



Pressure points build for D&O, PI

The level of competition in the market for professional indemnity and D&O liability insurance has increased dramatically in the past few years, says Max Broodryk, national SME mgr and NSW corporate accounts mgr for AIG Aust's financial lines divn. He spoke at the ANZIIF-NSW liability conference in Terrigal ([CN 1529](#)). Broodryk said the market had been primarily driven by competition for market share, new entrants and an increase in the bargaining power of customers and their intermediaries. That had created an environment of falling prices and expanded coverage, manifesting itself in higher expense ratios (though not yet significantly higher claims ratios, but that may develop over time). Broodryk said most insurers had employed aggressive strategies to maintain market share. Despite the robust results reported by Aust insurers ([CN 1526](#), [1527](#), [1528](#)), Broodryk identified several worrying pressure points. The D&O premium pool had remained unchanged or even declined in the last few years to about \$220m-\$240m, but the pipeline of large claims for publicly listed companies exceeded that number by "a significant margin". "Whether or not large risks are being priced correctly in the current market is a matter of debate which will take some years to determine, given the long-tail nature of this class," Broodryk said. He cited the securities class action against Aristocrat Leisure, with the litigation funder involved estimating the claim at \$230m, excluding legal costs, as an example. A second pressure point was the housing market, with any severe downturn potentially leading to losses in several professional liability classes of business. They included property valuers, real estate agents, mortgage brokers, conveyancers, solicitors and financial planners. (Continued p4)

Lloyd's: no need for us to take hard line on corporates over climate change

Evidence has become "pretty obvious" over the past 2-3 years that something has to be done about the cumulative effects of climate change, says Lloyd's of London chairman Lord Peter Levene. There were differing opinions about the "real effect" of human

behaviour on climate change but there was no question it "is going to make it worse", Levene said. He saw no need for Lloyd's, franchisor of the world's leading specialist insurance market, to act hard against large corporations on climate change. At a media roundtable in Syd last Tues ([CN 1529](#)), Levene said "a large number" of corporate shareholders and customers were putting "pressure on companies, particularly in energy". Levene cited evolved corporate social responsibility (CSR) statements in company reports as demonstrating that the best boards were responding to the challenge. Some CSR reports used to be "four-line statements read [only] by geeks", Levene said. Now, they ran to "a couple of pages" and were pored over by big institutions. Analysts questioned companies on what they were doing about climate change, Levene said. Lloyd's was "encouraging" businesses about how they behaved, he said. Some of Lloyd's biggest lines of insurance are in energy, property & casualty, and aviation. (see *Insurers predicts higher cat losses*, p3)

APRA concludes Zurich investigation

APRA has concluded its investigation into financial reinsurance transactions in 2000 at Zurich Aust ([CN 1445](#), [1401](#)). The reinsurance arrangements helped Zurich Aust overstate its profits by \$61m. The regulator has handed its report to Zurich Aust, but it will not be made public. Spokesperson Rob White told CN that, as far as Zurich Aust was concerned, the matter was concluded in May 2005, when APRA accepted enforceable undertakings from Zurich in relation to the transactions. Zurich Aust had already implemented the EU, or was in the process of doing so in accordance with the agreed timetable, White said. "The bottom line is that there is nobody in Zurich Aust now who was involved in the financial reinsurance transactions." White said the business had occurred in 2000, and it is "a different Zurich Aust now. There's a very strong compliance culture within the company". APRA said in a statement that it was "satisfied" Zurich Aust had undertaken all "necessary remedial actions" in relation to the transactions. APRA is now finalising action against individuals involved in the Zurich transactions with General & Cologne Re Grp Aust. It said no criminal actions would be pursued.

Merger gets final approval

Suncorp's Promina merger will be implemented on March 20 after the Fed Court approved it on Monday (CN 1529). Suncorp CEO John Mulcahy said the Fed Court approval had cleared the way for "a merged group with an extremely strong product offering, comprehensive distribution network and the competitive scale required to maximise growth opportunities". He said Promina and Suncorp execs would work together on a "systematic approach" to integration, mgmt team appointments and business model development. A Suncorp spokesperson said the mgmt team would be decided after March 20.

