

riskinsight

FINANCIAL LINES ISSUE 2009



Rising to the challenge

The lifecycle of a **Directors & Officers** insurance claim

In this issue:

adidas on international Financial Lines programs. **Addressing information security risks.**

D&O claims – just a US problem? Management liability in emerging markets.

Mergers and acquisitions – the insurance implications. **Safety net against employee claims.**

Inside

- 4 D&O Claims – just a US problem?
- 8 Lifecycle of a D&O Claim
- 18 Addressing information security risks
- 21 Mergers and Acquisitions – the Insurance Implications
- 24 Brazil: Focus on Management Liability
- 28 China: Taking the management liability test
- 32 Companies seek a safety net against the cost of employee claims
- 36 Dispelling myths on Zurich Multinational Insurance Proposition (MIP) and international Financial Lines programs
- 39 Assessing and addressing the risks of fraud in emerging markets
- 41 adidas on international Financial Lines insurance programs

An insider's view

Welcome to Riskinsight. This issue is designed to give you the inside track on some key issues in Financial Lines insurance facing global companies and their senior management. As a leading global insurer our aim is to keep our customers and partners up-to-date on issues including best practice for risk management, trends in the market, the impact of legislative changes and learnings from claims.

In an uncertain global economy corporate insurance buyers need to keep on top of a constantly changing environment, scrutinizing the extent of policy coverage and limitations provided across all areas whilst seeking ways to continuously minimize risk exposures. In this issue we will be examining a variety of Financial Lines risk insights and also sharing some updates from our International Financial Lines Conference 'Global liabilities. Global risks'.

We hope you find it useful and would value any feedback you may have.
Best regards



Vincent Vandendael
Head of Financial Lines Global Practice
Zurich



Vincent
Vandendael

Directors & Officers Claims – just a United States problem?

There is the widely held assumption that Directors and Officers (D&O) claims are limited to just the US. Wrong.



Julian Martin is an Executive Director of Willis Ltd in London. He has specialized in Global Directors and Officers Liability Insurance for 21 years.



Looking at some of the cases filed outside of the United States in 2008, which are presented on the next page, we can see that:

The rest of the world may be behind in the league of D&O claims, but they are occurring and with increasing frequency and severity. The impact of the global financial crisis has turned the heads of regulators and shareholders towards the conduct of D&O.

- Subprime related claims are leading the way with a number of companies accused of misrepresenting their exposure to the US subprime mortgage market. According to Julian Martin, Executive Director at Willis, “The credit crisis and economic downturn have led to an increase in the number of all management liability related claims being brought against our financial institution customers worldwide. These claims are brought in the first instance by customers and investments and/or fraud related issues, and then by shareholders and regulators against the D&O once the initial problems have become public knowledge”;
- Corporate governance is under question for a number of banks accused of failing to spot millions of dollars of money laundering and profiting from such activities;
- Increased regulatory scrutiny is inevitable. In the UK the Financial Services Authority (FSA) has fined the UK branch of a Swiss investment bank GBP 5.6 million for failing to act with due skill, care and diligence. When a regulator enforces such a large fine, one has to question the severity of what has happened and how far reaching its impact will be. In the case of this

company a class action is now taking place in the US. Such fines by one regulator can only give rise to increasing investigations by regulators in other countries;

- The commercial sector will inevitably start to see more claims. Take the example of a former Managing Director for a UK construction company’s subsidiary and two colleagues who were charged with fraudulent trading;
- A successful class action in Nigeria could also encourage greater shareholder activism in Africa and other emerging markets, where previously plaintiffs may be deterred by the cost of such lawsuits and the time they take to reach court.

We can clearly see that D&O cases are increasingly being filed in different jurisdictions around the world. The claims that started with the US subprime mortgage crisis will inevitably lead the way to claims in different sectors and jurisdictions that have previously seen little to no shareholder activism.

With constantly changing legal environments across the world, and dependencies on a global economy, potential exposures for companies and their D&O have never been greater. The days of one global D&O policy may be limited as questions are asked of potential exposures in local territories. Naturally, senior management will scrutinize the extent of policy coverage and limitations across all areas.



Paul Schiavone is Chief Underwriting Officer for Directors and Officers Insurance at Zurich Global Corporate. Paul has over 15 years of experience in the insurance industry and Financial Lines (specializing in D&O and EPL insurance). He has worked in San Francisco, New York and is now based in Europe.

Company	Jurisdiction of case	Type of case	Case details
A French bank	France	Collective action	A leading French bank is accused of failing to spot EUR 32 million in laundering and profiting from this, according to Bloomberg New report.
A US investment bank	Cayman Island	Collective action	A group of shareholders are challenging the decision to put two feeder funds into litigation on the grounds that the Directors did not have the proper authority to do so.
A Canadian bank	Canada	Class action	Multi-billion dollar class action against a Canadian bank and its Directors and Officers on the grounds of misrepresentation of the banks total exposure to investments in failing relating to the US subprime residential mortgage market.
A Swiss investment bank	UK	Securities fraud	The Financial Services Authority (FSA) fined the UK operations of a Swiss investment bank's GBP 5.6 million for breaching FSA Principles 2 and 3 by failing to conduct their business with due skill, care and diligence and failing to organize and control their business effectively.
UK food manufacturer	Nigeria	Class action	Over 300 shareholders are claiming they 'suffered a huge loss' and are suing the company's directors and auditors for breach of duty in relation to overstatement of the companies financial position.
A Latin American telecommunications company	Mexico	Securities claim	Proceedings brought against the company and one of its directors in Mexico following an agreement over the sale of ownership of a third company. It is alleged that the true value of the third Company was fraudulently represented resulting in a reduced settlement.

Examples of cases

filed outside the US in 2008

Company	Jurisdiction of case	Type of case	Case details
UK construction company	UK	Serious Fraud Office investigation	Following an SFO investigation a former managing director of a subsidiary of a leading UK construction company was charged with three Investigation separate offences in relation to misrepresentation of sales in accounts filed to its parent. Two other individuals, a former Operations Director and Sales Director were charged with fraudulent trading.
A French insurance company	Thailand	Customer compliant	Criminal proceedings brought in Thailand against the company, directors and employees of the company's subsidiary in Thailand. The company had previously lodged a report with the police alleging that the plaintiff had provided false information when making a claim under his policy. After the company had settled the loss, the plaintiff alleged that under Thailand's Criminal law sections 137,173,174, and 376 all of the defendants were guilty of jointly making a false criminal charge and defamation.
A steel company	Luxembourg	Minority action shareholder	The company and its directors were sued by hedge funds who were also minority shareholders. It is alleged that as part of a merger, shareholders were originally offered eleven shares in the new merged company for seven shares in the old company. Once the offer was accepted by a large majority of the old company shareholders, the terms of minority shareholders were changed to eight shares for seven of their old shares.
Various European companies	France	Oil for Food	Companies across Europe, including their directors, are being investigated in relation to possible breach of Oil for Food regulations following the Volcker report. The Oil for Food Programme was established in 1995 and terminated in 2003. Its contracts which were entered into during this period are now the subject of investigation.

rising to the challenge

Lifecycle of a **D&O** claim

A person in silhouette stands in the lower-left foreground, looking towards a massive, snow-capped mountain peak that dominates the background. The sky is a clear, deep blue. The mountain's surface is covered in snow and ice, with some rocky outcrops visible. The overall scene is one of vastness and scale.

In this article a group of experts examine a D&O claim scenario and share insights on how best to manage the lifecycle of the claim.

Lifecycle of a D&O Claim

Claims scenario

Company X is a worldwide supplier of communication connectivity solutions headquartered in Germany and whose shares trade on a number of European exchanges (and whose level three American Depositary Receipt (ADR) trade on the NYSE). The company introduced a new product that it touted as being several generations ahead of its competitors. In a series of public releases Company X claimed that sales of the product were robust, and based on the market's response, its revenues increased by 27% in the current fiscal year. Company X further stated that it expected significant growth over the next several years based on the acceptance of its technology as a new standard within the industry. In response to these positive forward looking statements, Company X's share price increased by an additional 35% over the course of the next six months. Company X, just prior to the release of its Q2 earnings report, issued a statement disclosing that it had begun to experience a material number of returns and cancellations of orders for its new product. Company X claimed that certain

flaws in the product were discovered at its US manufacturing facility resulting in the failure of product's functionality. Company X further disclosed that several of its competitors had recently introduced competing products which placed into question whether Company X's technology had set the standard within the industry. In light of these disclosures, Company X's shares tumbled 55% in value, as did its level three ADRs traded on the NYSE.

Thereafter, a US law firm filed a shareholder securities class action lawsuit against Company X and its D&O in the United States District Court for the Southern District of New York, alleging violation of the Securities & Exchange Act of 1934, sections 10(b), 20(a) and rule 10b-5.

The plaintiffs seek to certify a class comprised of all purchasers of Company X stock and level three ADRs during an alleged class period of January 1, 2007 through to July 7 2007.

