIONS WITH MIDDLE-MARKET BROKERS**

Summary. In general, the commercial property-and-casualty (P&C) market is holding up and, despite many dire predictions, is not rolling over. The overall market is more competitive than last year, but from our conversations with brokers, it appears that pricing for midyear renewals is not going negative. Major insurance carriers are still pushing for moderate levels of rate increases, and unless the account is very good, they are remaining relatively disciplined. As usual, there is a dichotomy between new and renewal business, with new business under more pressure. Uncharacteristically, the market appears to be shifting from hardening to stable (usually it goes straight to down). Read more about pricing, variation by line, and more @ <http://goo.gl/jm1sQn>

(Source: William Blair & Co)

### **RAA RELEASES 3-MONTHS 2014 UNDERWRITING RESULTS**

In a survey of reinsurers' statutory underwriting results conducted by the Reinsurance Association of America (RAA), a group of 18 U.S. property/casualty reinsurers wrote \$19.1 billion of net premiums during the three-months ended March 31, 2014. Net premiums at three months ended 2013 were \$6.9 billion. [The increase in net premiums written was largely driven by an affiliated loss portfolio transfer and quota share agreement reported by one of the survey respondents.] The underwriting reports for three-months 2014 and 2013 are available at Quarterly Underwriting Report on the RAA website. [View here.](#) **ISN**

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**~ A-MJ, major global carrier**

**"There are significant difficulties for buyers on the regulatory side, especially when it comes to integrating local risks into global programmes. Across virtually all of Latin America, non-admitted legislation is strictly enforced by the authorities. This is the case in Brazil, Mexico, Argentina, Chile, Peru and Colombia, the most important markets for multinational companies today." ~ Paul Bitner, managing director and Americas regional director at Brokerslink network, said recently at an event sponsored by MAPFRE GLOBAL RISKS and Clyde & Co.**

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**"Choosing not to understand or not to act within a country's local insurance regulations ensures that you and your client are at risk of acting illegally in a given country, which in turn can cause taxes, fines and penalties, including jail to be levied." ~ Antoinette "Toni" Gambonini**

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**Azerbaijan** – Azerbaijan will liberalize access to the insurance market for foreign investors in 2017, Forinsurer reported. As well it should because the market as it stands isn't very large. Our partner publication XPRIMM reports that in 1Q2014, the insurance market of Azerbaijan totaled AZN 117.94 million (USD 150.38 million), marking an increase rate of 15.37 percent in local currency, while the claims payments amounted to AZN 28.57 million (12.49% up), according to data presented by the Ministry of Finance of the Republic of Azerbaijan. Due the exchange rate variations, in European currency, the insurance market increased by 7.72 percent, to € 109.39 million.

**India** – The country's non-life insurers reported a 12.2 percent year-on-year increase in earned gross premium to Indian Rupees 775.41 billion (USD 12.88 billion) in March 2014. (Business Standard)

**India** – India's new government is set to raise the foreign direct investment (FDI) ceiling in insurance to 49 percent from the existing 26 percent, but will restrict the voting rights of foreign investors to 26 percent and require all insurers to offer health insurance. (Asia Insurance Review) This discussion has been ongoing for years and now it seems the requirement that all insurers offer health insurance might have finally put the matter to rest and become a reality. It also might dissuade some insurers from remaining in or entering the market.

**India** – The chief executive of an insurer in India said the issue of banks becoming insurance brokers to sell policies was discussed "in the recent meeting between private insurers and Finance Minister Arun Jaitley," Business Standard reported. Whether this would

be for private insurance, personal auto, health or commercial insurance is being investigated.

**Pakistan** – Hong Kong's Cathay Pacific has announced that it will stop flying to Karachi in Pakistan, with the last flight leaving Hong Kong on June 28. The move follows the June 8-9 terrorist attacks at Jinnah International Airport in Karachi that is the country's biggest and busiest airport. (Asia Insurance Review)

**Qatar** – Qatar is deemed the most peaceful nation in the GCC ranking 22 out of 162 countries globally, followed by Kuwait at 37, the UAE at 40, Oman at 59, Saudi Arabia at 80 and Bahrain at 111, according to this year's Global Peace Index (GPI) released recently. (Middle East Insurance Review, 6/22/2014)

**Russia** – Russia's central bank has published draft guidance on the calculation of the amount of permissible foreign capital in Russian insurers' authorized capital, reports Forinsurer.

**Sri Lanka** – Sri Lanka's insurance sector recorded an 8.39 percent year-on-year increase in overall gross written premium to 94.48 billion Sri Lankan rupees (USD 722.3 million) in 2013, the Insurance Board of Sri Lanka said. Meanwhile it has been reported that AIG is pulling out of Sri Lanka. AIG entered the market in 1999 when it received a license to operate as a general insurer in the market. The insurance board has asked the company to present a written plan to explain how it intends to care for its employees and policyholders.

**Spain** – Insurers' Profits Down 27 Percent Q1 2014 – Insurers' non technical accounts accounted for 8.09 percent of retained premiums at the close of the first quarter, against 11.04 percent in 2013, according to statistics

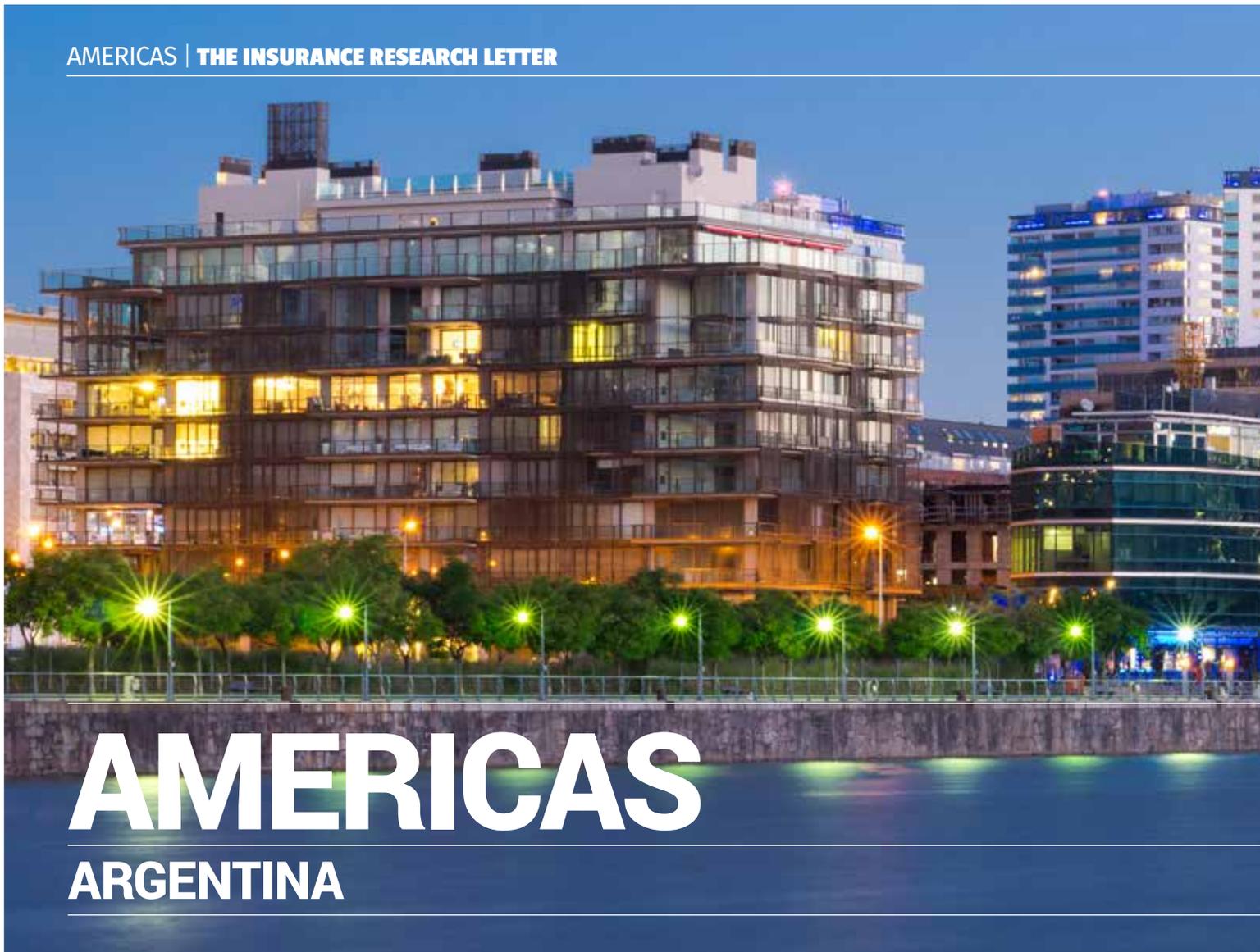
released by ICEA, the research arm of the Spanish insurance industry. In absolute terms, and with retained premiums of € 12.86 billion, profits totaled € 1.04 billion at March 31, 27 percent less than in March 2013. Technical accounts, on the other hand, showed a profit of 9.33 percent of retained premiums against 13.65 percent in 2013, due to increased loss ratios. The overall loss ratio reached 87.18 percent of retained premiums against 83.94 percent a year earlier.

