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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.

Insurance Day also produces a number of must-attend annual events to complement its daily output, including the *Insurance Day* London Market Awards, which recognise and celebrate the very best in the industry.

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Marine insurers sail to forefront of insurtech revolution

It may be one of the most traditional insurance classes, but the marine market is the focus of technological innovation



Michael Faulkner
Editor

Despite being the oldest and one of the most traditional insurance classes, marine insurance is at the forefront of the insurtech revolution in the commercial lines sphere.

While many insurtech initiatives have focused on personal lines products such as home, motor and travel insurance, those relating to commercial risks have been relatively few in comparison.

Yet marine insurance is perhaps surprisingly the beneficiary of a growing number of many such insurtech initiatives – leading some to even coin the term “marinetech”. And money is pouring into the sector.

Insurance Day reported this week that marine-focused insurtech firm Windward had raised \$16.5m in its latest round of financing, led by XL Group's insurtech fund XL Innovate. The Israel-based firm has now raised a total of \$39m, with some big-name backers.

In May what is thought to be the first blockchain platform for the marine insurance market was given its commercial launch. Insurwave, which has been developed by consultancy EY in a joint venture with blockchain specialist Guardtime, already has the backing of broker Willis Towers Watson and insurers XL Catlin and MS Amlin.

“Marine insurance has a notoriously complex premium-setting process, which made it a great prospect for a blockchain-based overhaul,” Tom McDonald, co-founder of software firm R3, whose Corda blockchain was used in the initiative, says.

Insurwave claims, among other things, to enable claims to be paid in hours, premiums to be agreed and settled in seconds, shippers to track assets

‘Marine insurance has a notoriously complex premium-setting process, which made it a great prospect for a blockchain-based overhaul’

Tom McDonald
R3

and share data with brokers and insurers, and for insurers to track their exposures in near-real time.

Shipping giant Maersk is now placing its marine hull portfolio through the platform. Maersk says the platform will help to remove a lot of the frictional costs from the process of procuring insurance, saving it millions of dollars.

“As clients digitise their business, blockchain is a brilliant way for data to be shared quickly, efficiently and in a secure environment,” Rob McAdams, chief underwriting officer for global marine at XL Catlin, says.

Open cargo

It is not just marine hull that could benefit from blockchain technology, either; so too could cargo covers, particularly open cargo policies.

Under an open cover policy, an insurer will provide cover to users for all shipments worldwide on an annual basis for a low premium, in exchange for the insured agreeing to declare every shipment. But a frequent complaint is the insured fails to declare each shipment to save premium.

“Blockchain technology would serve to prevent such lapses if all shipment transactions of the insureds are automatically recorded on an irreversible ledger with the ability to create and enforce policies automatically,” Andrew Horton, partner at law firm RPC, says.

Marine insurance is also an ideal class to make use of artificial intelligence (AI) and risk analytics, given the amount of shipping industry data available.

Insurtech firm Concirrus uses AI-powered software to help marine insurers move to “behavioural-based underwriting”. The company's software provides behavioural analysis that considers a ship's location, speed and other factors to offer more accurate underwriting models.

It accesses and interprets large sets of data, such as vessel statistics, movements, cargo and machinery information, and combines this with historical claims information to reveal the behaviours that correlate with claims.

Concirrus has partnered with EY to scale up the offering across the marine insurance market.

“With recent advances in technology and the masses of data available from insurers and the shipping industry, we have found a way to understand the behaviour of the assets insured,” Andy Yeoman, chief executive of Concirrus, says.

Similarly, Windward collates shipping data and uses vessel operating patterns and behavioural traits to predict the likelihood of a ship having an accident in the year ahead.

“There is a tremendous amount of expertise in the insurance market, but risk models are very much based on past claims, the weight of the vessel and the domicile,” Ami Daniel, Windward's chief executive, says.

With the pressures facing the marine insurance market at the moment, insurers may well be more receptive to using modern technology that could improve underwriting performance.

Former Pioneer chief executive Doherty joins rival MGA Dual

Hyperion-owned underwriting business makes senior management changes



Michael Faulkner
Editor

Former Pioneer Underwriters chief executive Darren Doherty will join Dual as vice-chairman and commercial director.

News that Doherty was leaving Pioneer, the underwriting business he founded in 2011, emerged in February.

Doherty will join Dual, the underwriting arm of Hyperion, on September 1.

Hyperion Insurance Group chief executive, David Howden, said Doherty's "extensive experience and energy will bring additional drive to Dual's expansion plans both in the UK and internationally".

Hyperion has more than \$300m to deploy on acquisitions this year as a result of its recent equity investment and debt refinancing, some of which is expected to be deployed on MGA acquisitions.



'[Darren Doherty's] extensive experience and energy will bring additional drive to Dual's expansion plans'

David Howden, Hyperion

Doherty's appointment is one of a number of senior management changes at Dual, which the company said would position it for further growth.

David Ibeson, chief executive of Lloyd's insurer Apollo, has been appointed as chairman of the business.

Ibeson, who is also a non-executive director of Dual, will replace Clem Booth who will become the chairman of Hyperion's remuneration committee.

In addition, Richard Clapham has been named group chief executive of the underwriting business.

Clapham will retain his role as Dual's group chief underwriting officer and chief executive of UK and Europe.

Both appointments are effective October 1.

Howden said Booth had overseen three "transformational" years for Dual. In addition, he said Clapham had been "instrumental in delivering positive change" at the business.

In May Dual bought Synkronos Italia, Italy's second-largest underwriting agency.

Dual contributed around one-fifth of Hyperion's growth in the last financial year.

Industry makes 'pledge' to drive more inclusive workplace

Insurers, trade bodies and brokers have joined forces to launch an industry-wide initiative aimed at creating a more inclusive work environment across the sector, writes Michael Faulkner.