Get down to brass tacks

The challenges

Clarifying coverage

Despite a heightened probability of exposure to huge losses, in the light of worsening D&O settlement statistics, senior executives may be shocked to find that their global D&O policies fail to comply with continuously evolving and varied local regulations. In such cases, coverage is voided due to non-compliance, which renders the companies additionally liable to the legal consequences of non-compliance, at a time when the company position is already weakened.

Misinterpretations of policy coverage can confuse and prolong efforts to resolve a claim.

The solutions

Fill in the gaps

Companies and insurers must work together to guarantee that global D&O coverage is backed by local coverage from country to country, keeping abreast of continuous legal developments.

Friendly face

In a claim like Company X's, the underwriter would supply the insured, the broker, and external legal counsel with crucial coverage information, especially with regard to the scope of coverage, intent of the policy wording, and any exclusions. The underwriter would also be able to provide contextual documentation as to the original insurance agreement. The long-established underwriter-broker relationship facilitates the smooth flow of communication throughout the claim lifecycle.



Paul Schiavone is Chief Underwriting Officer for Directors and Officers Insurance at Zurich Global Corporate. Paul has over 15 years of experience in the insurance industry and Financial Lines (specializing in D&O and EPL insurance). He has worked in San Francisco, New York and is now based in Europe.



Know your game

The challenges

Exposure to astronomical losses

Companies settle in order to forestall the potential of bank-breaking judgments and indefinite litigation, and to protect company and individual reputations. The motivation to settle is evidenced by the rise in median settlement value from USD 8 million in 2006 to USD 8.2 million in the first half of 2008. Record-breaking settlements have risen into the hundreds of millions, the most notable in recent years actually exceeding the billion dollar mark.

Inexperience

Many companies are unfamiliar with managing their D&O claims due to a lack of experience. An ill-conceived action plan at the outset of a case can lead to indiscriminate or potentially damaging information sharing, wasted funds in an unsuitable or unnecessarily broad investigation, hiring of superfluous external counsel, and a poorly-conceived exit strategy. The failure to create and implement a sound litigation strategy at the outset also can result in the depletion of valuable policy proceeds that could be used to resolve the litigation.

The solutions

Early expertise

The company General Counsel should assess the situation immediately upon notification of a lawsuit, and engage highly experienced external counsel to provide an early assessment of the potential liability and damages exposure, formulate a sound strategy, and secure the benefits of attorney-client privilege and the 'work-product doctrine'. Otherwise, internal investigations conducted outside the auspices of external counsel run the risk of not enjoying similar protection under the law.

Prudent preliminaries

In the course of determining the liability and damages exposure, external counsel should assess the likelihood of whether the case will be dismissed at the pleading stage, or whether the allegations are sufficient to withstand a motion to dismiss. Such an approach prevents wasting funds on superfluous investigation and defense activities.

An important first step in this process is to assess whether the complaint meets the recent Supreme Court standard for pleading the 'strong inference' required for alleging scienter. See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2504-2505 (2007) ('...to qualify as 'strong' ..., we hold an inference of scienter must be more than merely plausible or reasonable – it must be cogent and at least as compelling as any opposing inference of non fraudulent intent').

If the plaintiffs cannot surmount this pleading obstacle, then the costs of defending the claim are reduced dramatically and, of course, liability exposure is eliminated.



Forecasting safeguards

Company X's sales figures which were published are not alleged to be false or misleading, and therefore are not actionable. Moreover, Company X's characterization of these sales as 'robust' might not be actionable, because such a characterization could be deemed to be 'puffery'. The primary area of potential exposure is whether Company X's forecast of 'expected significant growth over the next several years based on the acceptance of its technology as a new standard within the industry' is false or misleading. This will entail an investigation into, and analysis of, whether the forecast was made in good faith with a reasonable basis, and without knowledge of facts which undermined the basis for the forecast. The results of this investigation will inform the defense strategy.

Loss causation

The plaintiffs also must plead 'loss causation'. In *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 125 S. Ct. 1627 (2005), the U.S. Supreme Court held that Section 10(b) of the Securities Act of 1934 permits plaintiffs to recover damages based on a stock drop only where the fraud 'proximately caused the plaintiff's economic loss'. As a result, it is no longer sufficient for plaintiffs to simply allege that they purchased the Company X stock at inflated values.

As a result, external counsel will review the pleadings and investigate the facts to determine if they can argue that the stock drop resulted from events unrelated to the corrective disclosures or information ultimately revealed to the market.

Mitigate losses

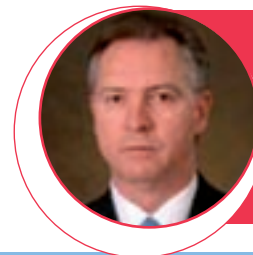
Should the allegations prove sufficient to move the case beyond the pleading stage, the focus usually shifts to reducing the damages exposure and shortening the class period.

Once again, defense experts must establish what portion of investor loss is directly related to the company's statements or omission.

Defense attorneys also will seek to impose the narrowest possible restrictions on class certification and frequently will challenge the length of the class period and the adequacy of the lead plaintiff as a class representative.

Conclusion

To paraphrase the lyrics in 'The Gambler', "You've got to know when to hold 'em, know when to fold 'em". This entails an ongoing assessment at critical stages of the proceedings of the potential liability and damages exposure, as well as expected settlement values. Another critical factor is to review other relevant decisions by the judge assigned to the matter in an effort to predict how the judge would rule in the pending litigation. Millions of dollars can ride on the ability to handicap the odds at key stages of the litigation.



Kim W. West is a Partner in the San Francisco office of Tucker Ellis & West LLP. He has furnished pivotal representation in several high-profile cases, principally representing insurers in D&O and Professional Liability claims.

Lift the fog

The challenges

Suspicious circle

Although arising in the States, the claim against Company X could well attract the attention of Regulatory Authorities in its European jurisdictions leading to one or more formal investigations into market abuse or similar.

The company which has omitted information during the placing of a D&O policy with or without intent will be in for a rude awakening when claim time arrives. If the insurer examines the policy in the light of a lawsuit which coincidentally demonstrates a previously undisclosed history of business complaints or other insurance claims, he is justified in voiding the policy, and merely repaying the premium.

UK insurers occupy a slightly cozier chair in the courts than their US counterparts, as the burden of proof lies more heavily on the claimant (plaintiff) insured in the UK where questions of validity are concerned. This may well catch out the innocent but worry the insured, a precedent, however, which tempts the innocent but wary insured to withhold helpful information which he fears might weaken his claim or spawn outrageous policy renewal rates.

When this approach later comes to light, insurers respond with suspicion of deliberate wrong-doing, refusal to advance defense funds, withheld coverage confirmation, and investigation probes.

Loss of focus

Since D&O lawsuits easily stretch on for years, many companies cease to assign sufficient priority to the resolution of the D&O claim, losing impetus and frittering funds on prolonged defense costs. It is easy for companies to forget to update reactive insurers on case developments.

The solutions

Confront questions

Relationships between the insured and insurer benefit from full disclosure at the drafting of a policy. In the event of a D&O claim, the insured should engage expert D&O legal counsel to draw up the initial notification to the insurer, making this as broad and comprehensive as possible, and delivering the notice as soon as practicable to comply with coverage requirements. After the initial notification, the insured should meet with the insurer face-to-face in order to: air internal views and concerns, (usually based on an absence of deliberate wrongdoing), address coverage ambiguities or exclusions and resolve them efficiently, and secure advancement of defense costs.

Shrewd selection

The insured should welcome the assistance of the insurer in the final painstaking selection of external legal counsel specializing in D&O liability claims, since judicial choices not only determine the overall success of a case, but also whether or not the limits of indemnity have been reached before the conclusion of the lawsuit.

During the course of a case, conflicts of interest and varying degrees of liability may emerge which dictate separate representation for the company and individual directors. Additionally in the case of Company X, corporate law specialists would be enlisted to handle the level three ADRs issue.

Keep the end in view

To maintain thrust and focus to the end of the lawsuit, one director should be nominated the point person in charge of managing a dedicated internal team, meeting deadlines, proactively updating insurers, and keeping abreast of the developing complications.



Martin Butterworth is a Partner at **Davies Arnold Cooper** law firm in **London**. He has covered disputes on insurance, pension administration, financial services and IT, and is sought after as an advisor on and drafter of D&O and E&O insurance policy wordings and endorsements.

Trust and tell

The challenges

Tremors

Most companies are caught unawares in the initial stages of a D&O lawsuit, with no prior experience in management liability, and little idea of how to move forward. The inclination will be to erect walls of protection, while expecting insurers to pay out without much ado.

Awkward admissions

Unfortunately, D&O liability claims are drastically more complex than standard submit-and-pay indemnity claims, and require far greater care and investigation before success is realized. Particularly where directors are charged with criminal intent, investigation must be sober and thorough.