**Uganda** – Despite rising levels of claims payments across Uganda, Aon Uganda Ltd. said an increase in premium prices is unlikely in the short term, East African Business Week reported.

**United States** – RIMS' New Website Focuses on Content Delivery – Easier Navigation & Consolidated Menus Provide Easy Access to Valuable Resources. RIMS unveiled a new website design that now emphasizes content on its front page and more streamlined navigational menus that allow practitioners to search and access resources with greater ease. The website can be found at [www.RIMS.org](http://www.RIMS.org).

**United States** – The Reinsurance Association of America endorsed bi-partisan legislation introduced by Senators Dean Heller (R-NV) and Jon Tester (D-MT) to accelerate the development of a private flood insurance market that would be overseen by State insurance regulators. The bill, Senate 2381, would clarify the National Flood Insurance Act of 1968. While the bill intended private insurers to provide flood insurance coverage, lenders unfortunately did not accept private flood insurance as meeting mandatory purchase requirements. The Heller-Tester bill would resolve this issue by defining acceptable private flood insurance.

**United States** – The House of Representatives Financial Services Committee voted 32 to 27 to approve a five-year extension, through 2019, of the Terrorism Risk Insurance Act,



# AMERICAS

## ARGENTINA

PHOTO  
Buenos Aires  
Cityscape

### **ARGENTINA**

#### **Reinsurance in Argentina: Third Renewal Season under New Rules**

July 1 is reinsurance renewal time in Argentina for most automatic arrangements. More capacity is anticipated in this renewal season as part of a process in which ceding companies gradually doubled their retentions over the last decade and more foreign insurers were admitted. But the playing field changed drastically two years ago when domestic reinsurers became a mandatory link (with or without brokers) between insurers and world markets. This report is based on interviews with several reinsurance executives published by “Mercado Asegurador” in its May 2014 issue.

Argentine insurers have been increasing their overall retentions over the last decade from 79.8 percent in fiscal year 2011/2012 to 90.6 percent in 2012/2013. However, over the last two years P&C cessions increased from 86.3 percent to 90.8 percent of written premiums. One reason was the increase of reinsurance in two major lines of business like Auto and Fire. In Auto reinsurances ceded premiums increased from 9.3 percent to 13 percent of P&C cessions and in Fire from 19.6 percent to 22.7 percent.

#### **Where is the Market Going**

The new domestic reinsurance market was able to cover all Argentine risks with a major support of

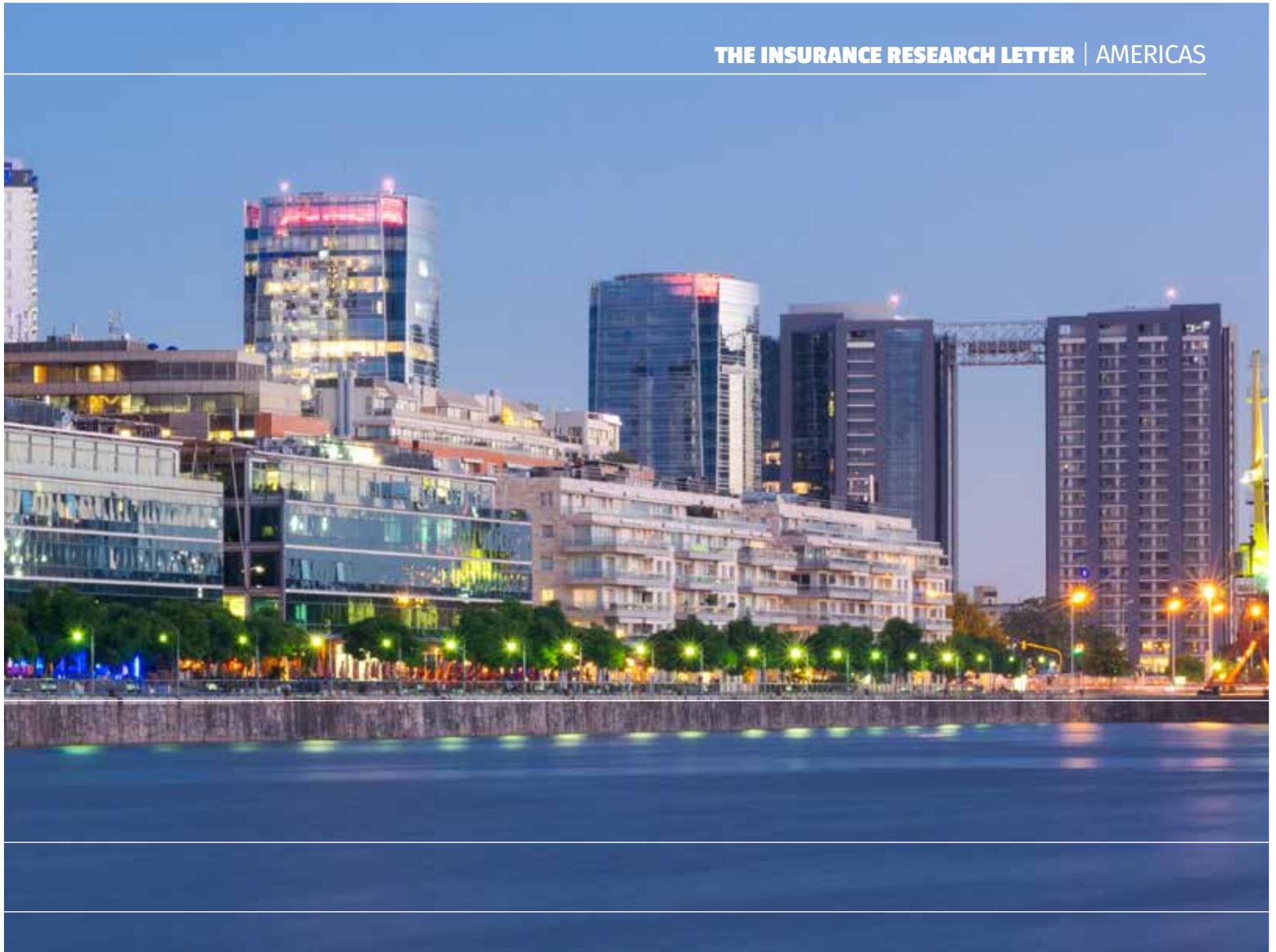


PHOTO  
APRIL 15, 2013:  
View of Buenos Aires  
Retiro region. View  
includes central  
railway station, bus  
station, sea port and  
*Villa 31*





capacities provided by foreign admitted companies. Horacio Cavallero, CEO of Punto Sur Sociedad Argentina de Reaseguros SA (related to the Sancor Insurance Group) and Chairman of the Association of Argentine Reinsurers, made a positive assessment of the market: “We were able to stabilize operating conditions and have ensured business continuity in a very complex national environment and with some macroeconomic indicators that concern the international market”.