Spearheaded by Lloyd's and Zurich, the "inclusive behaviours pledge" is supported by 50 firms, including Aon, Axis Capital, Willis Towers Watson and XL Catlin. Trade bodies including the Lloyd's Market Association and the London & International Insurance Brokers' Association are also supporting the initiative.

The initiative builds on the insurance sector's work to drive greater inclusion across the profession, including the global DiveIn Festival, which is now in its fourth year.

The pledge addresses all forms

of potential discrimination in the workplace and sets out a framework of desired behaviours for leaders and employees in the workplace, as well as in their interactions with suppliers and customers.

It contains a series of CEO-level commitments, with an obligation for them to have clear policies and procedures in place for reporting any inappropriate or discriminatory behaviour in the workplace.

It commits chief executives to take action within their own organisations if their employees are not treated with dignity at work, with serious repercussions for the perpetrators of any behaviour that falls short of the desired behaviours.

Lloyd's chief executive, Inga Beale, said: "The inclusive behaviours pledge is a public com-

mitment reinforcing our promise as individual organisations and as a collective to challenge inappropriate behaviour and create increasingly welcoming and inclusive workplaces for the diverse talent powering our sector."

Tulsi Naidu, chief executive of Zurich UK, said: "My experience is the insurance industry is a great place to work but we do still see instances of poor behaviour which undermine the whole and that's why we think this pan-industry initiative is so important."

"We believe the inclusive behaviours pledge will send a clear signal the leadership of our industry is committed to working together to drive out inappropriate or discriminatory behaviour," Naidu added.

AmTrust downgraded by AM Best

AM Best has cut AmTrust's ratings, citing the group's deteriorating underwriting results and increased variability of performance in recent years, writes Lorenzo Sperry.

AmTrust's results in 2016 and 2017 were marked by high loss ratios and adverse development in loss reserves.

"Through year-end 2017, adverse reserve development was particularly noticeable in the 2010 through 2014 accident years," the rating agency said.

"Although there has been no material adverse development reported since the third quarter of 2017, AM Best continues to incorporate a reserve deficiency in its view of AmTrust's risk-adjusted capitalisation."

AM Best removed from under

review with negative implications and downgraded the insurer's financial strength rating (FSR) to A- (excellent) from A (excellent) and the long-term issuer credit rating (LTICR) to "a-" from "a" for the members of the AmTrust Group.

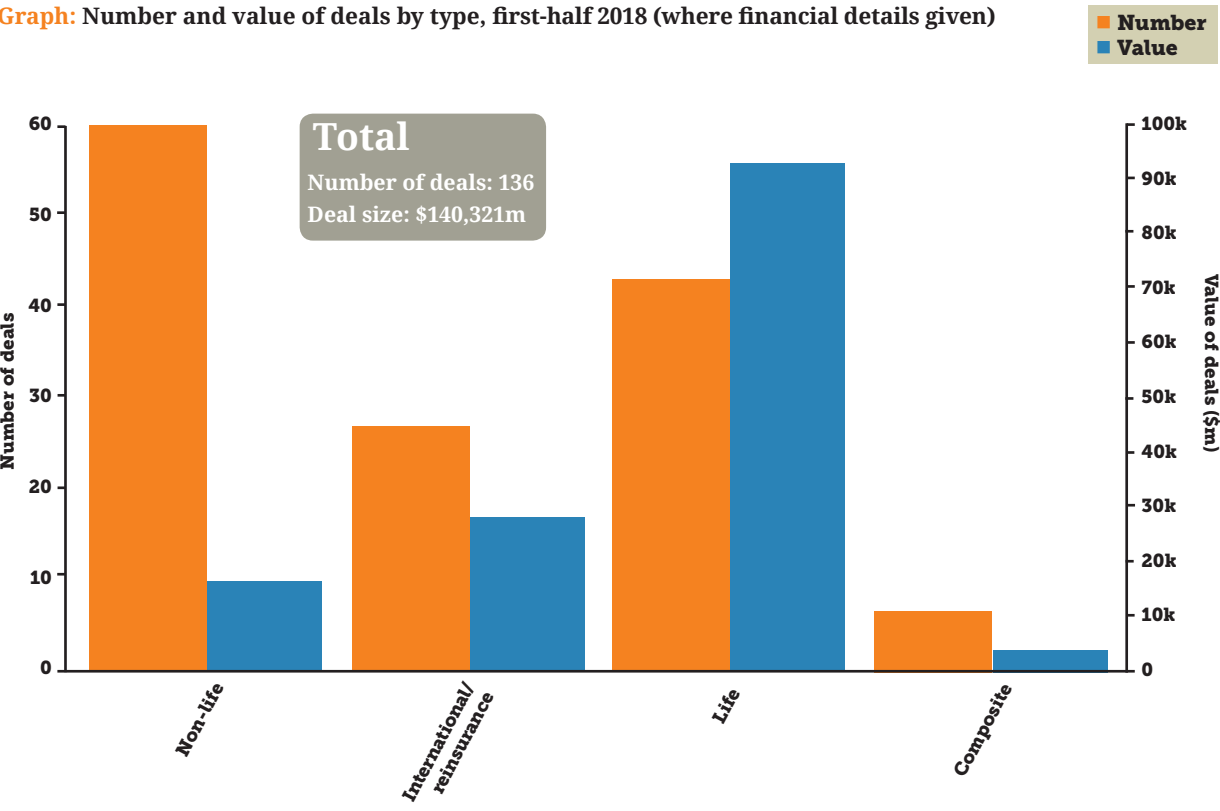
In addition, the rating agency removed from under review with negative implications and downgraded the LTICR of AmTrust Financial Services Inc (AFSI) to "bbb-" from "bbb" and downgraded all of AFSI's LTICR and indicative long-term IRs by one notch.

AM Best also removed from under review with negative implications and affirmed the FSR of A- (excellent) and LTICR of "a-" of AmTrust Title Insurance Company.

The outlook on the ratings is stable.