Companies may become incensed by probes and information queries posed by insurers, possibly to the extent of waivers of privilege, however concerns regarding privilege may be overcome through a variety of techniques.

Unfathomed damages

With insufficient counsel or assistance, an insured might be lulled into a false sense of security by the assumption that the tower of coverage amounting to, for example, 150 million dollars is sufficient to weather a claim. Yet as settlements skyrocket into the billions, such complacency is unfounded.

The solutions

Tell early, tell all

An insured creates the most favorable claim situation by discarding cynicism towards insurers, enlisting them instead as members of the inner circle, useful teammates in the quest for case and

claim resolution. The insured should instruct its broker to organize an initial coverage commission, including the insured's Risk Manager and General Counsel, the broker, the primary insurer, and probably all remaining insurers. Although the broker serves conveniently as a point of contact between insurers and insured, candid personal communication between the insured and its primary insurer in particular should flow freely throughout the claim lifecycle, in order to affect the most hassle-free and magnanimous claim resolution.

The insured's honest disclosure of all internal facts and concerns in the initial meeting will enable insurers to assess the case clearly, and compose timely and accurate letters delineating their initial coverage positions. The broker will help the insured's ascertain whether requests for information are reasonable, explain the grounds and legal ramifications of the coverage positions, and help ensure that coverage qualms are addressed early and put to rest, allowing for vital focus on resolving the underlying claim.

Check the numbers

After assisting in the selection of appropriate numbers of highly qualified external legal counsel, the insurers will want to review budgets and bills, to help ensure that the policy proceeds are not exhausted in the legal process before the final settlement is reached. The insured, broker, insurers, and legal counsel should meet regularly to assess developments and reach a consensus on the value of the claim. This will enable insurers to set aside the appropriate reserve for prompt payment at the point of resolution.



James J. Real Esq. is the Managing Director of Financial Lines Claims for Zurich's North America Specialities. Jim has over 20 years of experience in handling complex Corporate D&O claims as well as other financial products.



With more than 21 years of experience litigating complex insurance issues, **Steve Shappell, Esq.** serves as the Managing Director of Aon Financial Services Group's Legal and Claims Practice, specializing in FSG matters including D&O Liability.



Collaborate at the core

The challenges

Exposure

Company X's case is a widely-recognized example of a class action claim in the US, highlighting the risk exposure all companies face when listed on the US stock market. The rising popularity of D&O claims in Europe will make it vital for European companies to learn from the experiences of their US counterparts, although their initial legal positions will differ slightly.

Delicate decisions

All internal and external investigations must be handled with extreme care by specially selected economic and judicial experts. A successful defense will depend upon the timely and pertinent actions taken by these experts in collaboration with the insured.

The solutions

Call and choose

It is essential for the insured to notify his broker and all insurers of the claim immediately. The broker will be able to advise the insured as to the relevant documentation to be congregated for each policy, in order to comply with notice provisions.

Expert legal counsel must be carefully selected with reference to experience, staff, and budget.

Team effort

A preliminary meeting between the insured, insurers, and legal counsel is highly beneficial in formulating an initial litigation strategy and action plan and coordinating different roles. Identifying one primary insurer contact facilitates the ongoing flow of information. Potential coverage concerns should be addressed at the outset to clear away distractions from the underlying claim.

Whether in the US or Europe, the focus must remain on resolving the underlying claim. Close collaboration between the insured and the insurer permits the most powerful defense.

Gion Rest Caprez, Head of Financial Lines in Zurich's European Claims Department, has been with Zurich as an expert legal advisor since 2001.



Beat them to the punch

The challenges

Bombs and blasts

Panic might well ensue when officers find themselves deluged by accusations from all directions, without sufficient experience to guide them in defending their companies and themselves.

Inexpert communications at such moments can erode a company's reputation with alarming efficiency. Similarly, leaving Public Relations (PR) professionals out of the loop in a high profile liability case can only set the stage for catastrophe.

The solutions

Man your positions

A crisis at the Directors and Officers (D&O) level requires many companies to switch mental gears abruptly where communications are concerned. As with legal counsel, companies must not delay in engaging with PR experts with extensive experience of maneuvering in the spotlight in such complicated claim cases.

PR should work intimately with Senior Management and legal counsel, forming a sacred triangle of unimpeded, raw information flow. Once the initial shock of crisis has subsided, all further surprises, both internal and external, should be averted by thorough investigation, candor, and planning.

Appointing limited spokespersons, who receive intensive media training, including profound and extensive Q&A preparation is essential. All communications should be scripted in finest detail. The spokespersons will be versed in the key messages the company wishes to transmit to the audience of current and potential customers, staff,

and journalists, and this mantra will be repeated each time inquiries are received. Key messages will assert the company's view of what happened, what the company has done to remedy the situation, and what the company yet plans to do.

Equally as important as the chosen spokespersons, are those who should be instructed to remain silent: all others. However, unintentional leaks are inevitable, which is why companies are careful to encourage staff with positive key messages.

All above-board

Senior legal counsel will advise PR experts on the legal ramifications of communications, as well as the potential court backlash following obvious media manipulation. Interestingly, external PR firms are not directly regulated by the FSA and therefore may have more leeway in this regard than internal departments. PR experts also pose the delicate but critical questions to company officers in D&O cases which nobody else dares ask.

Keep the ball in the air

Part of the PR team's job is to keep the company disciplined during troughs of activity, to prepare spokespersons to snuff out random surprise sparks. Unrelenting monitoring of all media avenues is required, to identify inaccuracies and accusations, which need to be answered directly by the company, and key messages transmitted. In a well-managed case, the end result should not come as a shock to the company, the media, or the market in the form of further violent share price movement.



Andrew Sharkey,
Director at Polhill
Communications, a
financial services PR
consultancy, weighs
in on D&O crises
with his 25 years of
communications
experience, including
directorships at three
other PR consultancies.





Addressing information security risks

These days it's hard to imagine any company not having a web presence. Almost all businesses regularly depend on e-mail as well as intranets and extranets, and a significant proportion are also involved in e-business transactions or e-commerce using the internet.

As we all grow more and more dependent on technology, the potential for data security and privacy breaches increases. Hackers and rogue employees pose the biggest threat, but there are almost as many incidents of records and sensitive information being compromised by the loss or theft of unencrypted mobile storage devices such as laptops, CDs and USBs.

No-one is immune. Recent cases in which the personal details of millions of people have gone missing have involved retailers, financial and healthcare operations, educational institutions and government agencies. Of all the cases to hit the headlines, though, none has been more alarming than the recent massive 'unauthorized intrusion' of a leading US retailer.

Louise Dennerstahl
CUO for Professional
Indemnity at Zurich
Global Corporate



Hackers who broke into the company's systems were able to steal details of over 46 million credit card, debit card, cheque and merchandise return transactions. The company's losses are expected to run into hundreds of millions of pounds.

Not that the UK has fared much better. Take the example of a UK building society, which was fined almost GBP 1 million by the Financial Services Authority for failing to manage its information securely after it delayed reporting the loss of sensitive data when a laptop was stolen from an employee's home. The FSA also fined a UK insurer over GBP 1 million for a very similar offence after it allowed fraudsters to use publicly available information, including names and dates of birth, to impersonate customers and obtain sensitive customer details from its call centres. The fraudsters used the information to request the surrender of 74 customers' policies, which resulted in losses of GBP 3.3 million.

And although the infringement of the right to privacy involved in these incidents is the most high profile of cyber security lapses, it is far from the only concern.

Companies could face claims as a result of damage to software or hardware if they inadvertently spread a virus, worm or trojan horse via their emails or website because they have failed to operate basic firewalls or other intrusion detection technology or have not uploaded essential patches.

Criminally motivated or disgruntled former employees who are out to get even with their bosses can also wreak havoc if common-sense steps aren't taken to stop them from infiltrating corporate systems.

Other common cyber risks include:

- **denial of access to your systems.** This is failure that prevents customers from gaining access to your network infrastructure, leaving them unable to trade with you, or use your network to operate, if you provide this function,
- **failure to secure/unauthorized access.** This is where a hacker will exploit a vulnerability in your computer system to send spam or, in an attempt to extort ISPs and network operators, launch a flood of messages aimed at a single target system forcing it to shut down and deny the service to its legitimate users – in what is known as a distributed denial-of-service (DDoS) attack,
- **damage to data.** Unlike physical property, data is often excluded from almost all Material Damage and General Liability insurance policies. This includes both your own and third party data,
- **defamation.** Companies are directly responsible for the content of their Websites and may also be liable for the content of blogs and of employees' emails,
- **Intellectual Property Rights (IPR) violations.** This is transmitting copyrighted content – usually file-sharing – without permission from the lawful copyright holder.

...the potential for data security and privacy breaches increases with hackers and rogue employees posing the biggest threat...