Marcelo Larrambeberé, CEO of Reunion Re Cia de Reaseguros SA (linked to insurer “La Holando Sudamericana SA”), added that “Two years after the introduction of the new reinsurance regulatory framework we can show a positive balance with a reinsurance supply that can write the automatic and facultative contracts and a growing capacity to increase the net domestic retention”.

Solange Seigneur, Director of Compañía Reaseguradora del Sur S.A. (related to insurer “Fianza y Crédito SA”) underlined that although domestic global retention is higher it is still unable to write major individual or CAT risks, “making admitted reinsurers a major player in Argentine reinsurance”. There are, of course, some problems that must be addressed: “Inflation and currency exchange risks are two key factors when analyzing a placement. Political decisions affect the economy and the manner in which business is done. Ways must be found to adapt to changes and challenges. The whole world is changing and new commitments and opportunities come up everywhere. This new market was a major bet and, in general terms, it is working as it should”.

#### **Reinsurance treaties**

On this matter, Cavallero said that

“reinsurance and retrocession portfolios reflect what is happening in the primary market. Property and Agricultural Risks showed very high loss ratios. Changes in relative prices are affecting Auto portfolios very much because inflation expectations on liability losses are a major issue in reinsurance placements”.

Larrambeberé reminded that during the last renewal season in July 2013 “conditions in Fire, Miscellaneous, Auto (TP and Hull) and Workers Compensations business did not show major changes, with logical adjustments in deductibles and limits for each company’s portfolio”.

“In Agricultural Risks (particularly Hail) terms changed substantially, in particular with higher deductibles and rates and a greater control on geographical aggregates”.

#### **Facultative**

Reinsurers said that facultative placements are being made in the usual ways. Rates have generally remained unchanged, but considering to a certain degree the changes in currency exchange rates that took place in Argentina over the last months.

“Most changes in facultative placements were related to each account’s loss ratio”, remarked Larrambeberé. “However, Reunion Re has facilities with high capacities to place facultative business in Fire, Liability, Engineering, Marine and other lines”.

Cavallero added that “the placements of major risks with large insured amounts were covered directly with the admitted market when amounts at risk exceed 50 million dollars. We have not seen significant increases in these cases, and the whole placement chain (insurers and local and foreign reinsurers) adjusted their

costs”.

“There is a problem with large facultative placements written in foreign currencies”, remarked Seigneur. As payments to foreign beneficiaries must be approved by regulatory authorities “currency exchange differences between the collection of reinsurance premiums and the payment to retrocessionaires generated significant losses for local reinsurers. The exchange risk affected seriously a number of placements”.

#### **Improvements**

During these two years it was clear that the new reinsurance regulatory framework was adjusted as needed, using the experience from day-to-day transactions. More adjustments are still needed in particular, say market players, remittances to foreign retrocessionaires in payment of placements of cover in excess of USD 50 million.

On this matter, Larrambeberé said: “One of the improvements that should be implemented is an automatic process to clear foreign currency for premium payments. The Insurance Department is working on online tools that would make the system more fluid.

Seigneur added that “we are still in the beginnings; new things and ideas often need adjustments. It is important to honor our commitments, and payments abroad are a major issue. All market players have a responsibility on this matter. This is a new market that we are all building, and we must improve it to get the necessary trust to obtain the capacities we need and preserve the ones we have. To achieve this, the system must work fluidly. Ceding companies, intermediaries and local reinsurers must all work together to meet the payment terms and obtain the authorizations to transfer funds abroad. But the different

steps that must be completed to get foreign currencies are usually completed without major hurdles.”

**Inflation**

High inflation and the steep January 2014 devaluation of the Argentine peso is also a serious concern for reinsurers because it alters some of the ratios established in the contracts. According to Seigneur “we must follow very carefully the development of inflation and exchange rates as these factors are extremely important in our business. The peso devaluation distorts the ratios between our assets and liabilities because current regulations do not allow a free access to foreign currencies and, on the other hand, we also have commitments in foreign

currencies”.

Larrambeere added on this matter that “deductibles in excess loss treaties as well as in other treaties written in pesos must be adjusted to consider inflation effects .... Insurers will surely work to update insured amounts premiums (especially in Auto liability covers) will be adjusted so that premiums can cover the higher loss costs caused by inflation”.

“Alterations in relative prices have always distortive effects on the economy”, remarked Cavallero. “Inflation erodes technical ratios because premiums and received and losses are paid in different timeframes and, therefore, monetary values are also different; so, the net effect can be more dam-

aging in our industry”, and added: “The January devaluation made a lot of noise in the media and elsewhere, but in fact the rate of exchange has been sliding strongly over the last year following the other economic variables. The effect on reinsurance contracts is disparate and, in the case of excess of loss covers, it should be considered if contracts include or not a currency stabilization clause”.

**2014 Renewals**

Most treaty renewals take place on July 1, in line with (re)insurers’ fiscal years. “We believe this third renewal year under the new regulatory framework will be more orderly and negotiations will start earlier so as to reach June 30

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with less turbulence and more efficiency. We see as well that admitted reinsurers will increase their offered capacities according to their individual capacities and expertise", said Larrambeberé. Seigneur added that "retrocessionaires' support is still very strong. Long term relationships may cover different cycles and periods, some more positive than others, but we think this should be a long term partnership".

One of the issues to be considered is the contract currency (basically, pesos or USD) and what basic terms may assure limits and covers in a constant currency. "We'll see that reinsurers will gradually pay more attention to aggregates in natural hazards in Auto and Property covers in general", concluded Cavallero. (Trans-

lation by Mauricio Kitaigorodzki, [maurikitai@gmail.com](mailto:maurikitai@gmail.com))

#### **BRAZIL**

##### **Mandatory Audits Required as from January 2015**

The Private Insurance National Council (CNSP) ruled unanimously at its last meeting that, starting in January 2015, all insurers, reinsurers, complementary pension fund managers capitalization companies will be required to carry out annual independent actuarial audits.

It was also approved that companies may not retain the same auditors for more than five years.

These audits shall be "specific and exhaustive" and must evaluate companies' main actuarial procedures and calculations of

underwriting reserves, data bases, retention limits, minimum required capital and other issues affecting the company's solvency.