Suncorp launches capital raising

Suncorp (*above*) has launched a \$1.17bn capital raising entitlement offer to help fund its merger with Promina. Suncorp lodged a prospectus with ASIC on Monday to offer Suncorp shareholders two shares for every 15 they hold, for \$15.50 each. Suncorp said the offer price was a 27% discount on Suncorp's March 9 share price. The offer, fully underwritten by Citigroup, opens on March 19 and closes on April 5. Suncorp chairman John Story said net proceeds of the capital raising would be used to partially fund the cash consideration payable to Promina shareholders. "We expect the merged group to deliver enhanced value to shareholders over the medium and long term by bringing together two highly complementary businesses, established and respected brands, a comprehensive product range and an extensive distribution network across Aust and NZ," he said. New shares not acquired under the initial offer would be offered to institutional investors. Promina shareholders would receive an increase in the number of Suncorp shares to compensate them for the impact of the discount applying to the entitlement offer. The share component has increased from 0.2618 Suncorp shares to an expected 0.2703 Suncorp share for every Promina share, plus \$1.80 cash. The adjustment brings the implied bid price to \$7.54 for Promina shares. A Suncorp spokesperson said excess capital contributing to the deal was expected to be \$650m.

Associated Marine launches prestige boat cover

Associated Marine Insurers' Agents has launched a unique, tailored insurance cover and service for prestige pleasure craft owners. It is called Helmsman Blue in Aust and Prestige Blue in NZ. The Helmsman Blue team includes legal specialists, liability and hull specialists and experts on protection and indemnity. Helmsman Blue cover will

only be offered through brokers, in order to ensure there are no gaps in cover, Associated Marine said in a statement.

ASIC releases EU guide

ASIC has released a guide clarifying its approach to accepting enforceable undertakings (EUs). ASIC chairman Jeffrey Lucy said the guide would be helpful in dispelling any uncertainty in the way ASIC dealt with EUs and would clarify the circumstances in which ASIC would accept undertakings from companies. The guide outlines what an EU is, when ASIC will consider accepting an undertaking, terms that are or are not acceptable to the cmn, and what happens if the terms of an undertaking are not complied with. ASIC plans to put examples of EU templates on its website soon, to supplement the guide. The templates would be updated regularly, ASIC said. The guide can be downloaded from the ASIC website.

Talent2 teams up with QBE

Recruitment company Talent2 has been selected by tender to provide an onsite recruitment service for QBE. It will recruit all QBE's permanent employees and contractors. The arrangement starts next month.

People

Sally-Anne Hall, an Oamps account exec, has been awarded ANZIIF's student of the year award.

Diary

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March 22: AILA/ ANZIIF Qld, Insurance law annual review, Bris. Ph (07) 3221 3699 or email qldbranch@theinstitute.com.au.

March 28: ANZIIF Qld, Insurance forum, Bris. Ph (07) 3221 3699 or email qldbranch@theinstitute.com.au.

April 3-4: Aust self-insurance summit, Syd. Ph (02) 8908 8555 or go to www.acevents.com.au/selfinsurance2007.

April 4: Insurance Council regulatory update 2007, Syd. Ph Veronique Henrisson (02) 9253 5176 or email vhenrisson@insurancecouncil.com.au.

April 23: NSW ANZIIF lunch, speaker Tim Flannery, Syd. Ph (02) 9247 1141, email nswbranch@theinstitute.com.au.

May 1-3: ANZIIF 22nd reinsurance rendezvous, Syd. Go to www.theinstitute.com.au.

May 3: Insurance Council NSW conf and annual dinner, Syd. Ph Veronique Henrisson (02) 9253 5176 or email vhenrisson@insurancecouncil.com.au.

May 17-18: AILA, Insurance law intensive, Noosa, Qld. Email Angela Morrisby, angela@connectU2.com.au.