From the legal point of view, perhaps the three areas of most interest are as follows:

Defamation: Since the courts now generally regard the internet as a broadcast medium, any articles published on a website may face the same potential liabilities as a magazine or newspaper, including defamation. The situation is different, though, with blogs and bulletin boards. A recent case (Smith v. ADVEN plc & Ors) concluded that postings were to be treated as a 'bar conversation', rather than written material. So, such content should be seen as slander rather than libel, and 'characterized by give and take'.

Intellectual Property Rights

violation: Carriers of data packets which contain copyrighted content have been granted immunity by the E-Commerce Directive in the European Union (EU) and, in the US by the Digital Millennium Copyright Act.

However, four of the world's leading record companies – EMI, Sony BMG, Universal Music and Warner – have brought a High Court action against Ireland's largest ISP, Eircom, to prevent its network from being used for the unlawful distribution and illegal free downloading of music. A final decision on whether Eircom has a legal obligation to monitor and filter traffic on its network is likely to be made by the European Court of Justice. Similar challenges have been launched in Sweden and Belgium.

Privacy: Unlike the US, there is no specific legislation in the EU requiring companies to reveal breaches of network security which involve sensitive personal data, although the issue is now under examination by

the Information Commissioners Office in the UK, as well as the EU. Legislative changes are likely to be incorporated within the E-Privacy Directive, but stronger powers of enforcement may not be available for up to 24 months.

In the face of such a diverse range of threats – each with potentially devastating consequences – it is imperative that businesses develop their own robust information technology (IT) security defences. Obvious protection measures such as regularly upgrading anti-virus software and firewalls and implementing intrusion detection or prevention technologies will all help maintain a safe environment. As will safeguarding mobile devices that hold sensitive personal data by encryption.

So how can insurance help?

Because protecting intangible digital assets against these e-threats is nothing like as straight-forward as protecting your tangible property against physical perils, the issues surrounding cyber liability can be complicated. This may explain why surprisingly few businesses are insured against any form of IT security breach. But adequate cyber liability insurance cover – such as a specialist technology or telecoms Errors and Omissions policy – can address most of the common exposures and provide a broad protection for e-business risk to keep your company out of harm's way.

As more and more companies embrace the digital era, experts are predicting cyber-crime against corporate computer networks will soon become one of the most significant risks facing any business, which should prompt growing number of companies to search for better ways to protect themselves against the potential liability.

No-one is immune.

Recent cases in which the personal details of millions of people have gone missing have involved retailers, financial and healthcare operations, educational institutions and government agencies

Mergers and acquisitions

– the insurance implications

The global financial economy is certainly in turbulent waters. With all this uncertainty, where does this leave the world of acquisitions and mergers?

What happens when you're trying to buy or sell a company? Who is going to finance it now that the banks won't provide the leveraging facilities? Without such financing, how will two transacting parties gain mutual economic value out of an acquisition? In the first six months of 2008, announced deals were around USD 1.9 trillion, down 30% on the first half of 2007, with 7% from financial or private equity generated deals¹. Mega-deals will continue eventually, because the political and economic drivers can straddle the economic cycle. However, the market for smaller deals is changing with corporate buyers having cash or equity surpluses more able to compete with the PE (Private Equity) firms, who no longer have the luxury of cost-effective, highly leveraged, debt-to-equity structures to finance deals.

¹ Source: Deal Logic 2007



Contact our M&A team on:

Europe +44 207 648 3919

US +1 212 871 1629

Additionally, the mezzanine debt financiers, having been opportunistically active at the back end of 2007 and first six months of 2008 are now starting to pull back. This looks to be a strategic move, as these players appear to be waiting for equity values to become even more depressed before they finance new transactions.

Geographically, the picture is changing too, with a widely held perception that the large Middle Eastern and Asian funds are beginning to invest in Europe, US, and Asia. This is already having an effect on the political landscape in the US, with political and cultural sentiment largely at odds with the economic necessity for investment.

Acquisitions are still taking place, albeit with alternative structures and financing. The roles of the Risk Manager and their insurance advisors take on a greater significance when a company is seeking to buy or sell an operation. How do the current insurance programs respond to an acquisition, or divestment? What is the notification process for the policies and what are the consequences for failure to meet those requirements? Are insurance premium payments regarded as considerations or alterations to the terms? Time frames for notification to insurers and compliance with their obligations, negotiated in advance can suddenly become threats to the success of a deal, particularly if a Risk Manager has limited access to the deal team.

Gerard Bloom is Senior Vice President for Zurich's Mergers and Acquisitions Group in Europe. Gerard has over 15 years of experience in Financial Lines insurance.



Jonathan Sherry is Senior Vice President for Zurich's Mergers and Acquisitions Group in Europe. Jonathan has significant experience in an advisory capacity supporting financial and corporate customers both pre and post deal to define and deliver on their strategic imperatives.



The Risk Manager of an acquiring company can find themselves trying to place retrospective coverage for the acquired entity, because the terms of the deal have dictated the level of retrospective liabilities that the vendor will accept. This is just one justification for the Risk Management function to be involved early in transactions, as insurance solutions may be difficult to find, particularly if the level of vendor disclosure is also limited. Insurance placements also need to be checked to ensure that the structure of any transaction (e.g. use of special purpose vehicles) can be appropriately accommodated within the coverage.

From a seller's perspective, retained liabilities will drive the requirement for additional insurances. Departing directors are unlikely to be content with relying on their former employer (and its D&O insurer) to bail them out in case of future litigation. Appropriate run-off cover and limits need to be considered early in the process. The liquidity crisis will continue to affect the insurance community as well as the banks. It is important for those purchasing longer-term protections via run-off covers that they are matching their longer-term responsibilities with the security and financial stability of the insurance provider.

Companies going through a merger, acquisition or divestment can benefit from a comprehensive range of insurance solutions including on going and run-off Directors' & Officers' Liability and Professional Indemnity insurances, transactional insurances including Warranties & Indemnities and Public Offering of Securities Insurance, and Property and Casualty insurances.

One certainty in the current economic climate is that Risk Managers will need to place greater scrutiny on traditional insurance values such as: appropriate policy coverage and long-term security of their insurance providers. Early engagement with their own management and with their insurance advisers can help ensure that they are protecting their company, its assets and employees in an appropriate manner.



In 2007 the Brazilian Initial Public Offerings (IPOs) hit a record high with 63 companies valued at USD 30.8 billion.

Brazil

Focus on Management Liability

The reforms in the 1990s brought financial stability to Brazil. Rich in natural resources, this nation has become self-sufficient in oil, ending years of dependence on foreign producers. Prior to the global financial crisis, Brazil's rate of growth was 5%. As with other emerging markets lack of available credit will inevitably slow down growth in the short to medium term. But will this halt progress on corporate governance?

Implications of current conditions and the Brazilian IPO market

In 2007 the Brazilian Initial Public Offerings (IPOs) hit a record high with 63 companies valued at USD 30.8 billion. Of the top ten global IPOs made in the world, two were Brazilian companies, namely Bovespa and BMF. Unfortunately, the global financial crisis has virtually halted this trend with approximately only half a dozen companies expecting to go public this year. In fact the 'top 10 worst performers' were entirely formed by new recent traded companies, who lost more than 90% of their investments.

If we look at the Brazilian banks, we find that they're quite conservative and tend not to have significant exposures to the derivatives market. The level of solvency and leverage is pre-defined and monitored by the Brazilian central bank. The central bank also regulates the rules applicable to lending, financing and mortgage activities with respect to collaterals.



Eduardo Pitombeira is Head of Financial and Professional Lines, for Zurich in Latin America. He has over 10 years of experience in Management Liability.

The culture of protection against potential liabilities is generally quite low in Brazil. Recent IPOs have necessitated the hiring and retention of independent non-executive directors. These individuals are fully aware of the potential risks and request companies to buy Directors and Officers (D&O) policies as a condition to be part of the board. The increased volume of investments made by private equity and venture capital firms has also fuelled demand for D&O insurance.

Privately owned companies are also leading the increasing volume of D&O policies with an estimated growth rate of 25% each year in gross written premium despite a soft marketplace and low level of claims. There is still the perception that small/medium-sized companies are more exposed to D&O claims; often the D&O are also the shareholders of these entities exposed to the 'statutory liabilities' such as taxation and labor issues compared to their peers in large conglomerates.

The Brazilian D&O market at a glance

- The D&O market started in the mid 1990s with Brazilian companies seeking US listings.
- 10% of companies are listed on the US Stock Exchange.
- Increased regulation is fuelling demand for D&O policies.
- D&O are liable to seizure of personal assets by the regulator.
- Only ADR/Large traded companies are allowed to buy coverage in US Dollars.
- Pricing needs to reasonably follow local market standards and actuarial plans filed with the Insurance Superintendency.



Regulatory landscape in Brazil

The legal landscape in relation to D&O is constantly evolving.