#### **LATIN AMERICA**

##### **Aspen Opens U.S. Rep Office to Handle Growing Latin America Energy Sector**

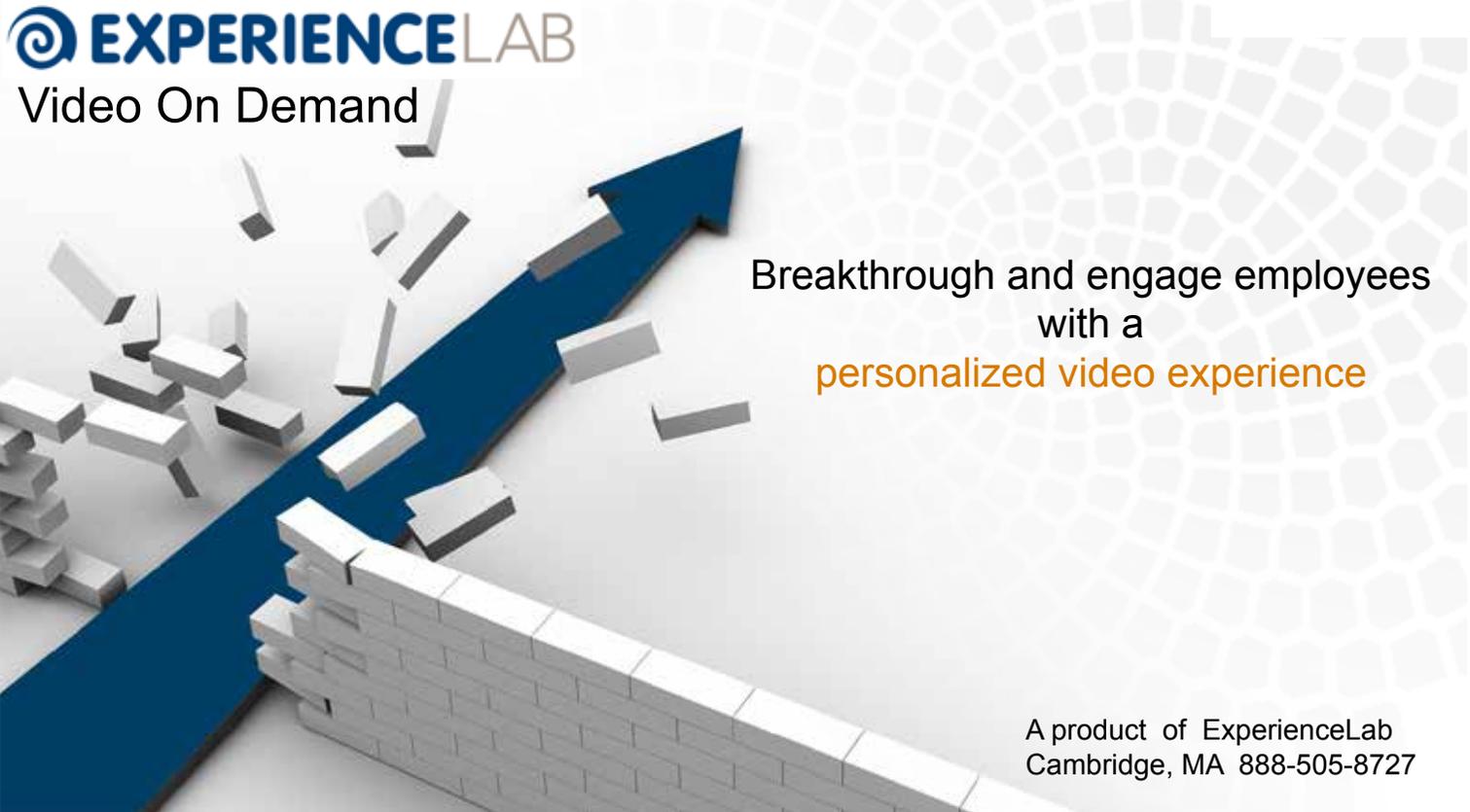
Aspen Insurance opened a representation office in Miami to increase its presence in the growing Latin American market. This new office will serve the Latin American energy market while at the same time expand its U.S. capabilities.

Tony Carroll, executive VP and head of marine, energy and building risks, said that "with the recent appointment of Gary Windsor to head our expansion in the Latin American energy insurance



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segment we are building a team focused on providing leading experience in the industry and local know how to support the growing demand of energy risk solutions over the region. Aspen's Miami will start writing business in July 2014".

Mario Vitale, CEO of Aspen Insurance, added that "this is an important step in our expansion of insurance operations in selected markets around the world, and we also intend to launch additional products in Latin America".

## UNITED STATES

### The Problem of Relationship Inertia with the Reinsurance Broker

If you have to overpay for your reinsurance to maintain a 'long term relationship with your broker', can't you find a less expensive relationship?

Reinsurance Intermediaries (brokers) are licensed and supposedly regulated by the various States' Insurance Commissioners. However, substantial enforcement action against intermediaries historically comes via various States Attorney's General. In insurance circles, it is common knowledge and well remembered that Elliot Spitzer, then AG of NY took Marsh to task for its broker subsidiary, Guy Carpenter's alleged self-serving practices, and for the \$850,000,000 settlement. Another settled allegation against Guy Carpenter come from Attorney General Richard Blumenthal of Connecticut. Guy Carpenter again denied any wrongdoing, but settled for \$4.25 million.

In the Attorney General Settlement Agreement for the Attorneys General of Florida, Hawaii, Maryland, Michigan, Oregon, Texas, West Virginia, Massachusetts and Pennsylvania, Marsh settled for its alleged deceptive practices in the

amount of seven million dollars (\$7,000,000).

A federal judge approved an \$88 million settlement between Marsh & McLennan Cos. and a group of plaintiffs in a lawsuit stemming from bid-rigging investigations in 2004 and 2005. The settlement approved by Judge Garrett E. Brown Jr. of the U.S. District Court for New Jersey in Newark, provided \$69 million in payments to the plaintiffs, including \$7 million in administrative costs, and \$19 million in legal fees, according to court documents. The settlement resolved federal class-action claims by policyholders against Marsh arising from the events of the fall of 2004, Marsh Inc., MMCs brokerage unit, (Guy Carpenter).

The above list is not exhaustive, but what I find interesting is, it is the Attorneys General taking the lead and not the Insurance Commissioner in bringing enforcement actions against the reinsurance broker. The allegations include that Guy Carpenter conspired with reinsurers to fix prices, rather than seeking competitive quotes. As a result of the alleged schemes, insurance buyers allegedly paid up to 40 percent more for coverage. Perhaps there are political reasons why the AG takes the lead on reinsurance broker enforcement actions, for while less than 25 percent of Commissioners are elected, most AG's are elected.

In the recent case *Workmen's Auto Insurance Co. v. Guy Carpenter & Co.*, (B211660 (c/w B213853)) Guy Carpenter argued that it does not owe a fiduciary duty to the ceding company, including the duty to NOT inflate its commissions, and the court agreed.

If it has no duty to not inflate its commissions, what is the basis for the Attorneys General law

suits? The weight of the suit by the Connecticut Attorney General is not based on fiduciary breach, although breach of fiduciary duty is alleged, but statutory – including violation of the State's Deceptive Trade Practices and Price Fixing. (Herein for CT - Connecticut Unfair Trade Practices Act §§ 35-32(a) and (c) (2), 35-38, 42-100m and 42-110o.)

How and why did this happen? – The Connecticut Attorney General provides in his summary of the case:

1. "Because of the unregulated nature of the reinsurance industry" (i.e., and apparently the "laissez faire" attitude by the Commissioner in regulating licensed reinsurance brokers.)
2. "The specific clientele at which the conspiracy was aimed" – (i.e., not sophisticated).
3. "Guy Carpenters dominant position as a broker in the United States for small to mid-sized insurance companies."
4. "The inertia inherent in the industry" (i.e. the long-term relationship of the Broker with the ceding company and over reliance on the broker by the ceding company)

The complaint summary further provides: "As part of the scheme, Guy Carpenter exploited a group of approximately 170 insurance companies by withholding critical information **and leading them to believe that Guy Carpenter was acting in their best interests when in fact Guy Carpenter was at all times working to enhance and maintain the profitability of the reinsurers and of course, itself**" (Emphasis added)

Understanding the mindset that the broker believes it has no fiduciary duty to the ceding company, and the realization that the small to mid-sized company's iner-



tia with its reinsurance broker, the criticism expressed in the October 14, 2007 issue of *Business Insurance* by the Insurance Information Institute (I.I.I.) when speaking of the Connecticut Attorney General's suit that "...it is difficult to believe that these organizations were systematically being overcharged for decades and didn't go off with another broker", demonstrates the widespread ignorance within the insurance industry itself. The I.I.I. obviously is unaware of what "inertia" in the reinsurance brokered market entails. It is not difficult at all to understand why small to mid-sized companies can be overcharged for decades by its broker.

For many small to mid-sized companies there is the overriding element of misplaced trust in the broker and a gross misunderstanding of their own duties. The broker rolls into town several times a year, and schmoozes the directors and officers and in the minds of these naïve clientele, they become vast forever friends. The officers and directors believe that the broker is working for them concerning a subject they know too little about (reinsurance), and they would never dream that their good buddies would overcharge them or allow them to overpay. Such naivety might be less of an issue if the officers and directors were spending their own money, but they are running a business and have a fiduciary duty to the policyholders or stockholders. It would also have less impact if rates charged policyholders did not include an element for the costs of reinsurance.

Clearly, apart from a fiduciary duty to the policyholders or stockholders as a reason to recover what it overpaid, the Commissioner should very much take an interest in the subject of Broker inertia and overpayment recovery.