M&A

Graph: Number and value of deals by type, first-half 2018 (where financial details given)



Map: Number and total value of M&A deals by region, first-half 2018

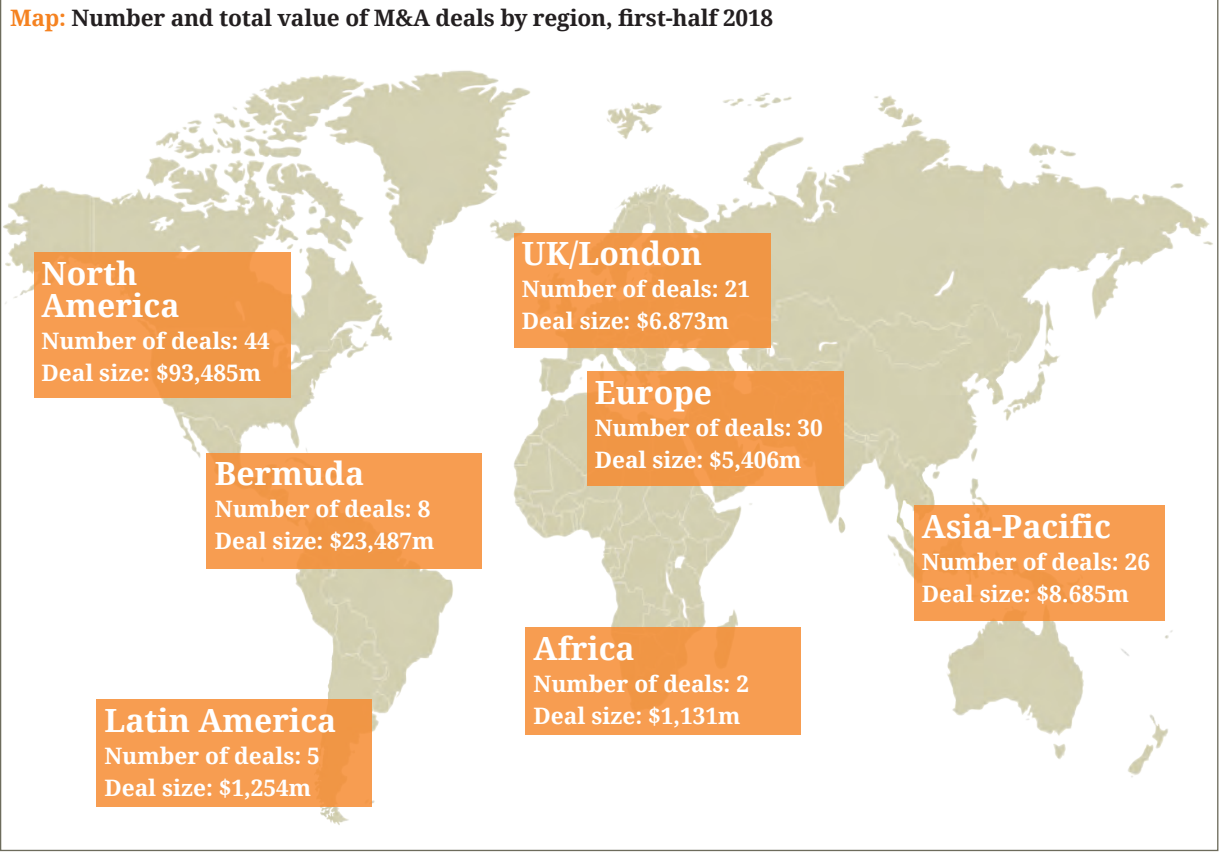
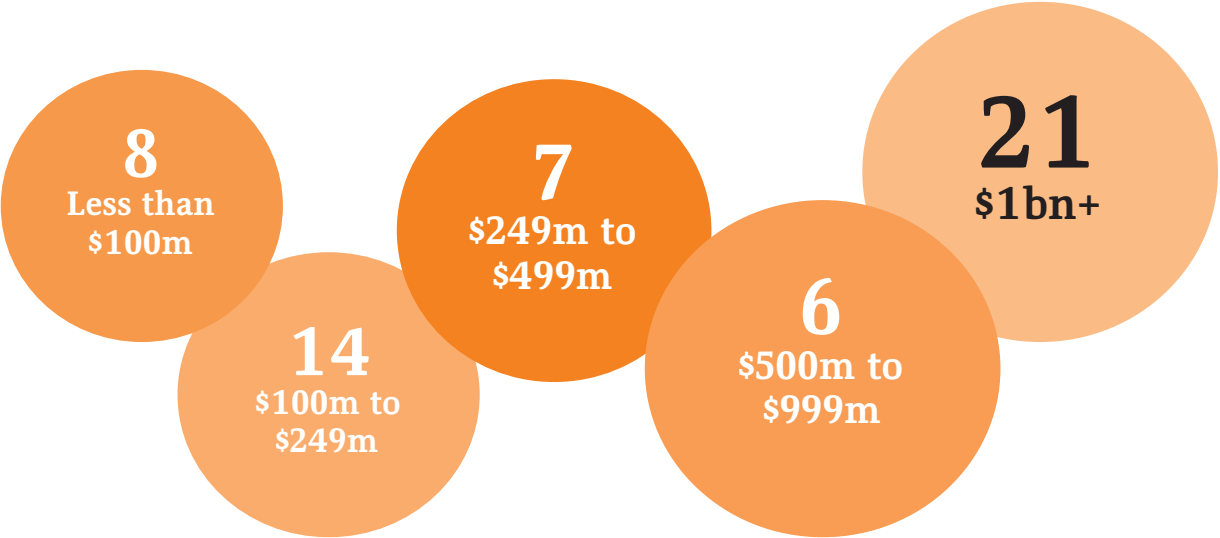


Chart: Number of deals by size range, first-half 2018 (where financial details given)

Total number of deals: 56



M&A revs up on industry’s high capital levels

Many firms have the financial capability to make strategic takeovers and see off threats from disrupters by transforming their business

Graham Village
Global markets editor

The acceleration in acquisition activity in the global insurance sector seen towards the end of last year has continued into 2018, and deal values are comfortably up for the first six months.