- The 2003 **New Civil Code** in Brazil definitively confirmed the possibility of a director or an officer being held liable for his/her acts in the course of the management. The laws expressly says that third parties and even the company itself may bring claims against directors and officers.
- **Tax Code:** Imposes criminal and civil penalties against natural persons that may be seen as a company's formal representatives, including its directors and officers. Despite the fact that the tax law has been in force for many years, tax authorities have started to use specific articles as a way of putting pressure on D&O. The fact that a D&O may or may not be held liable for a corporate tax still remains a grey area and creates many concerns for executives despite having a D&O policy in force.
- **Brazilian Central Bank:** Since the reforms made to the Brazilian financial system in the middle of 1990s, the Central Bank increased its power to investigate D&O of financial institutions and may even impose fines and penalties at their own discretion.
- **Securities and Exchange Commission (CVM):** With the increased number of IPOs, the Commission has modernized its internal structure, including new staff and increased jurisdiction to investigate and punish D&O of traded companies as well as any other open market participants.
- **Pension funds:** Two new laws were promulgated in 2001 to regulate both open and closed pension funds, establishing the 'Pension Agency' to regulate this market separate from the insurance market. The new laws expressly say that D&O may be personally held liable for management acts. Penalties include the freezing of their personal assets and fines of up to USD1 million.

To date there have been no US securities actions made against Brazilian companies. However, on the employment liability front claims have been increasing. With a growing economy, changing legal environments, and potentially increasing levels of claims in the near future, Brazilian companies and their D&O will undoubtedly pay greater attention to corporate governance and seek comprehensive D&O policy coverage.

Managing liability in emerging markets

China taking the management liability test

At the time it was closed by the Communists in 1949, Shanghai was the world's third-largest stock exchange after New York and London. Since it re-opened in 1990, as part of China's efforts at reform, it has grown at the same awe-inspiring pace as the country's emerging economy.

Bernard Poncin is Head of Financial and Professional Lines at Zurich Global Corporate in Asia Pacific. Bernard has over 16 years experience in the insurance industry specializing in Financial Lines insurance.



Now, despite the fact that its formerly gravity-defying performance has stuttered in the wake of the global credit crunch – along with every other stock market index – Shanghai is still back among the five largest stock markets in the world. As such, its record on corporate governance is increasingly the subject of reform and intense domestic and international scrutiny.

The regulatory landscape in China

The regulatory landscape in China is changing with remarkable speed. The formally non-litigious population is beginning to see the courts as a way of asserting their individual rights against the face of authority. Recent cases include medical malpractice suits against state hospitals, and unfair dismissal suits against private employers, breach of copyright, infringement of privacy, misrepresentation by company directors and defamation. Despite the increasing scope of litigation, however, court awards remain extremely low compared to the West.

Following the implementation of the new Security Law and The Company Law in China, companies, especially listed companies and their D&O are exposed to more responsibilities from Jan 1, 2006.

The new Security Law mainly focuses on what's forbidden in information disclosure (from article 63 to article 72 in parts 3), the internal shareholding of D&O of the company, inside trading, etc. Secondly and importantly, it nails down the consequences of economic and administrative punishment for infringement.

In the section on information disclosure, the new law makes rules on prospectus, measures for financing through issuance of corporate bonds, financial statement, listing report, annual report, midterm report, temporary report or any information.

The directors and senior managers of a listed company shall sign in the periodic report in order to 'guarantee the authenticity, accuracy and integrity of the information' (article 68). Although still too simple and obscure, article 68 has been close to the Sarbanes-Oxley Act in that it's the first time that written form is required in confirming information disclosure and that it requires the directors, supervisors and senior managers to guarantee the authenticity, accuracy and integrity of the information disclosed.

The first benefit of the new Company Law is to give definition to 'officers' for the first time, thus providing definite direction for D&O insurance. Secondly, it sets up a special Chapter VI 'Qualifications and Obligations of the Directors, Supervisors and Senior Managers of a Company' that relate to D&O, their liabilities and punishment.

Things you should know about implementing polices in China

- Non-admitted insurance is prohibited.
- Local polices are required as local subsidiaries expect to be protected and receive compensation for D&O suits.
- Policies have to be filed and approved by registering them with the CIRC.

An orange circle graphic on the left side of the page, containing the text 'Managing liability in emerging markets'. A thin orange line extends from the bottom of the circle towards the center of the page.

Managing liability in emerging markets

The Chinese insurance industry

There tends to be low levels of awareness and demand for insurance in China compared to other emerging or developed economies. According to a broker's attitude surveys, those who do understand insurance tend not to regard it as a necessity. For example, private factory owners tend to prefer to 'gamble' that they will not have a fire rather than spend money on insurance.

Despite the existence of statutory reserving requirements, many insurers are still said to account on a 'cash-in, cash-out' basis. There is a lack of financial data, particularly from insurers' far-flung branch networks, and the data that is available is not consistently presented. This makes it almost impossible for the China Insurance Regulatory Commission (CIRC) to monitor insurers' solvency positions and reserving adequacy. New accounting standards have therefore been introduced from January 1, 2007, which all insurers will have to observe. In particular, all companies will now be obliged to calculate their unearned premium reserves on a 1/365 basis rather than the 50:50 basis, which was common in the past. These standards are expected to reveal insurers' true financial positions for the first time and allow the CIRC to take action against the 'cash-flow underwriters' who are responsible for much of the market's rating weakness.

Claims in China

Despite a move towards a more litigious culture, the majority of claims are still settled out of court. A number of small suits and employment practices liability claims against Chinese employees located in the US have been settled for relatively small amounts. Class action lawsuits have also been filed against Chinese companies listed on US stock exchanges. It is therefore only a matter of time before one of these results in a D&O claim, filed in mainland China, which will inevitably fuel the growth of the market.

Addressing employment practices

China has to deal with an increasing number of labor disputes. Recent court cases suggest that class action lawsuits are permitted; at least as far as employers' liability claims are concerned. The limitation period is one year for most cases of bodily injury. We expect the number of class action lawsuits to further increase.

A new draft bill has been introduced to strengthen mediation and improve arbitration for labor disputes. Under this bill, corporations are entitled to establish labor mediation committees to solve labor disputes on a grassroots level that occur within the company. The committee should consist of employees and management representatives. Should a labor dispute occur, litigants will be able to turn to the corporate mediation committee. Labor disputes concerning pay, medical fees for job-related injuries, compensation and pensions whose relevant sums do not exceed 12 months of the local minimum monthly wages could be solved by arbitration. The arbitration documents will be legally binding once handed out.

With increasing employment regulations, employees are becoming more aware of their rights and they are taking action.

Implications of current conditions and Chinese IPO markets

With a highly fragmented insurance industry, both the cities and the province sets premium levels and policy wordings to suit local market conditions. The lack of meaningful data makes it difficult to assess pricing trends in China. Looking at the broader picture, the credit crunch and an increasingly litigious environment will lead to increased severity of claims, which in turn will impact capacity. As capacity shrinks, the Chinese insurance market – like other world markets – is likely to harden with premiums increasing and terms growing more restrictive.

The Chinese stock markets (Shanghai, Shenzhen, Hong Kong and Taiwan exchanges) raised USD 62 billion in Initial Public Offerings (IPOs) in 2006, compared to USD 48 billion raised in the US, and USD 39 billion in the UK. This frenzied investment bubble is beginning to burst. Fears of sliding stock prices and plans for huge cash calls by already-listed firms, as well as oversupply, are all threatening to stifle activity this year.