Insurance Companies take into account the costs of reinsurance; if the insurance company mistakenly pays too much for reinsurance, then the rates it charges may also be too high. The commissioner is charged with assuring that rates are adequate yet not excessive. Failing to adequately regulate brokers provides the means and opportunity for overpayment by inertia bound small to medium sized ceding companies, albeit it often by ignorance on the part of such ceding company. According to the Casualty Actuarial Society's Principles of Ratemaking, a rate is "an estimate of the expected value of future costs, provides for **all costs associated with the transfer of risk**, and provides for the costs associated with an individual risk transfer." (Emphasis added) Reinsurance is a cost of doing business associated with the transfer of risk.

I can attest to the misplaced blind loyalty of the small to mid-sized ceding company to its broker, and how it will ignore its own fiduciary duties in recovering overpaid funds because as some have been told by the broker, if recovery of overpaid funds is perused:

1. The reinsurers will immediately file for arbitration; and/or
2. The reinsurers will immediately increase its rates.

That is, when there has been an overpayment for the treaty for years because of improper inuring and/or accounting in determining the subject base, and this is in fact even confirmed in writing by the broker to the ceding company, the ceding company is "advised" that to try to recover the over payment will lead to increased reinsurance rates.

Is this correct, do reinsurance companies really depend on ignorant ceding companies overpaying

them in their rate setting process or is something else at work here? The reinsurance companies I checked with actually prefer accuracy to ignorance. Additionally, how is it that the broker allegedly speaks on the behalf of the reinsurers? That should be the "inertia bound small to medium companies" big clue that their broker may not actually be "working for them". Why would your long-term best buddy be trying to talk you out of getting a refund for what you overpaid?

Herein the interests of the broker and the interests of the inertia bound small to medium sized ceding company are in conflict, and it is entirely appropriate for Commissioners to forcefully address this conflict. At the same time advice is given to the small to mid-sized ceding company that recovery of overpaid premiums will result in their rates being increased, Guy Carpenter is being quoted as:

1. "Guy Carpenter & Co. has reported that reinsurance rates-on-line fell at the January 1, 2014 renewal in nearly all classes and regions." (*Insurance Journal*, December 30, 2013)
2. "Plentiful capacity kept rates in check across most business lines and geographies during the April 1 reinsurance renewals", reinsurance intermediary Guy Carpenter & Co., L.L.C. in a statement Thursday. (*Business Insurance* April 10, 2014)
3. "Guy Carpenter & Co. L.L.C. on Tuesday said downward pressure on reinsurance rates has increased since the June 1 renewal." (*Business Insurance*, June 3, 2014)

The stability and downward trend is stated as due to "alternative sources of capital, strong reinsurer balance sheets, low loss levels, plentiful capacity, and an unprecedented influx of conver-

gence capital" - If this is all true for the general market as stated by Guy Carpenter, I find it hard to believe that if the small to mid-sized ceding company recovered what it overpaid, that this trend would be reversed and its rates would go up.

The fact is, the broker is paid a commission on the premium amount paid, and lower premiums mean lower commissions. It actually means that the broker could have to give back its commission on the overpayment if the ceding company pushed to get its overpayment back. The ceding company' usually expresses its reluctance to recover overpaid premiums after speaking with its broker as "we really value our relationship with our broker"... how is that relationship threatened by recovering what was never owed? (They are really expressing Inertia – a body at rest tends to remain at rest & status quo is more comfortable than change, as well as expressing ignorance and fear). The Connecticut Attorney General correctly identified the inertia problem. As if the relationship with a reinsurance broker is a personal friendship and not business relationship.

Suppose that instead of an overpayment of premium, the ceding company underutilized the treaty program. For example, suppose a ceding company misclassified losses and failed to include some losses in a cat recovery. Recovery on missed claims is generally met with a lot less resistance from the broker than recovery due to overpaid premium...and you may have already guessed why there is no negative commission incentive for the broker to argue otherwise.

The Connecticut Attorney General recognizes that inertia is an issue, lending itself to decades of misplaced loyalty... so why not

**For many small to mid-sized companies** there is the overriding element of misplaced trust in the broker and a gross misunderstanding of their own duties.

do something about it? It is a fact that there is nothing like a little sunshine to cleanse away stain.

Comparing the ethical standards required of a CPA and those of a reinsurance broker, we find that:

The AICPA has code of professional conduct of 176 pages of rules and standards. The reinsurance broker has an attitude and it has been confirmed in court that it owes the ceding company no fiduciary duty. To become a CPA demands a rigorous system of educational pursuits simply to qualify to take the exam. A reinsurance broker has no standardized demands for educational pursuits.

Knowing this, we must ask the NAIC - why must a ceding company change its leading CPA for its annual statement purposes at least every five years (NAIC Annual Financial Reporting Model Regulation Section 7 D (1)) and yet the reinsurance broker may remain the broker for an unlimited amount of time? Why is it that the broker who has no fiduciary duty, no written rules of professional conduct, no rigorous educational standards and who is responsible for year in and year out selling the ceding company its largest purchase able to maintain such inertia and yet the highly trained and ethics bound CPA must be changed at least every five years? What sense does that make?

Why does the Connecticut Attorney General recognize the specific problems associated with

reinsurance broker inertia and the NAIC not?

Why does the NAIC imagine a danger of overfamiliarity by a CPA with a ceding company, and yet not address the very real danger of overfamiliarity of a reinsurance broker with a ceding company, even after the issue is pointed out by various Attorneys' General?

From my own experience I know that reinsurance brokers will rise to the occasion of competition when it is introduced; however, the inertia of the small to mid-sized client in the broker relationship stifles the introduction of competition. Getting the Insurance Commissioner more actively involved in the oversight of the reinsurance broker will spur competition.

One manager I know initiated a "sunset" review on every vendor the company uses, be it claims, accounting or reinsurance broker. Every vendor relationship is put out for bid every several years. That is a very good risk management technique; it keeps the vendors on their toes. She realizes that she is running a business, she may like the vendor, but the relationship is not a personal friendship and it ends when another vendor can provide better or less expensive service to the company she is managing.

Indeed the company she runs is very small, she does not depend on the Commissioner to oversee the reinsurance broker, and she had no hesitation in recovering



what the company overpaid. She also did not have her broker telling her that her premiums would be increased and in fact a Lloyds syndicate advised her that the credit she showed from them had never been paid, and so it sent funds beyond what she asked for. Kudos to the Lloyd's Syndicate for its honesty and for a clear indication that the Broker does not speak for them on the issue of recovery for overpayments.

From a business perspective, these small to mid-sized companies understand their upstream position in their downstream to their policyholders. They would never dream of telling their marketing force that if a policyholder downstream overpays his premium and then seeks a refund of the amount overpaid, you are to advise them that we will increase their rates. That is an absurd position to take and an even more absurd position to express. So why do many of the small to mid-sized companies not realize that they are the downstream consumer for the reinsurance product? Why do many of them accept what a broker tells them that which they would not tolerate coming from their own marketing force?

If they did understand their position as the downstream marketing stream, these small to mid-sized companies would be exhibiting cognitive dissonance. **Cognitive dissonance** refers to a situation involving *conflicting attitudes*, beliefs or behaviors. This normally produces a *feeling of discomfort* leading to an alteration in one of the attitudes, beliefs or behaviors to reduce the discomfort and restore balance. The absence of widespread feelings of discomfort leading to changed behavior amongst these small to mid-size companies tells me that they do not fully comprehend their position as the downstream

consumer.

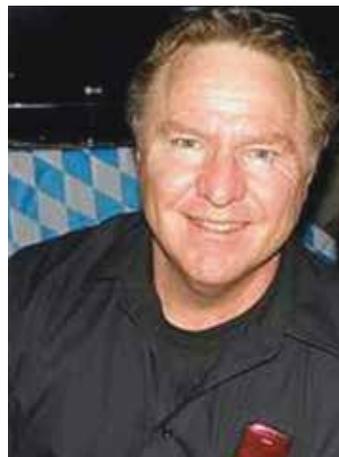
The longer customers stay with a company, the more likely they are to pay more than they need to, said the Texas Office of Public Insurance Counsel. In a survey released in 2012, Deloitte, the accounting and consulting firm, found that 30 percent of auto owners and 45 percent of homeowners had never switched insurers, with people under 35 years old twice as likely to change auto insurers as those over 50. About 60 percent of consumers said they never or only rarely shopped for alternatives to their auto or homeowners' insurance.