The financial total of more than \$140bn in announced or completed transactions we have tracked over the opening half of the year is heavily distorted by Cigna’s huge \$67bn bid for pharmacy company Express Scripts, the latest in a series of mega-deals in the healthcare sector. As with several proposed healthcare tie-ups, Cigna’s plan will face a high level of regulatory scrutiny, including overview by the US Department of Justice.

Even stripping out the Express Scripts deal, the 2018 statistics suggest this is a year of rising values for acquisitions. The 17 deals valued at more than a billion dollars compares with 13 for the first half-year of 2017. And the \$73.3bn in transaction value, excluding the Express Scripts deal, is significantly higher than the \$57.2bn for the comparable period of 2017. Both periods saw 43 billion-dollar deals announced or completed.

This year has seen no great change in the type or pattern of acquisition activity, with all the familiar drivers continuing to encourage deals.

Much of the interest has been in the international re/insurance sector as pressures that have been building for some time reach a head. The specialist players in Bermuda had a difficult 2017 because of the catastrophic losses and many players are now in the sights of larger, mostly broader, groups, including some from outside the traditional pool of insurance investors.

Changes to the rate of corporate tax in the US and the Base Erosion & Anti-Abuse Tax introduced by the Trump administration have chipped away at Bermuda’s competitive advantage over the US for international business.

The big deals involving the Bermudian market recently are Axa’s \$15.3bn bid for XL, working its way to completion, and AIG’s \$5.6bn takeover of Validus.

‘When it comes to growth strategy, more of the same is not necessarily the best answer. What may have been a core business in the past may not be in the future’

Ram Menon
KPMG

And others are in the offing. Sirius, formerly part of White Mountains but now owned by China Minsheng, is working with US asset management group Easterly to take the re/insurance business private in a deal that would value the business at about \$2.2bn.

Aspen is known to be considering potential bids, Maiden has called in corporate advisers to assess options and Enstar is thinking about a sale of its active underwriting units, StarStone and Lloyd’s business Atrium.

In Europe, Solvency II has given companies a more formal process for identifying how effectively they are using capital, revealing how beneficial it is to dispose of units that are dormant or no longer core.

In the life sector, both Europe and the US have seen a high level of interest in the disposal of large legacy blocks of business. PwC described the recent sale announcements of legacy

variable annuity portfolios by Hartford and Voya, as well as MetLife’s spin-off of what is now Bright-house and the flotation of Axa US as “just the beginning of what we see as a trend that is similar to fixed annuities divestitures that took place between 2011 and 2015”. Those divestitures made good sense, PwC noted, as the financial markets reacted favourably to the sales.

KPMG recently quizzed 200 senior executives from the global insurance industry on thoughts about acquisition, finding a high level of interest in targeted deals. Over the next three years, 74% of respondents expect to make an acquisition, and of those 81% hope to make up to three acquisitions while 37% are looking to get rid of at least

one asset. And more than 70% hope their deals will be transformative rather than merely add-ons.

A key driver is the realisation that the past may no longer be an accurate guide to the future in many ways, including business lines and regions that offer strong profit potential, the type of product and service customers want and how best to reach potential customers.

KPMG notes gross domestic product increased more than 20% between 2010 and 2016 yet global premiums were up just 9% during the period. Organic growth is increasingly hard to deliver.

The firm’s global insurance deal advisory leader, Ram Menon, said: “When it comes to growth strategy, more of the same is not necessarily the best answer. What may have been a core business in the past may not be in the future.”

Insurance leaders are taking a more strategic approach to acquisitions and interestingly seem more optimistic than might be expected on the disrupters assailing the business. Another survey carried out by KPMG, polling 115 insurance industry chief executives, found more than 60% view disruption as more of an opportunity than a threat.

And with insurance industry capital levels at a high level, many companies have the wherewithal to pursue acquisitions in both traditional and disrupter sectors. KPMG notes many insurers, realising their skill and knowledge gap in the area of acquisitions, are setting up dedicated capabilities, including corporate venture capital (CVC) teams, to acquire and accelerate innovation. The survey found 18% of respondents either had a CVC in place or planned to form one. ■