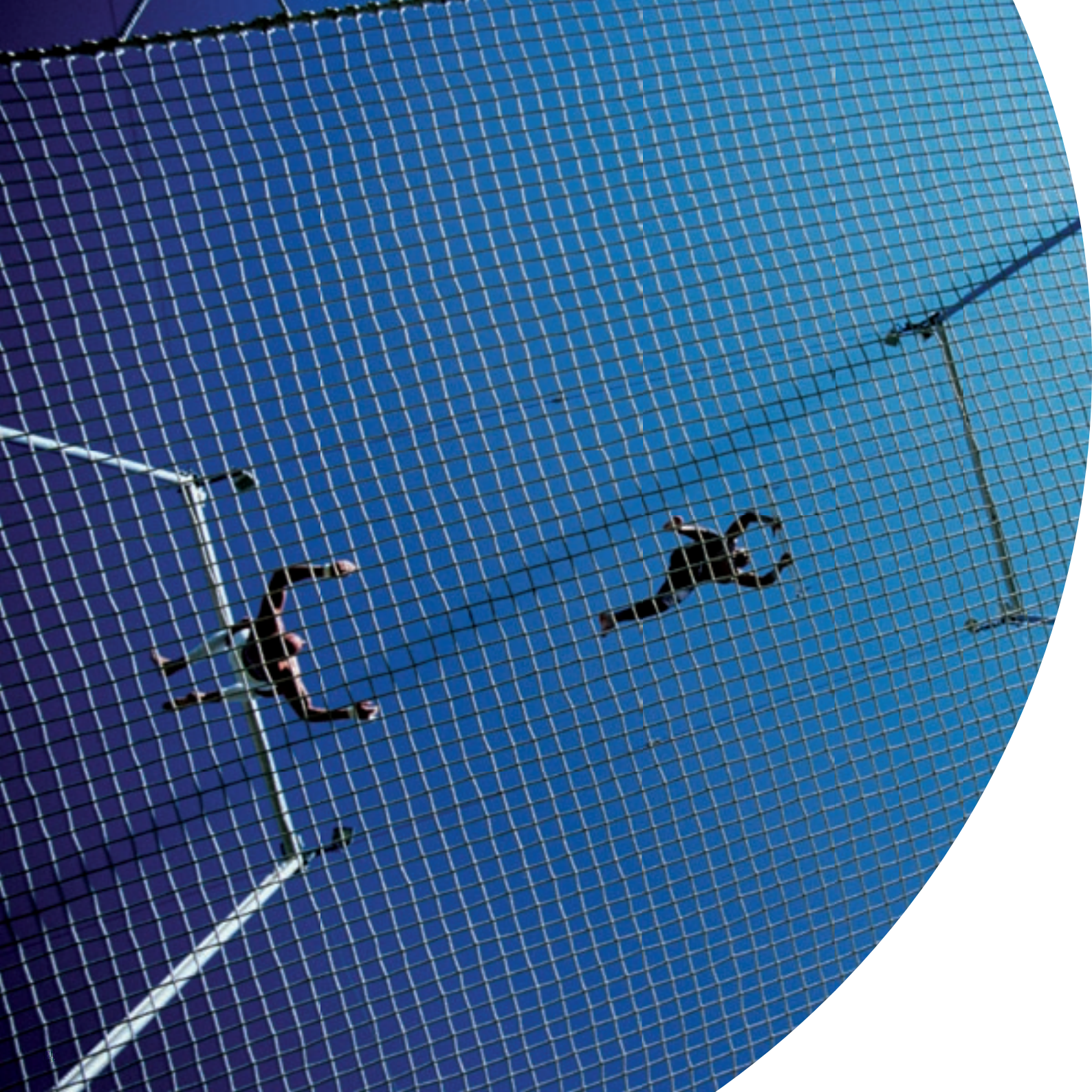
And when the Shanghai Index plunged more than 40% below its previous record peak, IPOs came to a virtual halt. A number of companies with IPO approval are awaiting final notice from the China Securities Regulatory Commission to launch offers. We can assume that China's IPO value is unlikely to reach that of 2007 in the foreseeable future.

As more Chinese companies opt for dual listing on the domestic and overseas stock exchanges, the requirements for appropriate corporate governance will become ever more important. Board members will naturally seek relevant D&O protection as a condition of taking up such appointments.



For more details on D&O insurance in China, please see our 2009 Guide to Directors and Officers issues around the globe.





Companies seek a safety net against the cost of employee claims

In today's litigious society, where disgruntled employees hardly think twice about suing their employers for alleged cases of sexual harassment, wrongful termination or discrimination, it's perhaps no surprise that growing numbers of companies have started to see Employment Practices Liability (EPLI) cover as an essential part of their risk management strategy.

The explosion in workplace-liability claims is reaching every corner of the globe.

Recent significant changes in the law such as the introduction of new anti-discrimination directives, as well as the frequency and severity of claims, have also helped fuel demand. Where it was typically only those companies with US exposures that sought EPLI cover, now almost every organization with European exposure or exposure in the world's emerging markets is keen to make sure they don't leave themselves at risk from potentially devastating legal action.

With the possible exception of certain Asian countries – where differences in culture and employment law tend to protect employers – the explosion in workplace-liability claims is reaching every corner of the globe.

In the US, for example, while the number of Equal Employment Opportunity Commission sexual harassment filings has declined in recent years, sexual harassment filings by men have consistently increased, doubling over 15 years. And while the number of employment litigations in the US has been stable or started to decline, litigations alleging violations of the wage and hour provisions have tripled since 1997.



Christoph Leuzinger,
Chief Underwriting Officer
for Employment Practice
Liability, Zurich
Global Corporate

Here are some other examples from around the world:

- The Beijing Labor and Social Security Bureau has recently targeted hotels, restaurants, property management companies and small and medium-size, labor-intensive enterprises that were violating the Chinese Employment Contract Law. The crackdown focused on whether employers had written employment contracts in place, and the payment of wages and social security contributions. As well as receiving hefty fines, offenders will be named and shamed.
- Earlier this year, a Beijing Court awarded a prospective employee damages for emotional distress because the individual was not hired after testing positive for Hepatitis B. The court held that the company violated the Employment Promotion Law introduced in January 2008. The judgement imposed damages for emotional distress amounting to €1,750.
- A Belgian security company was held liable for discriminating against a Turkish-Belgian job applicant. What prompted the complaint was an email from the company that informed the applicant that he was not the right person for the job. Attached to the email was an internal mail with the question 'Can you find an excuse not to accept this person? I've never seen a foreigner selling security'.
- A female claimant brought a claim for harassment and bullying by colleagues against the UK arm of a continental European bank. It was alleged that colleagues stonewalled her, laughed in her face, blew raspberries and told her 'you stink'. During her employment she received stress counselling and suffered a nervous breakdown. The judge awarded her GBP828,000.
- An Australian employee of a German bank claimed that he was discriminated against as he wasn't German. The GBP10 million lawsuit was successfully defended, but the bank incurred significant costs in doing so.
- The French Appeal Court held that a personnel recruiting company and a healthcare company had colluded to find only white women to sell make-up in Paris. They were fined €30,000 and a former employee of the personnel recruiting company was given a three-month suspended jail sentence.

New labor and employment laws aimed at strengthening employees' right are also being introduced around the world.

Examples include:

- In January this year, China introduced the Employment Contract Law which requires written labor contracts with employees. The All-China Federation of Trade Unions has launched a new campaign to establish a union presence in 80% of the Fortune 500 companies operating in China.
- In Australia, the Government has recently released its final National Employment Standards (NES) that will apply to all employees. It will deal with the maximum weekly hours, flexible working arrangements for parents who have to care for a child under school age, and many more situations.

The EU is also determined to protect the rights of EU workers and to eliminate discrimination, and has introduced the reversed burden of proof in discrimination cases.

Here are some examples:

- The European Court of Justice has recently ruled that an employee who is the primary carer of a disabled child was treated less favorably than other employees. The question was whether the EU Equal Treatment Framework Directive would protect not only disabled employees from direct discrimination and harassment, but also employees – such as carers – who are associated with someone with a disability. Their decision affects over six million carers in the UK, many of whom are in full or part-time employment.
- A case is currently being heard by the European Court of Justice to test whether mandatory retirement at 65 breaches the EU Directive. The action has been brought by the charity Age Concern and a decision is expected later this year.

- In Brazil, Congress is currently debating new rules regarding moral harassment. The outcome may well be a constitutional amendment that protects employees against general harassment in any form, which can only increase the frequency and severity of EPLI claims.
- A discussion paper published recently by the World Bank regarding the enforcement of labor regulations in Brazil found that, in 2002, of the 304,000 firms visited by labor inspectors, approximately 17% received a notification of non-compliance with the labor regulations.

These are just some of the EPLI issues in various jurisdictions around the world that companies should be aware of. Undoubtedly, regulation around employment practices is increasing across the world making EPLI more relevant for companies. Appropriate EPLI can help companies against possible claims for alleged wrongful termination, sexual harassment and discrimination based on age, gender, race, religion or disability. For more information please contact your broker or email.



Dispelling myths on

Zurich Multinational Insurance Proposition (MIP) and international Financial Lines programs

John Latter is Head of Zurich MIP and he has over 24 years of experience with Zurich. He was previously Chief Claims Officer of Zurich's London operations, responsible for setting and implementing the claims strategy.



Martin Strnad is Head of Legal at Zurich Global Corporate.



At Zurich's fourth international Financial Lines conference in October 2008, we wanted to dispel a few myths in the market around Zurich Multinational Insurance Proposition (Zurich MIP) and international Financial Lines programs. Vincent Vandendael, Head of Financial Lines for Zurich posed a series of candid questions raised by customers and brokers to a panel of speakers including John Latter, Head of Zurich MIP, Paul Schiavone, CUO for Directors and Officers (D&O) Insurance in Zurich Global Corporate, Martin Strnad, Head of Legal at Zurich Global Corporate, along with two expert lawyers – including David Murphy a Partner at [DLA Piper UK LLP](#), and Guy Soussan a partner at Steptoe & Johnson LLP. Some of these questions included:

Is it true that Zurich MIP's only purpose is to solve Zurich's internal problems in particular a recent tax fine?

No. Zurich has not been fined. Rather, having conducted extensive global legal research we have found – and many of our leading experts have confirmed to us – that there is a potential for triggering investigations, audits or even fines, if prohibitions for non-admitted business were not followed and Insurance Premium Taxes were not paid appropriately. Zurich made the decision to be proactive in its approach to these issues – this is how Zurich MIP came about.