The reason? Inertia... sound familiar? Why do small to mid-sized companies know and believe this when it applies to their consumers, but somehow that it does not apply to them as consumers?

Thank goodness for the Attorneys General! But like the oncologist, he can only "after the fact" addresses the problem. In my opinion, preventive medicine is called for. I propose that a model law similar to that applied to CPA's, needs to be applied to reinsurance brokers. I also suggest that Commissioners need to be aware of and get involved quickly if the ceding companies they regulate do not pursue recovering known overpayment of reinsurance premiums.

While the duties of the Commissioner position vary from state to state, their general role is as a **consumer protection advocate and insurance regulator**. Sometimes it's easy to forget that the domestic companies they oversee are also consumers that need protection.

Clearly, as demonstrated by the various settlements, there is a need for the Commissioner to be pro active and more effectively regulating reinsurance brokers.



**Bruce Heffner. Bruce is an attorney that has a significant background with substantial business experience in insurance and reinsurance, underwriting, claims, risk management, corporate management, auditing, administrative & regulatory experience. He is presently general counsel and managing member for [Boomerang Recoveries, LLC](http://BoomerangRecoveries,LLC), a reinsurance risk management company, specializing in reinsurance review, recasting, and recovery. [bruce@boomerangrecoveries.com](mailto:bruce@boomerangrecoveries.com)**

## INSURANCE COVERAGE FOR CROWDFUNDING

On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law by President Barack Obama. The stated purpose of the Act is to “increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.” On October 23, 2013, the SEC released proposed rules establishing a framework for crowdfunding offerings which have been regulated under the JOBS Act. The public comment period for the proposed rules ended on February 3, 2014. On April 10, 2014, the Investor Advisory Committee voted unanimously to ask the SEC to adopt a series of recommendations to the proposed crowdfunding rules.

While the term “crowdfunding” is not defined in the JOBS Act, it is commonly understood to mean the collective actions of people who pool their money and other resources together, usually via the internet, to support the efforts of others. Websites such as Kickstarter and IndieGoGo are popular examples of web-based crowdfunding sites.

Now, as the investing public awaits SEC guidance on crowdfunding regulations, the moment should not pass without acknowledging that the implementation of the rules may result in significant liability for issuers and intermediaries, as well as the directors and officers of such companies.

Insurance Issues associated with the SEC’s Crowdfunding Regulations

It has suggested that the JOBS Act will have the consequences of increasing IPOs, increasing private company financing flexibility, increasing securities litigation, and causing risk averse companies to elect to make more

complete disclosures.

These issues are expected to have insurance implications in a number of important ways. First, the traditional distinction between public and private companies in D&O policies will be blurred by the emergence of seemingly private companies, crowdfunded companies that are not publicly traded, yet exposed to more stringent disclosure requirements than a typical private company. Policyholders will therefore need to ensure that their insurance coverage covers their form of the company including any hybrid public-private company.

This is critical as some D&O policies for private companies contain exclusions pertaining to securities claims or “offerings”. Policyholders that may engage in crowdfunding activities will want to ensure that such activities are covered.

Second, policyholders will also want to ensure that the pertinent definition of “loss” covers losses which might arise out of crowdfunding. For example, some policies contain exclusions pertaining to disgorgement or, as aforementioned, securities claims. While policy language can vary widely, it is important for those engaged in crowdfunding to have coverage in the event of a suit by investors which could necessarily entail the reimbursement of invested capital.

Third, policyholders should closely analyze any fraud or dishonesty exclusions, if present in any pertinent policies, to ensure that the insurance company will not seek to bar coverage in the event that investors assert fraud claims in connection with crowdfunding. **ISN**



**Source: Anderson Kill; Authored by Peter A. Halprin, Anderson Kill, New York**

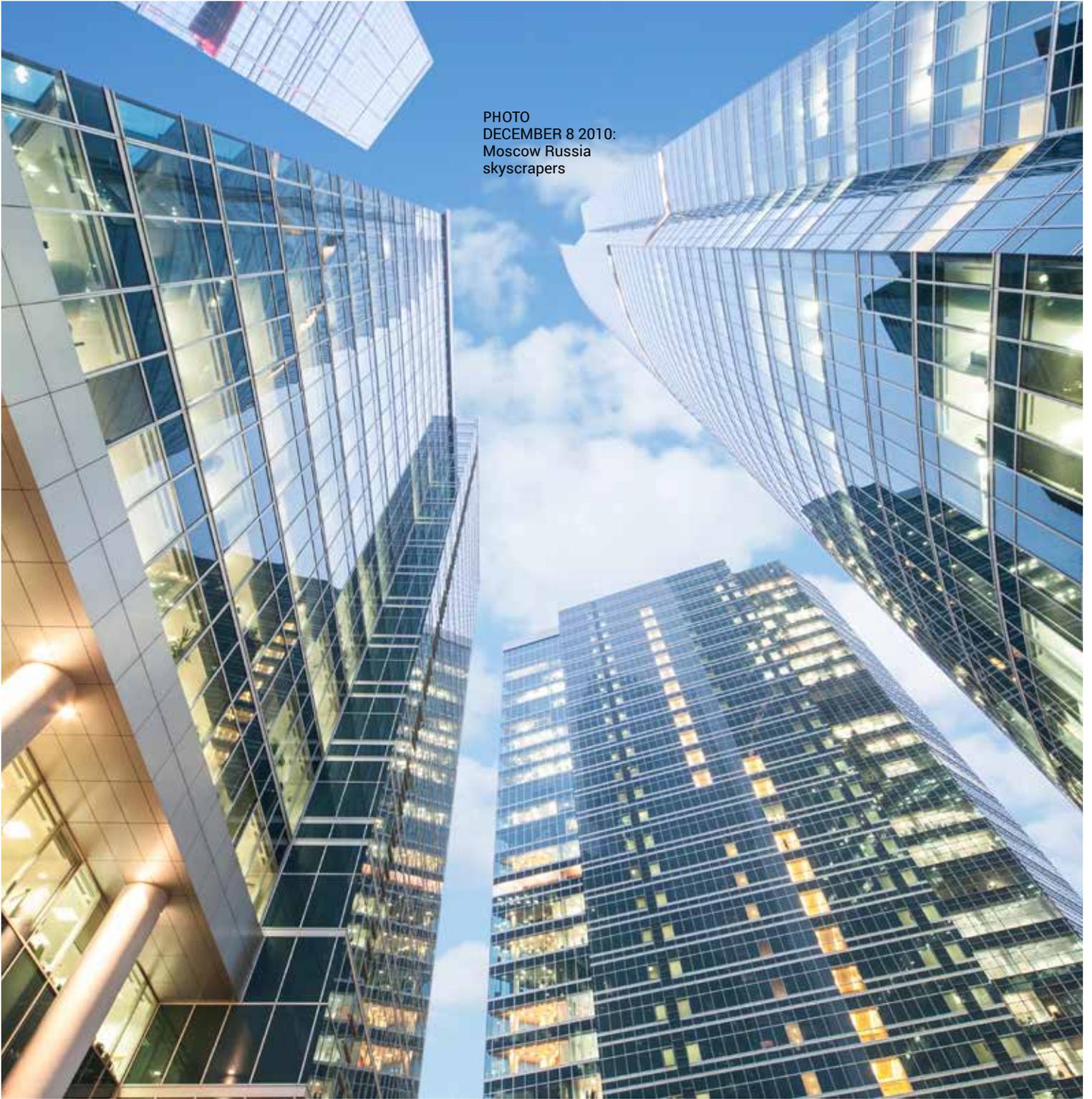


PHOTO  
DECEMBER 8 2010:  
Moscow Russia  
skyscrapers

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# EUROPE & RUSSIA

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REGIONAL COMMENTARY: (UK)

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**REGIONAL COMMENTARY (UNITED KINGDOM)****Low level of broker satisfaction of UK mid-market claims performance**

The United Kingdom is ranked fourth in the world of commercial insurance premiums. Besides the global giants such as BP, Rio Tinto, GlaxoSmithKline and quite a few other well-known corporations, the middle market represents a large chunk of the \$30 billion in premiums booked in the country. While, individually, mid-market firms are not able to exercise the same amount of clout as the multinationals, this is where one will find the bread and butter business which insurance carriers regard as loyal and comfortable.