Merger and acquisition deals for the year to date

Table: Major insurance underwriting company M&A deals and flotations 2018*

Acquirer	Target	Notes	Price (\$m)
Cigna	Express Scripts	Cigna has agreed to buy pharmacy benefit manager	67,000
Axa	XL	French group has launched cash bid for XL	15,300
AIG	Validus	AIG will strengthen its position in reinsurance and special commercial lines	5,560
Phoenix	Standard Life	Closed fund company Phoenix plans to buy the life book of Standard Life	4,048
Institutional investors	Axa	French group has launched the IPO of its US life unit	4,000
Lincoln National	Liberty Mutual	Liberty has sold its Liberty Life business	3,300
HCF	HBF	Two of Australia’s largest health insurers are planning to merge	3,100
Cornell Capital	Hartford	Hartford has sold its Talcott Resolution to an investment consortium	2,750
StonePoint/Karfunkel family	AmTrust	Karfunkel family working with StonePoint to take AmTrust private. Offer now increased	2,750
Assurant	Warranty Group	Assurant has closed its acquisition of The Warranty group from TPG Capital	2,500
Allianz	Euler Hermes	Allianz has completed the purchase of the 25.6% it did not already own	2,242
Institutional investors	Sirius	Sirius, owned by China Minsheng, is working with Easterly to float	2,200
Rothsay	Prudential	Pru has offloaded £12bn of annuity liabilities	1,750
Institutional investors	PICC	Chinese group plans to float less than 10% on Shanghai Stock Exchange	1,600
Kemper	Infinity	Kemper is to take over US non-standard motor insurer	1,400
MS&AD	Swiss Re	Japanese insurer has taken a 13.2% stake and committed to investing £800m in Swiss Re’s ReAssure	1,048
Institutional investors	Brighthouse	Former MetLife business has made a secondary offering	1,030
Nippon Life	MassMutual	Nippon Life has acquired 85.1% of MassMutual’s Japanese operation	988
Centerbridge Partners	Canopus	Investor group has now completed takeover of Canopus from Sampo	952
MS&AD	BoCommLife	Mitsui Sumitomo is to buy a 37.5% stake in Chinese life company	680
Athora	Generali	Italian group is selling its Belgian business, focused on life	660
Mapfre	Banco do Brasil	Mapfre is taking 100% control of joint venture BB Brasil’s non-life business	637
Tokio Marine	IAG	IAG is selling its businesses in Thailand and Indonesia	525
Cigna	ANZ Bank	Cigna is to acquire OnePath Life NZ for NZ\$700m	488
Rakuten	Asahi Fire & Marine	Japanese ecommerce company Rakuten plans to buy insurer from Nomura	415
Enstar/Hillhouse	Hillhouse/Enstar	Enstar has taken full control of KaylaRe while Hillhouse has upped its stake in Enstar	400
White Mountains	NSM	White Mountains is buying programme administrator NSM	368
Banco BPM	Aviva	Aviva has sold its interest in Italian joint venture to partner	328
Kuvare	United Fire	United Fire has sold its United Life unit	280
Bankia	Aviva	Aviva has sold two Spanish joint ventures to Bankia	250
Zurich	QBE	Zurich is to buy QBE’s Latin American business	250
Athora	Aegon	Athora has completed the takeover of Aegon Ireland	237
Talanx/Assa	Generali	Generali has sold businesses in Colombia to Talanx and in Panama to Assa	208
CaixaBank	Allianz	Allianz has sold 8.4% stake in Banco BPI in Portugal	208
Institutional investors	Tiberius Acquisition	Tiberius, focused on insurance takeovers, has floated	173
ASR Nederland	Generali	ASR has bought Generali Nederland	169
Aviva	Achmea	Achmea has sold its Irish life insurer Friends First to Aviva	154
Shinhan Financial	Prudential plc	Korean group has agreed to buy Pru’s consumer finance business in Vietnam	151
Institutional investors	Sabre	Founder and BC Partners have sold an 18% stake in UK motor insurer	150
CopperPoint Mutual	Alleghany	Alleghany has sold workers’ comp insurer Pacific Compensation	150
Generali	Future Group	Generali is upping its stake in Indian composite insurer Future Generali to 49%	140
Allianz	Janashakthi General	Allianz takes a 20% market share in Indonesia with this acquisition	106
Warburg Pincus	Legal & General	Warburg Pincus is to buy L&G’s stake in IndiaFirst Life	106

Source: Company announcements/Insurance Day M&A database
*announced and/or completed in 2018



High Court rules on asbestos claims contributions time limit

Insurers will only have two years in which to claim contributions

Jonathan Sacher and
Kelly Jones
Bryan Cave Leighton Paisner

The English High Court has ruled the time limit for an insurer liable to pay the entirety of an asbestos claim under the Compensation Act 2006 to claim a contribution from other insurers is only two years from settlement, not (as was previously understood) six years.

This means insurers (and possibly reinsurers) need to act quickly to identify insurers/reinsurers on risk and pursue them within the much shorter timeframe.

In *RSA Insurance v Assicurazioni Generali*, the original claimant, Mr Merritt, contracted mesothelioma during his employment at a painting and decorating company. RSA covered Merritt's employer for only the final six months of his 10 years of employment. Despite the proportionately short period of

cover, RSA was liable for the entire claim under s3 of the Compensation Act, which RSA duly paid.

RSA then sought to claim an equitable contribution from the other two insurers on risk during Merritt's employment (Aviva and Generali) for their proportionate share of the settlement sum on a time on risk basis. Aviva paid its share but Generali objected on the basis RSA's claim was now statute barred under the Limitation Act. In the alternative, Generali put RSA to proof on the reasonableness of the settlement.

Generali argued RSA's contribution claim fell within s 1(1) of the Civil Liability (Contribution) Act 1978 and therefore the shorter limitation period of two years applies (as set out in s10 of the Limitation Act 1980) rather than the usual period of six years.

It was agreed between the parties the application of the Contribution Act depended on whether RSA's claim for a contribution was a debt claim (in which case,

The court accepted Generali's argument there was a long line of cases supporting its argument that liability arising under an insurance contract of indemnity is a 'damages indemnity liability' and held the Contributions Act time limit applied

limitation would be six years) or a damages claim (in which case limitation would be two years).

The court accepted Generali's argument there was a long line of cases supporting its argument that liability arising under an insurance contract of indemnity is a "damages indemnity liability" and held therefore the Contribution Act and the two-year limitation period would apply.

The second limb of Generali's defence put RSA to proof as to the reasonableness of the amounts claimed. This limb of Generali's de-

fence did not need to be dealt with by the court as the claim had been held to be time barred but the judge nevertheless rejected this aspect of Generali's defence and held the level of contribution should be determined on a time on risk basis. The judge added a change in approach would produce undesirable uncertainty, leading to an inevitable increase in litigation for contribution claims.

The ability of reinsurers to claim contributions from other reinsurers is the subject of an appeal in the case of *Equitas v MMI*.

Equitas v MMI is an appeal against a decision by Lord Justice Flaux, acting as judge-arbitrator, primarily on whether reinsureds can "spike" their reinsurers (that is, choose which reinsurance year to claim all its mesothelioma losses). Flaux LJ held reinsureds could "spike" their reinsurers and reinsureds could seek contributions from other years.

In granting leave to appeal, the Court of Appeal identified three "potential problems" with Flaux LJ's determination of this issue and so, reinsurers' rights to claim contribution will be one of the is-

ssues to be decided on appeal. This means the position as to reinsurers' rights of contribution from other years are unclear at present, which leaves the issue of limitation in respect of those claims also unclear.