We all hear the horror stories of potential tax liabilities, fines and even jail sentences but is this not just scare-mongering? Can Zurich help us understand the consequences of non-compliance?

Firstly, we all have to observe Regulatory Law: Many jurisdictions prohibit insurers from providing insurance coverage on a non-admitted basis. Further in many cases such laws do not make any differentiation between Primary, Difference in Cover/Difference in Limits (DIC/DIL) or excess coverage. For example, in a recent case the Swiss Federal Supreme Court found that covers provided on a non-admitted basis should be declared as void. Secondly, all parties have to observe premium tax requirements: In many cases, where a buyer receives non-admitted coverage, for example in respect of its Canadian subsidiary, it is this Canadian subsidiary that may become responsible for paying the Insurance Premium Tax (IPT).

Both of these issues are remote and solvable, but must be seen as a concern to all parties to the contract. For example, what would be the position if a customer's country manager is placed in custody and they cannot secure his or her release as the local court will not accept the advancing of the bail bond by a non-admitted insurer? And to demonstrate the interrelation to the IPT: The fact that the insured got cover from a non-admitted insurer can arise due to the fact that no IPT was paid.

We place a lot of business for clients with exposures in the US and Zurich is the only insurer to insist upon a local US policy. Why is Zurich so inflexible on this issue?

Where a parent company's interest in its subsidiary is insured at the parent's domicile, a local policy of course is not needed. This discussion only makes sense when a local D&O risk is insured, i.e. a locally residing director or a local affiliate. It is true that many US states accept non-admitted coverage for risks residing inside their territory, despite the principle that normally a local license is required. This has to do with a large variety of principles and exemptions, for example the self-procurement laws and the minimum contact rules, which are applied differently all across the different US states.

The bottom line is however: even where non-admitted insurance is permissible, all this really permits is just the covering of the risk. What is and still remains subject to local requirements (for example licensing) are all ancillary activities, such as premium invoicing, loss adjustment activities, and sometimes even the claim payment itself. If these restrictions are not observed, the insurer and the customer can run into regulatory difficulties.

Where there is a need to be able to advance defense costs and provide ancillary insurance activities, it is just a measure of reasonability to agree on a local policy in the USA.

Also, many of our non-US customers insist on us providing a local policy in the US which is specifically tailored for US regulations such as the US securities and exchange committee's investigations and proceedings, the foreign corrupt practices act, and broad cover for securities claims in the US. US policy language is tailored (over years of jurisprudence) to conform with US case law on D&O. These are technicalities that Zurich is addressing proactively in favor of not only itself but also the customer and the broker.

One of the biggest issues raised by customers and brokers is why is this happening now, why haven't we heard this before?

Some customers and brokers are not prepared internally to deal with the administrative burden of Zurich MIP (revenue/asset allocation, premium allocation, premium payments, invoicing). Customers and brokers don't necessarily know the process and need to get their heads around it, what it entails, which countries, what about local claims, what limits, who issues, who pays, and the broker's role.

Today, with the experience that we have gathered including that of our customers and brokers, there is a constructive discussion on all the different solutions and scenarios Zurich MIP provides for.

These were just some of the questions addressed by the panel. In conclusion John Latter spoke of how "compliance is not something that Zurich recommends compromising on, we're proud of Zurich MIP. We probably didn't get everything right first time in terms of our messaging, but we are listening to our customers and brokers and we're constantly seeking to improve our solution(s)".

Vincent Vandendael summarized: "International Programs are a revolution in the global Financial Lines insurance world, and Zurich has been the driver and market leader of this change. The risk Zurich took two years ago is now paying off. In today's market environment it has never been more important for our customers and brokers to have locally compliant international D&O programs."

How insureds and brokers can help ensure a smoother implementation process:

- Preparing in advance details on subsidiaries i.e. revenues or assets by country in which they operate in, or where the customer feels they have a need for a local policy, local contacts and addresses, at least 60-90 days prior to the effective date.
- The insured should communicate to the recipients of the local policy(s) about the master program, its intent, their role in it along with the process and payment details; particularly in the case of countries like Brazil and Japan where premium payment is required before coverage can be effected.
- Provide the insurer with feedback on how the service or communication and information flow can be enhanced.



Assessing and addressing

the risks of fraud in emerging markets

There is no question that the booming populations and rapid progress of many of the world's developing nations offer western companies exceptional opportunities for growth and a strong return on their investments.

But as eager as any company is to expand its operations into these new and emerging economies, there are threats to their success which they cannot afford to underestimate.

While it is true to say that the potential for fraud and corruption exists almost anywhere in the world, it is in the countries of Asia, Latin America and Europe's former Eastern Bloc that the risk is particularly acute.

Any company entering these new markets without adequate anti-fraud measures in place could leave

themselves vulnerable to practices such as the misappropriation of assets, accounting fraud, corruption and bribery, money laundering and infringement of intellectual property.

Take the example of a European multinational healthcare provider keen to invest in the Colombian market.

To meet its growth plans, the decision was taken to acquire a domestic subsidiary, rather than setting up its own operation from scratch.



Owen Williams is a Senior Underwriter for Commercial Crime, Zurich Global Corporate UK. He has over ten years experience in this field.

The first mistake many companies make is not introducing new senior management when a subsidiary is acquired.

The founder of the Colombian operation was retained as the General Manager and continued to be the company's key contact with its clients, many of which were government institutions.

It was only when the business became unprofitable for the first time – for reasons that had nothing to do with the fraud itself – that a USD 5 million fraud was discovered.

A fall in the company's credit rating had prompted a detailed review by external auditors and a new Chief Financial Officer was appointed. At the same time, the General Manager left for the US to check himself into a rehabilitation clinic.

Despite the General Manager's denials of any wrongdoing, an official enquiry revealed that the fraud involved payments from customers being diverted into a secret bank account. Although the account had been set up in the company's name, the General Manager was the sole signatory and the funds were not recognized in the financial records. Some of the money was channelled into the subsidiary's legitimate accounts, some went towards paying kickbacks that secured extremely lucrative contracts for the company, and the rest was used to fund the General Manager's own lavish lifestyle.

The only questions left to answer were how such a significant incidence of fraud could remain undetected for several years without ever arousing suspicion and what more the healthcare company could have done to anticipate and mitigate the risks from the outset.

The first mistake many companies make is not introducing new senior management when a subsidiary is acquired. In this instance, while regional managers were given responsibility for monitoring contractual dealings and expenditure, every transaction was still routed through the General Manager. As a domineering and charismatic personality, he found it easy to fend off questions from subordinates and from head office alike.

Because of its unique nature, it was also difficult to compare the performance of the Colombian business with any of the company's other operations elsewhere in the world. Alarm bells didn't ring for the simple reason that, prior to the slump in business, the subsidiary had been extremely profitable.

The good news is that even the most basic anti-fraud policies can substantially lower the risks and help avoid losses.

According to David Ledger from ASL, international loss adjusters and forensic accountants: "Effective due diligence pre- and post acquisition should target not just the financials but also examine the nature of the business and the customer relationships and contacts. Best practice would also suggest that new management should be introduced when a subsidiary is acquired, with an effective internal audit function and regular head office financial reviews to highlight anything untoward. All of this activity also needs to take place against a strong understanding and awareness of the culture, industry practices, laws and regulatory regimes of the local, domestic markets."

Certainly, ambitious businesses need to be pursuing opportunities in the world's emerging markets, but not at any price and adequate controls such as these can help make sure fewer companies fall victim to the fraudsters.



on International Financial Lines insurance programs

Adidas share their key considerations for developing an international Directors and Officers program and how they differed from other areas of insurance.



Karin Leineweber, is the FINPRO Practice Leader at Marsh in Germany. Karin has over 12 years of experience specializing in international liability programs.




Dieter Schmitt, Adidas Risk Manager, pointed out that: “While a number of the core considerations for developing an international D&O programme are similar to other lines where international placements are made, one major key difference is the higher profile of the D&O purchase from senior management and the focus on compliance that this brings. In fact, local compliance was top of our list of considerations and following discussions with Zurich we felt that Zurich Multinational Insurance Proposition (Zurich MIP) was worth pursuing. A year ago, adidas had one global D&O policy. Recognizing the importance of compliance with local insurance tax regulations, we now have one master policy and twenty local policies. Non-compliance is not an option for us as adidas. Other considerations for us include:

- a financially strong insurer;
- transparency – clearly defined coverage, limits and appropriate pricing;
- a long-term relationship based on good levels of service with both the insurer and broker – we don’t want to go shopping every year.”

Sharing views on how adidas manage their renewal process and communications on D&O insurance purchase, Dieter mentioned that there is more communications around D&O insurance than there used to be, and that adidas share details of coverage with their people so that they are empowered with the

knowledge. Sharing the details of their renewal process, Dieter commented that adidas started the process by engaging with their broker six months in advance, however, “we would like to see the insurer involved much earlier in the process that they do at present”.