It is therefore surprising that a recent survey in the broking community of Mid-Market Claims Performance showed that only five carriers in the whole country received a net positive satisfaction score. "The most striking finding from the study is the wide variance in service levels delivered by insurers in the mid-market space," said Ben Bolton, CEO of Gracechurch Consulting (<http://www.gracechurchconsulting.co.uk/>) who conducted the survey. "The study shows clear gaps between some insurance brands who are 'go to' businesses for placing risk but whose claims service is pretty weak." The most frequently mentioned areas for improvement were poor communication, cases being passed through numerous handlers and low quality outsourcing operations.

This is a timely reminder to the carrier market that it needs to pull its socks up. The promise to pay is what insurance companies sell to their clients. Equally important are the speed and quality of communication and knowledgeable and personable claims teams who help the customer through the claims process. It is good that every now and then service providers, many of whom are large bureaucracies, are given a reality check.

~ Mr. George Worsley,  
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Director, Worldwide Risk Solutions;  
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**UNITED KINGDOM****International Adjusting conference faces up to the communications challenge when dealing with catastrophe claims**

Communications have never been more important – or more complex – when dealing with catastrophe claims delegates at the International Federation of Adjusting Associations 5th Educational Conference were told.

"This is the instant communication age", Phil Godwin, Senior Claims Manager at Lloyd's told the conference in London last week. "We need to be very alert to the demands this places on us when dealing with catastrophes. For instance, we need to factor in how we will deal with social media which has grown in importance in the last few years".

Felipe Hoetz, the new IFAA president, representing ALOSI in Chile, underlined this from his experience of the recent severe earthquakes in his country. He said the Chilean insurance association quickly realized the key role social media would play in communicating with people who were affected and so it set up a team to monitor the main social media channels and respond directly using them.

The complexity of the communication challenge was a key theme of the panel session too.

Spencer Clark, Managing Director of Concordia Chartered Loss Adjusters, identified several national and international political challenges faced by adjusters and insurers responding to catastrophe claims. Mr. Clark highlighted the difficulties encountered with reinsurance recoveries and the importance of insurance companies working with governments to recover claims costs wherever possible.

Mike Jones, Chief Operating Officer of GAB Robins, said that the way the recent UK floods developed a political dimension made them very different to other major claims in the UK: "We had to learn very quickly as an industry how to respond to significant political intervention, even as the situation on the ground was still developing."

The London riots of 2011 had thrown up another communication challenge that the insurance industry needs to deal with better said Jonathan Clark, head of business solutions & syndicate claims management at SCOR's UK branch: "There are 26 languages in Tottenham where the riots started and insurers sent people who were fluent in just one of them".

Mr. Hoetz said the language problem can be a major challenge when dealing with catastrophes: "As soon as I was nominated by my company as the lead person in Chile for the earthquake my inbox was full of messages from the overseas owners of businesses based in Chile. I had messages in all sorts of languages including Chinese, Arabic and some I didn't even know what they were".

The president of the UK's Chartered Institute of Loss



**The IFAA Executive Board from the left Fred Plant, CIAA, Incoming IFAA President. Nihal Bogahalande, SLALA, Past President. Felipe Hoetz, ALOSI, IFAA President. Paul May, Director at Large IFAA**

Adjusters, Candy Holland stressed the need for effective communication through the duration of a claim: "Loss adjusters are fantastic at first response and most people really appreciate that. From the policyholder view when the claim progresses they can feel they are left out in the cold. We need to ensure the communication remains very good all the way through the claims process".

(Courtesy: David Worsfold, Worsfold Media Services Ltd)

### **IFAA EDUCATIONAL CONFERENCE: REGULATION AND CULTURE**

International loss adjusters who neglect vital pre-planning face major hurdles when jetting in to deal with the aftermath of natural or man-made catastrophes. This was one of the key messages from speakers at the International Federation of Adjusting Associations' 5th Educational Conference in London on June 6.

The need to be fully aware of increasingly varied and prescriptive regulatory regimes has to sit alongside a greater sensitivity to local cultural differences, warned a succession of speakers at the conference.

"The cultural dynamic has an important influence on the outcome of a catastrophe claim," said Phil Godwin, senior claims manager at Lloyd's.

"How people locally respond to the challenge of a disaster is a key factor that insurers should aware of in their planning and response. This has to take its place alongside

a proper understanding of how markets operate. What is communication within the market like? Do the various elements have the ability to work together? The role of trade associations is important so you need to know if there is an effective body.

"Pre-impact conditions have a material impact on outcomes. You can map them and price them. Many are embedded, such as language, while others are dynamic, such as the weather.

"Regulation is especially important nowadays. Is there any local licensing of adjusters? It is too late to find the answer to that after an incident has happened," said Mr. Godwin.

The need to get to grips with local regulation was stressed by Steve Parry, head of UK and Ireland claims at ACE: "20 years ago I never met a regulator. Now they are one of the first people I meet when I go to a new territory."

It is important that adjusters understand the local legal environment, said Jonathan Clark, SCOR UK's head of business solutions and syndicate claims management, especially when asked to give advice to policyholders on coverage: "It is not for the adjuster to say whether a claim is covered. That is the responsibility of the carrier. In some jurisdictions it is not permitted for adjusters to give advice on policy coverage."

Mr. Clark also highlighted the importance of gaining as much knowledge in advance of local markets as possible: "How do your suppliers work? How do they brief their people and how do they deploy their resources? Once an incident has occurred it is about understanding what is unique. To do that you need to get an overview of the incident before you focus attention on the specific risks and claims you are exposed to."

The uniqueness of major incidents was underlined by Justin Crick, a partner at forensic accountants RGL, who contrasted the challenges adjusters faced in dealing with the earthquakes in New Zealand and the Thai floods.

"In New Zealand we faced massive depopulation as people moved out of Christchurch and the challenge of dealing with four separate earthquakes. Working out which losses were caused by which earthquake was quite a challenge," he said.

Nick Hyatt (pictured), vice-president of Thornton Tomasetti, who spent two-and-a-half years in Christchurch following the earthquakes, said the ambiguity caused by the multiple events led to mistakes being made and to litigation in the most complex cases. During the initial response phase too many buildings with small cracks were demolished when they could have been repaired, leading to unnecessarily high payouts. This underlined the importance of early involvement by loss adjusters when there are potential multiple events so that a proper system of triage



**Nick Hyatt, vice-president of Thornton Tomasetti, who spent two-and-a-half years in Christchurch following the earthquakes, said the ambiguity caused by the multiple events led to mistakes being made and to litigation in the most complex cases.**



▷ can be put in place to deal with minor damage before the next event hits.

In Thailand the problem was the extent of the wide area damage and the impact this had on inter-related businesses, said Mr. Crick. This was further complicated by the duration of the floods which took months to subside in some areas which meant there could be multiple dependencies among manufacturers, suppliers and distributors. This made the calculation of losses and potential for recovery in revenues for business interruption claims very sensitive. He urged adjusters to adopt a collaborative approach to dealing with such claims and expressed a strong dislike of what he described as “ambush meetings” aimed at trying to catch out the insured.

There were also a range of local factors in Thailand to be taken into account when making decisions about whether to restore or replace damaged machinery, said Neil Courtney, managing director UK of LWG Consulting.

A lot of machinery damaged in the floods was not restored because of a combination of time, lack of capac-

ity with manufacturer approved repairers, concerns over the re-instatement of warranties and availability of parts, he said. However, some of that machinery written off and replaced by insurers would subsequently be sold locally as local mechanics were often able to recycle parts and find a secondary market for repaired machinery.