Depending on the outcome of the *Equitas v MMI* appeal and provided *RSA v Generali* is not appealed, it appears entirely arguable that limitation in respect of contribution claims from other reinsurers is two years from reinsurers' settlement, on the basis that liability under reinsurance policies is likely to be deemed to be founded in damages in the same was as liability under insurance policies is said to be.

Reinsurers should therefore act promptly if they are to seek contribution for other years. Reinsurers also need to bear limitation in mind in respect of claims they receive to ensure they are not paying claims that, according to *RSA v Generali*, are time barred. ■

Jonathan Sacher is insurance practice co-leader and Kelly Jones is a senior associate at Bryan Cave Leighton Paisner

Security for costs in disputed insurance claims

Insurers must be careful when seeking security for costs of defending a claim after a recent UK Commercial Court ruling

Mark Stiggelbout
Quadrant Chambers

In *Deleclass Shipping v Ingosstrakh Insurance* (2018), the UK Commercial Court considered two security for costs applications in insurance litigation. In particular, it considered what is expected of a defendant that alleges the claimant has not made full and frank disclosure of available funding; whether failing to pay an arguable claim on a policy may be treated as a factor causing the claimant's impecuniosity (and thus militating against an order for security); and whether a defendant may expose itself to an order to provide security by adopting a third party's claim defensively.

The claimants were the owner and manager of the vessel *Siderfly*, which sank in 2013. The defendant insurer accepted the vessel was a constructive total loss under the policy but declined to indemnify the claimants because a third party had intimidated it was the assignee of the insurance proceeds.

The claimants commenced proceedings against the defendant, seeking the policy proceeds. The defendant issued a Part 20 claim, adding the third party that had asserted its entitlement and seeking a declaration of non-liability to the third party. In its counterclaim, the third party alleged it was indeed entitled to the policy proceeds.

Following the claimants' reply – in which the third party's assignment documentation was alleged to be fabricated – the third party failed to respond in the proceedings. The defendant obtained an "unless" order to the effect that, unless the third party responded, its defence and counterclaim would be struck out.

Failing any further response from the third party, its pleadings were struck out. However, on the same day, the defendant served a rejoinder in the main action in which it positively advanced the third party's case as its own (that the third party was entitled to the proceeds). The defendant amended its defence to like effect.

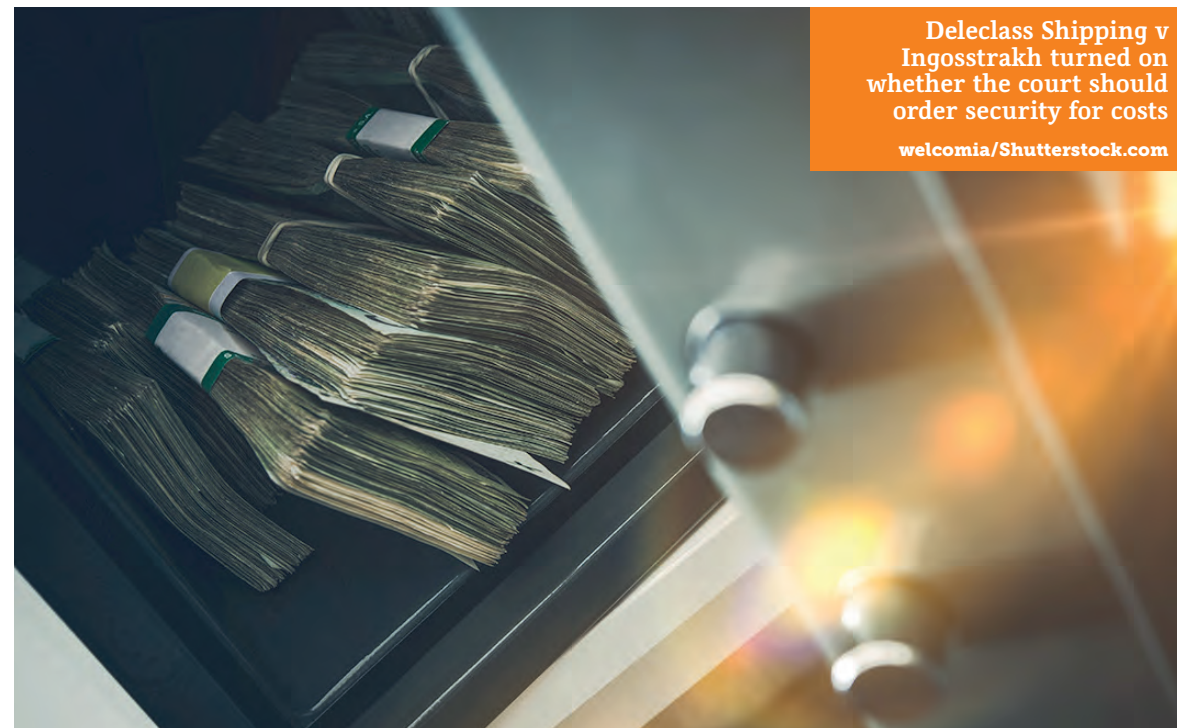
Accordingly, the claimants' claim was denied by the defendant and the court had to consider the parties' applications for security for costs (made before the removal of the third party).

The defendant's application was pursuant to CPR 25.12(1) "for security for his costs of the proceedings" – estimated to be more than £400,000 (\$528,108) – and relied on the CPR 25.13(2)(c) ground that each claimant was "a company... and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so".

Security argument

The parties disputed whether the court should exercise its discretion to order security. The claimants argued that, if required to provide security, they would be unable to do so, such that their claim would be stifled. Moreover, they contended that, having lost their only substantial asset when the vessel sank, the defendant's failure to pay under the policy was itself a cause of their impecuniosity. The defendants denied they had caused the impecuniosity, and alleged the claimants had not made full and frank disclosure of their ability to obtain funds.