Adidas’ broker, Karin Leineweber from Marsh, mentioned that for the first time companies are beginning to implement international financial lines programs. “We need to help customers understand the growing breadth of issues around D&O insurance, and establish what is important to the individual customer i.e. especially compliance and scope of coverage. Furthermore, from a broker perspective, an early start would help us better serve our customers needs when it comes to implementing international Financial Lines programs.”



“...we would like to see the insurer involved much earlier in the process that they do at present”

Our global expertise

here to help you

To find out more about how we can help you, please speak to your local Zurich contact or broker.

Country/Region	Key contact	Contact number
Asia	Bernard Poncin	+ 852 2977 0200
Australia	Andrew Strain	+61 2 9995 2242
Benelux	Herbert Baeten	+ 32 2 639 5577
France	Stephane Vauterin	+ 33 1 5590 4573
Germany	Michael Ullrich	+ 49 69 7115 2399
Italy	Simona Fumagalli	+ 39 0259 667810
Latin America	Eduardo C. Pitombeira	+ 55 11 5504 8594
Nordic	Lars Danielsson	+ 46 8579 33064
North America	Salvatore Pollaro	+ 1 212 553 5531
Russia	Elena Barcheva	+ 7 495 933 51 41 ext. 1401
Spain	Beatriz Valenti	+ 34 933667446
Switzerland	Luca Ravazzolo	+ 41 44 628 9725
UK	Alan Moore	+ 44 207 648 3080

Business area	Chief Underwriting Officer	Contact number
Financial Lines	Keith Thomas	+ 41 44 628 8530
Financial Institutions	André Ford	+ 44 207 648 3214
Directors and Officers	Paul Schiavone	+ 44 207 648 3258
Professional Indemnity	Louise Dennerstahl	+ 46 733 573 143
Employment Practices Liability	Christoph Leuzinger	+ 41 44 628 81 42

Alternatively, visit our website www.zurich.com/corporatebusiness

Where to find us:

Asia Pacific

Australia

Zurich Australia Insurance Limited
5 Blue Street, North Sydney
NSW 2060, Australia

China

Zurich Insurance Company, Beijing Branch
Suite C, 21st Floor, Gateway Tower A
No. 18 Xia Guang Li, North Road, East Third Ring
Chao Yang District, Beijing 100027, China

Hong Kong

Zurich Insurance Company (Hong Kong branch)
Address: 24-27/F, One Island East
18 Westlands Road, Quarry Bay, Hong Kong

Indonesia

P.T. Zurich Insurance Indonesia
Address: Sudirman Plaza, Indofood Tower, 8th Floor
Jl. Jend. Sudirman Kav. 76-77-78, Jakarta 12910
Indonesia

Japan

Zurich Insurance Company, Japan Branch
Address: Shinanomachi Rengakan
35 Shinanomachi, Shinjuku-ku
Tokyo 160-8585, Japan.

Malaysia

MCIS Zurich insurance Berhad
Wisma MCIS ZURICH, Jalan Barat
46200 Petaling Jaya, Malaysia

New Zealand

Zurich Australian Insurance Limited trading as Zurich
New Zealand, 55-65 Shortland Street
Auckland 1010, New Zealand

Singapore

Zurich Insurance Company (Singapore branch)
50 Raffles Place, 29-01 Singapore Land Tower
Singapore 048623

Taiwan

Zurich Insurance (Taiwan) Ltd
No. 56, Tun Hwa North Road
Taipei, 10551, Taiwan

Europe

Belgium

Zurich Global Corporate Benelux
Zurich Insurance plc, Belgium Branch
Avenue Lloyd George 7, 1000 Brussels, Belgium
Reg. No: 0882 245 682

Denmark

Zurich Global Corporate Nordic
Zurich Danmark, Filial af Zurich Insurance plc
Ireland, (CVR.nr. 31184606, Erhvervs-og Selskabsstyrelsen)
Edvard Thomsens vej 10 st.mf. DK-2300 Copenhagen SV
Denmark, Zurich Global Corporate Nordic is a trading name
for Zurich Danmark, Filial af Zurich Insurance plc, Ireland

Finland

Zurich Global Corporate Nordic
Zurich Insurance plc, Finland Branch
(Reg No: 1996555-8, National Trade Register)
Tammasaarenkatu 3, F-00180 Helsinki, Finland

France

Zurich Global Corporate France
Zurich Insurance plc, France Branch
96, rue Edouard Vaillant
92309 Levallois-Perret cedex, France
RCS Nanterre 484 373 295

Germany

Zurich Global Corporate Germany
Zurich Versicherung Aktiengesellschaft (Deutschland)
Solmsstrasse 27-37, D-60444 Frankfurt am Main
Germany

Ireland

Zurich Insurance plc
Zurich House, Ballsbridge Park, Ballsbridge, Dublin 4, Ireland
Registered in Ireland under company registration
number 13460

Italy

Zurich Global Corporate Italy
Zurich Insurance plc, Italy Branch
Piazza Carlo Erba 6, 1-20129 Milan, Italy

Netherlands

Zurich Global Corporate Benelux
Zurich Insurance plc, Netherlands Branch
Zurichtoren, Muzenstraat 31
NL-2511 VW Den Haag, Netherlands
Chamber of commerce Den Haag No: 27293233

Norway

Zurich Global Corporate, Nordic
Zurich Insurance plc, Norway Branch
(Reg No: 991 803 017, Foretaksregistret)
Drammensveien 149, P.O Box 574 Skøyen
NO-0214 Oslo, Norway
Zurich Global Corporate, Nordic is a trading name for
Zurich Insurance plc, Norway Branch

Spain

Zurich Global Corporate Spain
Zurich España
Compañía de Seguros y Reaseguros, S.A.
Via Augusta, 200, E-08021 Barcelona, Spain

Sweden

Zurich Global Corporate Nordic
Zurich Insurance plc, Sweden Branch
(Reg No: 516403-8266 Bolagsregistret)
Linnégatan 5, P.O. Box 5069
SE-102 42 Stockholm, Sweden
Zurich Global Corporate, Nordic is a trading name for
Zurich Insurance plc, Sweden Branch

Switzerland

Zurich Global Corporate Switzerland
Zurich Insurance Company, Austrasse 46
CH-8045 Zurich, Switzerland

United Kingdom

Zurich Global Corporate UK
London Underwriting Centre, 3 Minster Court, Mincing Lane,
London EC3R 7DD, England.
Zurich Global Corporate UK is a trading name for:
Zurich Insurance plc

A limited company incorporated in the Republic of Ireland
No. 13460. UK Branch registered in England and Wales No.
BR7985. Registered Office: Zurich House, Ballsbridge Park,
Dublin 4. Head Office in the UK: The Zurich Centre, 3000
Parkway, Whiteley, Fareham, Hampshire, PO15 7JZ.

Authorised by the Irish Financial Regulator and subject to
limited regulation by the Financial Services Authority. Details
about the extent of our regulation by the Financial Services
Authority are available from us on request.

Latin America

Argentina

Zurich Argentina Cia. de Seguros S.A.
Cerrito 1010, Buenos Aires C1010AAV, Argentina

Bolivia

La Boliviana Ciacruz de Seguros y Reaseguros S.A.
Calle Colón No. 288, 2nd floor - La Paz, Bolivia

Brasil

Zurich Brasil Seguros S.A.
Rua Dr. Geraldo Campos Moreira, 240/5,6,7 andar
Brooklin Novo, Sao Paulo-SP, Brasil

Chile

Chilena Consolidada Seguros Generales S.A.
Av. Pedro de Valdivia 195, Santiago, Chile

México

Zurich, Compañía de Seguros, S.A.
Boulevard Manuel Avila Camacho
No. 126, Col. Lomas de Chapultepec, 11000 México

North America

Canada

Zurich
400 University Avenue, Toronto (Ontario), M5G 1S7,
Canada 416 586 3000, www.zurichcanada.com

This is intended as a general description of certain types of
insurance and services available to qualified
customers through Zurich Insurance Company. Your policy is
the contract that specifically and fully
describes your coverage. The description of the policy
provisions gives a broad overview of coverages and
does not revise or amend the policy.
Because change happenz® and Zurich® are trademarks of
Zurich Insurance Company.

©2008 Zurich Insurance Company

North America

Zurich
One Liberty Plaza, New York, New York 10006, USA
860 866 7292 www.zurichna.com

This is intended as a general description of certain types of
insurance and services available to qualified customers through
the companies of Zurich in North America. Your policy is the
contract that specifically and fully describes your coverage. The
description of the policy provisions gives a broad overview of
coverages and does not revise or amend the policy.

Insurance coverages underwritten by member companies of
Zurich in North America, including Zurich American Insurance
Company. Certain coverages not available in all states. Some
coverages may be written on a nonadmitted basis through
surplus lines brokers.

©2009 Zurich American Insurance Company



Because change happenz™