As important as machinery, property, business interruption and regulation are when dealing with catastrophe claims a recurring theme throughout the conference was that people must always come first, powerfully summed up by Phil Godwin: “When we think of the challenge of handling large catastrophe claims we need to get the context in focus, especially the humanitarian side. People may have died or been injured, they might be homeless, desperately worried about their families and their businesses. This will include your own staff. Many may have shown extraordinary courage such as the lady in Japan who sounded the tsunami alert in her town until it hit – she knew she was going to die but stayed at her post”.

(Courtesy: David Worsfold, Worsfold Media Services Ltd) **ISN**

continued from page 5



**ACUITY Flag,  
Fabrication,  
April 2, 2014**



ACUITY Flag, Foundataion, April 1-22, 2014



ACUITY Flag, Crane Assembly, April 22-23, 2014





ACUITY Flag, Installation Phase 1,  
April 25, 2014



ACUITY Flag, Installation Phase 2,  
April 28-May 9, 2014





ACUITY Flag,  
Final Installation,  
May 10, 2014

that its Board of Directors has named **Peter D. Hancock** (pictured) as President and Chief Executive Officer, AIG, effective September 1. Mr. Hancock will also join AIG's Board of Directors, effective September 1. He currently serves as Executive Vice President, AIG, and Chief Executive Officer of AIG Property Casualty, and will succeed **Robert H. Benmosche**, who currently is AIG President and Chief Executive Officer.

Insurance industry veteran **Bob Deutsch** is joining **Hamilton Insurance Group** as chief strategy officer, the company said in a statement. Deutsch will work with Hamilton's executive management and report to group chief executive officer (CEO) **Brian Duperreault**. Hamilton said that Deutsch will work to "identify opportunities for the ongoing development of the group's operations outside of

Bermuda, including both organic growth and strategic acquisitions." Deutsch has more than 30 years' experience in the insurance and financial services sector, most recently as managing director at **GCP Capital Partners**. He is a founder and former CEO of Bermuda-based property casualty insurer Ironshore, former executive vice president and chief financial officer (CFO) of **CNA Financial**, and former president, chief actuary and CFO of **Executive Risk**, a start-up company acquired by **Chubb**.

**Liam McGee**, chief executive officer of **Hartford Financial Services Group**, is stepping down from his post after a medical procedure. He will be replaced on July 1 by **Christopher Swift**, Hartford's chief financial officer. McGee will keep his position as executive chairman of Hartford until the next annual shareholders meeting. **ISN**



**Peter D. Hancock as President and Chief Executive Officer, AIG, effective September 1.**

# THE BACK PAGE

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By Elizabeth Buehler,  
*The Daily Princetonian*  
(May 11, 2014)

## Quotes of the Month

“If your ship doesn’t come in,  
swim out to it!”

~ Jonathan Winters (November 11, 1925 – April 11, 2013).  
Jonathan Harshman Winters III was an American comedian,  
actor, author, and artist.

## Did you know?

- ASEAN4 refers to Indonesia, Malaysia, the Philippines, and Thailand while Vn is Vietnam.
- ISN's Country & City Telephone codes and time zones is the second most visited page worldwide. Bookmark [http://www.isn-inc.com/countryinfo/phone\\_time.aspx](http://www.isn-inc.com/countryinfo/phone_time.aspx)

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# WORDS AND DEFINITIONS TO HELP INSURANCE PROFESSIONALS\*



**Keith  
Purvis**

## **AFTER THE EVENT LITIGATION INSURANCE**

After the event (ATE) litigation insurance is a form of legal expenses policy taken out by individuals and SMEs – small and medium sized enterprises – in the United Kingdom that wish to claim against a third party because of an event that has already occurred. While the most common ATE cases involve claims for personal injury for motorists and medical malpractice, a surprisingly wide range of other forms of civil litigation are also insurable, and these include professional negligence, contractual disputes, defamation and competition law.

This cover, available in the UK but not in Germany, is not as bizarre as might appear at first sight. Conventional “before the event” insurance (BTE) covers foreseeable eventualities, such as disputes with the employer/ employees, landlord/tenant, the authorities, and so on. What, however, if a situation is not foreseeable? And the matter of foreseeability itself is often an issue in claiming under a BTE policy.

The initiative for taking out an ATE policy often comes from a solicitor who has been approached by someone who wants to sue a third party, the policy enabling the client to bring an action without the risk of being saddled with legal fees – his own and the opponent’s – should it fail. All ATE policies cover the solicitor’s expenses and the opponent’s legal costs and expenses. Some solicitors work on a contin-

gency fee basis: that is, no win no fee. However, since April 1, 2013 solicitors are not allowed to charge more than 100 Percent of their normal fees if they win a case, this success element being much less for routine matters, and a winning policyholder’s own ATE premium is not recoverable from the opponent.

Solicitors whose clients apply for insurance receive a referral fee from the legal expenses insurer, and those that win a high proportion of their ATE cases may be granted underwriting authority for routine cases. Brokers may offer difficult cases and those with high cover limits to solicitors with proven expertise in this field.

The sooner the cover is applied for after a dispute has arisen, the more likely insurance can be provided and the cheaper it will be, though coverage is in principle available right up until a case is first heard. For an equivalent action the price of ATE coverage is optically higher than for BTE, which is hardly surprising.

It is legally permissible in the UK to have both a BTE policy and to obtain ATE coverage if need arises. Unfortunately, there are no statistics indicating whether the take up of ATE litigation insurance has affected the sale of BTE policies.

\* Keith Purvis for Versicherungswirtschaft Nr. 6, June 2014.  
(PIA Member) **ISN**



**safely** filed

 **continued from page 3**

sarily behave like GC given the opportunity...they might or might not, but changing the paradigm with oversight would make it a non issue in the future. The idea of “inertia” is not limited to just Guy Carp. Although it is their select market (small to mid-sized) that is prone to inertia and the author believes they advantage themselves in the relationship. The author thinks in the long run the industry would be better served to view this as a structural problem and not just a one particular broker issue.

**Regional Commentary (United Kingdom) / Low level of broker satisfaction of UK mid-market claims performance**

– It is surprising that a recent survey in the broking community of Mid-Market Claims Performance showed that only five carriers in the whole country received a net positive satisfaction score.

**Trouble on the bridge? Is Lloyd’s abandoning its Lime Street ship?**

The Lloyd’s insurance market is reportedly in talks with developers about a move away from its iconic One Lime Street headquarters, according to a report in The Sunday Times (UK). The newspaper said that Lloyd’s is in discussions with several developers but favors a move to a yet-to-be-built skyscraper known as Gotham City. The 36-storey tower in Leadenhall Street is planned for 2020, close to the current Lloyd’s Building in Lime Street. No agreement has been signed between Lloyd’s and the tower’s developer TIAA Henderson Real Estate and a decision could be six months away, the Sunday Times reported. Sources told the newspaper that Lloyd’s could look at other developments or use the proposed move to force lower rent on Ping An, the Chinese insurer that owns the Richard Rogers designed Lloyd’s 1986 building. The newspaper also reported that Marsh & McLennan is also in discussions with Henderson. **ISN**

**continued from page 13**

the measure that provides for the federal terrorism reinsurance program. While extending the program, the measure approved by the panel would also differentiate between conventional terrorist attacks and those involving nuclear, biological, chemical and radiological (NBCR) weapons. For conventional attacks, the trigger for the federal backstop would be gradually raised to \$500 million in losses from the current \$100 million and private industry’s co-pay would rise to 20 percent of insured losses from the current 15 percent. The trigger and co-pay for NBCR events would remain at the lower levels.

**Venezuela** – A German businessman has been killed recently in Caracas during a shootout at a five-star hotel. Violence is soaring in Venezuela, and the country’s murder rate is among the highest in the world but most murders take place inside the city’s shanty towns and adjacent areas as a result of gang violence, theft, and stray bullets. (Source: HIS Jane’s 360). This incident highlights the worsening security environment in Caracas. The city is one of the most dangerous places worldwide in terms of kidnapping and murder. Red24’s Global Risk Map which displays overall risk ratings and most significant security threats by country @ <http://goo.gl/6Ssuu1>

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