Deputy High Court judge Andrew Henshaw QC declined to infer the claimants' evidence had not been full and frank. Such an inference would be unfair in circumstances where no specific arguments to that effect had been made before the hearing. He said:



Deleclass Shipping v Ingosstrakh turned on whether the court should order security for costs
welcomia/Shutterstock.com

"While the onus is on the claimant to make out its case of stifling on the evidence, I find it hard to see any good reason for a tactic of withholding objections until the last possible moment, with the result that the claimant is not only unable to provide any evidence in response but unable even to take proper instructions.

"On the evidence, the court was satisfied the claimants had limited assets and no real prospect of obtaining funds to provide security," the judge added.

As to whether the defendant could be said to have caused the claimants' impecuniosity, this called for consideration of one of the particular security for costs factors identified in *Sir Lindsay Parkinson & Co v Triplan* (1973), namely "whether the company's want of means has been brought about by any conduct by the defendants, such as delay in payment or delay in doing their part of the work".

The defendant argued this factor applies only where either the claimant can show it has a strong case on the merits or the defendant has caused the claimant's impecuniosity in some way unrelated to the subject matter of the case. However, this was rejected by the judge, who held:

"Such an approach would make the factor virtually redundant because it would only apply either in the very unusual circumstances where some extraneous action by the defendant had caused the claimant impecuniosity or where the claimant could show a very clear case on the merits."

'Causal link'

Thus, it suffices "the claimant has an arguable case on the merits and the evidence demonstrates a causal link between the defendant's alleged non-payment and the claimant's impecuniosity". The judge concluded it was "likely non-payment of the insurance claim has materially contributed to the claimant's impecuniosity".

Having concluded an order for security would probably stifle the claim and the claimants were not unfairly using their impecuniosity, the court decided it would not be just to require security.

The claimants had applied for an order that the defendant provide security for their additional costs of having to enforce any costs order in Russia. However, as CPR 25.12(1) only provides for a "defendant to any claim" to apply for security, this raised the question of whether, by having "chosen to adopt that claim [the

counterclaim of the third party] wholesale in an apparent bid to avoid having to pay out at all in respect of the loss", the claimants were effectively now defendants to "any claim".

Henshaw QC decided there was no jurisdiction to make such an order. Although the assignment claim of the former third party was a "claim", the defendant had adopted it purely by way of defence to the claimants' claim.

The court accordingly confirmed allegations of a failure to make full and frank disclosure must be particularised in good time for the claimant to have fair opportunity to respond, an insurer's failure to pay an arguable claim may itself cause/contribute to the claimant's impecuniosity and a party adopting a third party's claim defensively will rarely be vulnerable to an order to provide security.

While the third point arises rarely, the first two will often warrant careful consideration where an insurer seeks security for its costs of defending a claim. ■

Mark Stiggelbout of Quadrant Chambers acted on behalf of the claimants, instructed by Fanos Theophani and Natalie Johnston of Clyde & Co

First US state enacts cyber laws for insurers

South Carolina has become the first US state to enact cyber security legislation governing the insurance industry.

On May 3 the state's governor, Henry McMaster, signed a bill requiring South Carolina insurers to "develop, implement and maintain a comprehensive information security programme" for their customers' data.

Based on the insurance industry model rules, the South Carolina Insurance Data Security Act has three primary aims: it requires "licensees" to prevent, detect and remediate insurance customer data breaches.

First and foremost, the law seeks to prevent cyber security breaches from occurring by requiring licensees to conduct a risk assessment and implement pre-

ventative processes, systems and procedures. Licensees that do not otherwise meet one of the various exceptions must perform an ongoing cyber security risk assessment, establish requirements for their cyber security programme as a result of such assessments, monitor and adjust the programme as needed and establish an incident response procedure based on the licensee's board's analysis of established minimum requirements.

The prevention plan and incident response procedures may be tailored to the level of threat and sensitivity of the data and could include: employee training, access and authentication controls on information systems, physical access controls, encryption of data, system modifications, environmental disruption planning and

adding cyber security risk to the licensee's enterprise risk management process.

Second, the law imposes a duty on the licensee's board of directors to oversee these efforts. At a minimum, the board must require the management team to develop, implement and maintain the cyber security plan and prepare an annual report for the board. The licensee must designate at least one employee or an outside vendor to act as a responsible party for the programme, which includes an ongoing obligation to detect, prevent and respond to attacks.

The incident detection and response plan must address specific provisions under the law, including the internal response process, goals for the plan, definition of

roles and responsibilities, communications planning, remediation objectives, documentation and reporting requirements and an ongoing revision cycle to address new threats or incidents.

The third prong requires licensees to remediate cyber security incidents. If a cyber security incident does occur, licensees, their outside vendors or third-party service providers must investigate the event and make certain assessments and determinations. If the cyber security event meets certain threshold criteria, licensees must notify the director of the state department of insurance within 72 hours of the determination.

The licensee must provide a report of the incident, as well as notification to its customers and

possibly certain federal consumer reporting agencies, as is consistent with obligations imposed under South Carolina state law for other industries. Although there is no private right of action under the legislation, licensees are subject to various fines and other potential penalties for non-compliance.

Licensees have until January 1, 2019 to comply with the reporting requirements and other provisions, until July 1, 2019 to comply with the implementation and maintenance of the programme and until July 1, 2020 to implement third party oversight provisions and ongoing evaluation and monitoring of their cyber security programmes. ■

Maria Sasinoski is an associate at McGuire Woods

Colorado State researchers downgrade hurricane forecast

CSU lowers its forecast for Atlantic storm season



Michael Faulkner
Editor

The Colorado State University (CSU) hurricane forecasting team has lowered its forecast for the 2018 Atlantic hurricane season.

The new forecast is well below the team's April 5 and May 31 forecasts and below the median for the 1981 to 2010 period.

The CSU team now anticipates the season will see 11 named storms, of which four will become hurricanes and one will strengthen into a major hurricane. To date the 2018 season has produced just one named storm.

In revising the forecast, CSU cited colder-than-normal sea-sur-

face temperatures in the tropical and sub-tropical Atlantic and the increased odds of a weak El Niño event developing in the Pacific.