Planners “frustrated by complex guidance”

ASIC guidance on how to implement Financial Services Reform Act (FSRA) changes has frustrated financial planners, but the principles-based legislation is sound, says FPA chairman Corinna Dieters. She told an ASIC summer school that changes to the Act left licensees uncertain how to implement the new requirements. ASIC’s “lengthy” guidance on statements of advice (SoAs) showed how the confusion arose. “Industry principles-based guidance was brief; principles-based legislation was brief. Spelling out implementation of the legislation in particular situations expanded the law exponentially.” But ASIC’s policy statement 175, on SoAs, was not law and should not be treated as such. An eg was “widespread concern generated as a result of ASIC’s [AMP] enforceable undertaking ([CN 1526](#), [1501](#)), resulting in further review of business practices even though there was no change to the [Corporations] Act”. Dieters said the problem was exacerbated when there was no “meaningful ongoing co-operation” between businesses and ASIC to develop guidance. “Guidance from the regulator is important. Logically it must be based on the outcomes sought and must support market competitiveness and consumer protection in equal measure,” she said.

Panel “fails to meet” terms of reference

The Fed Govt’s medical indemnity policy review panel ([CN 1528](#)) has not met its original terms of reference and is an “insurance industry and doctors’ panel”, says David Hirsch, a Syd barrister who specialises in medical negligence. He said fed health minister Tony Abbott had “refused to allow anyone” on the panel to represent patients’ interests and that had cost taxpayers. “The terms of reference of the original review included making sure proposals were fair to patients, taxpayers and doctors.” Hirsch said taxpayers were paying for most injuries caused by medical negligence. “This much is clear from the UMP ([CN 1444](#)) bailout and other schemes whereby the govt subsidises certain claims.” He said insurers were legally required to repay Medicare for the cost of caring for patients injured by medical negligence from proceeds of settlements or judgements. “Because of tort reform, these repayments have ceased because most injured people are unable to make claims. The taxpayer foots the bill, not the insurer of the negligent doctor or hospital.” Hirsch said doctors and hospitals had taken active steps to “improve their practices and lift their games” because of litigation. The panel’s conclusion that continued reform should be encouraged “should be

translated as ‘we have never had it so good, we are insulated from legal accountability, the taxpayer has bailed us out, keep up the good work’.”

Insurers expect bigger cat losses

Insurers have modified catastrophe simulation models to bring them in line with higher expected damage in 2007, despite 2006 insurance losses from natural catastrophes and man-made disasters being below long-term trends, says Swiss Re. Its latest Sigma study, *Natural catastrophes and man-made disasters in 2006*, said that, unlike 2004 and 2005, natural catastrophes had affected mainly developing countries where property values were low, resulting in comparatively light economic losses of US\$48bn. Low insurance penetration in developing countries meant only one third of economic losses (US\$15.9bn) in 2006 were covered by insurance. “Overall, 2006 brought property insurers the third-lowest losses of the past 20 years. Only 1997 and 1988 were less expensive after allowance for inflation,” the Sigma report said. Natural catastrophes cost insurers US\$11.8bn and man-made disasters US\$4bn in 2006. “These low loss figures were attributable mainly to the calm hurricane season in the US and the absence of highly damaging events in Europe. Three events ran into the billions; two tornadoes in the US in April and a typhoon in Japan in Sept.” Insured losses had risen in past decades, mainly due to weather-related catastrophes and “an increasing concentration of property values and urban encroachment” into highly exposed regions. “Going forward, the effects of global warming are likely to aggravate the loss situation. Climatologists assume shifting climate zones could lead to weather events, that have hitherto been restricted to extreme regions, spreading to other parts of the world,” Sigma said.

Dexta launches new D&O policy

A new, individual policy has been launched to protect directors, avoiding reliance on company D&O liability policies and indemnities. The Directors’ Personal Liability Risk Protector product, developed by Melb-based broker Risk Partners, and underwritten by Dexta Corp, provides primary D&O insurance protection to individuals. Mark Parris, a Risk Partners director, said the product had been designed in response to the “increasingly precarious landscape” for Aust directors and to tackle shortfalls in traditional D&O cover. “By buying your own cover, a director does not risk someone else sharing, exhausting or exploiting your policy limit. The safest bet is to have a policy no one else can touch,” Parris said. The Directors’ Personal Liability Risk Protector is a primary cover so directors can rely on it immediately if a claim is made. Up to eight directorships can be included on one policy.

Reflect risk profiling in insurance:

Aon

Brokers should facilitate partnerships between insurers and operational risk mgrs to deliver creative insurance solutions for financial institutions, says Tim Farren, Aon Aust financial institutions practice grp head. He told an Aon operational risk financing conf in Syd last week that operational risk financing provided a strong platform to use insurance more efficiently. "Banks and financial organisations face myriad risks in their respective environments. Regulations, such as Basel II, mean banks and financial institutions have developed an advanced understanding of their risk profiles. Organisational clarity around risk responsibilities and accountabilities are vital, according to regulators," he said. Improvements in risk profiling should be reflected in policies and brokers could facilitate that. "The role of a traditional broker needs to change from transaction executer to partnership facilitator and knowledge sharer between insurers, insurance buyers and operational risk mgrs. The challenge is to better connect risk mgmt to client operations; to turn risk data into risk knowledge and influence insurers to devise creative solutions that respond to these risks," Farren said. Brokers should ensure clients' insurances were "absolutely aligned" with risk profiles. Insurers could show leadership by "pricing risks appropriately and ensuring outcomes from risk profiling are reflected in policy outcomes and inclusions", Farren said.

Property industry vulnerable to claims

(From p1) Property developers, mezzanine financiers, property fund managers and other financial institutions could also be affected in terms of professional indemnity and D&O liability claims, Broodryk said. A third pressure point was the financial planning profession, which was still adapting to considerable regulatory change and ongoing scrutiny of its practices by ASIC ([CN 1462](#)). "The collapse of the Westpoint Grp ([CN 1525](#)) illustrates the potential of even a single investment class to cause large losses in the industry," he said.

CEO will use 'fear' to cut paper

Lloyd's of London CEO Richard Ward, who joined the specialist insurance market last April, is committed to culling "piles of paper". Lloyd's chairman Lord Peter Levene told the media

roundtable in Syd (p1) that Ward had discovered the Lloyd's building in London sent an enormous four tonnes of paper to Chatham every day. Lloyd's Chatham office provides back office support to its Lime St, London, centre of operations and market place. Levene said Ward expected to stop Lloyd's paper-based system "sometime next year". Asked how Ward would accomplish this, Levene smilingly replied "by fear". He said Lloyd's had already embarked on stepping up its recycling efforts. Lloyd's website says recycling has halved its office waste going to landfill.

CGU/AMP stoush heard in High Court

The High Court is likely to hand down its decision on *AMP Financial Planning v CGU Insurance* within six months, say Wotton & Kearney insurance lawyers Andrew Moore and Kate Burrows. The High Court has heard CGU's appeal against the Sept 2005 Full Fed Court decision to allow AMPFP to claim more than \$3m in unpaid professional indemnity claims ([CN 1463](#)). AMPFP originally lost its application because it had not then paid the claims and Fed Court Justice Peter Heerey ruled liability was "hypothetical" ([CN1421](#), [CN1420](#)). AMP submitted that it was liable to the 47 investors who had been misled by its securities representatives, and had settled with them, at ASIC's behest. ASIC had urged AMPFP to meet the losses as an inadequate response to the investors' claims would put AMPFP's securities dealer licence at risk. Counsel for CGU submitted that the Full Fed Court had erred in refusing to determine some issues concerning the construction of the relevant insurance policies. CGU pleaded that it had simply "helped AMP to discharge its obligations under the law" but it had reserved its right to argue it was not liable because circumstances did not give rise to an indemnity. It was entitled to deny indemnity as it had kept AMP notified that, despite its agreement to the settlement protocol, it was not confirming that indemnity would be extended. Moore and Burrows hoped the High Court would provide guidance on the acts that constituted those of a "prudent uninsured". But, judging from the transcripts, they said it was more likely the court would focus its attention on whether an insurer was estopped from denying indemnity once the insured had complied with the requirement to act as a prudent uninsured. ([HCA trans, CGU Insurance Ltd v AMP Financial Planning, 28/2007](#); [CGU Insurance Ltd v AMP Financial Planning, 47/2007](#))

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