In May the CSU forecast anticipated 14 named storms, six hurricanes and two major hurricanes.

Another leading forecaster, Tropical Storm Risk (TSR), has also dramatically reduced its expectations for the 2018 hurricane season following the recent cooling of sea-surface temperatures in the tropical Atlantic.

In May the London-based forecasting unit said it expects a quiet season, with activity 50% below the long-term norm.

TSR expects nine named storms, four hurricanes and one major hurricane of category three intensity or greater. This was down from an April forecast of 12 named storms, six hurricanes and two major hurricanes.

11
Named storms
CSU is predicting
for the 2018 Atlantic
hurricane season,
of which...

4
Will become
hurricanes

Pacific Hurricane Fabio builds

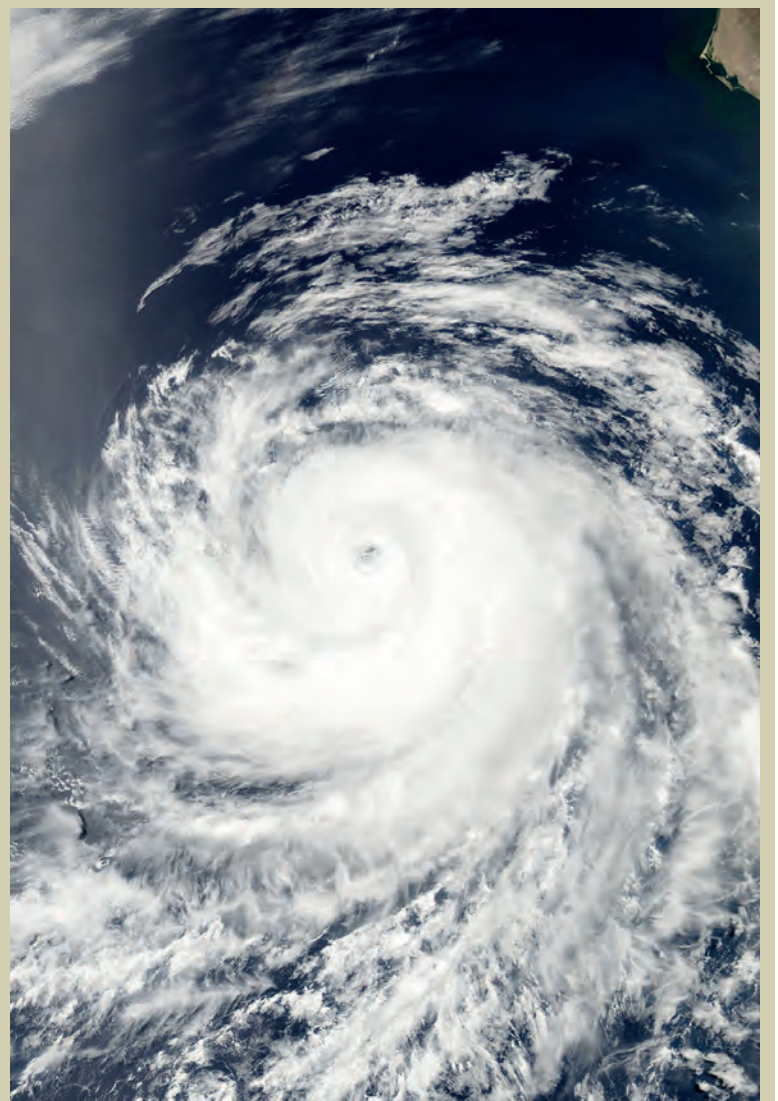
Hurricane Fabio continued to strengthen off Mexico's Pacific coast and may become a major hurricane.

The US National Hurricane Center said the storm will begin to display steady-to-rapid weakening today and become a tropical storm on July 5.

Late on July 3 Fabio was centred 650 miles south-west of the southern tip of Baja California, moving west-north-west at 15 mph with sustained winds of 110 mph, placing it at the upper end of category two storms.

Fabio is expected to move to the north-west, with no current threat to land.

Hurricane Fabio, off Mexico's Pacific coast late on July 3, could still become a major hurricane



Ed swoops on Saudi Re for Mena treaty head

Broking group Ed has appointed Souvik Goswami to lead its treaty business across the Middle East and north Africa (Mena), as well as India and the Indian sub-continent, writes Lorenzo Sperry.

He joins from Saudi Re, where he worked as head of non-life underwriting for facultative and treaty.

Goswami's focus at Ed will be on new business opportunities in the region and on strengthening the firm's relationships with clients.

'Not only does [Souvik] know the Mena and south Asian markets inside out, he's also highly respected by clients within those markets'

Minesh Jani
Ed

"Souvik is a first-class addition to the team and will make a significant impact on our service," Minesh Jani, chief executive of Ed's operations in the region, said. "Not only does he know the Mena and south Asian markets inside out, he's also highly respected by clients within those markets."

"Together with his strengths in analytics, he's ideally placed to leverage the new technical and analytical capabilities Ed has been investing in," Jani added.

UK insurance M&A sees 'strong start' in 2018

Merger and acquisition (M&A) activity in the UK insurance got off to a "strong start" in 2018, with deal volume reaching £4.5bn (\$5.95bn) at the half-year mark, according to analysis by EY, writes Lorenzo Sperry.

The value of deals has already surpassed the full-year values seen in 2016 and 2017.

Although M&A in the first half was driven by some large transactions in the life insurance space, the consultancy said it expected "continuing high levels" of M&A activity across all elements

of the UK insurance sector in the second half.

"Wider sector transformation is set to drive further consolidation, increase the sales of non-core businesses and also lead to growth-related M&A aimed at building out critical new capabilities and customer propositions," David Lambert, global insurance transactions leader at EY, said.

Outside the UK, this year has seen some very large transactions, most notably Axa's \$15.3bn swoop on XL Group and AIG's \$5.56bn takeover of Validus.