VIRTUAL ROUND TABLE

CorporateLiveWire

Insurance & Risk Management 2014

MEET THE EXPERTS

Abadi Abi Tisnadisastra - AKSET
T: +62 21 2992 1515
E: atisnadisastra@aksetlaw.com
W: www.aksetlaw.com

Abi is a licensed Capital Markets lawyer with emphasis on the financial services and information and communications technology sectors. He specializes in complex structuring and capital market compliance for a wide range of clients, including major multinational financial institutions and insurance and insurance supporting companies. He has represented many insurance companies in restructuring their Indonesian business operations. He is the author of the Indonesia chapter of Getting the Deal Through - Insurance and Reinsurance.

Edward Susolik - Callahan & Blaine
T: +1 714 241 4444
E: esusolik@callahan-law.com
W: www.callahan-law.com

During the last 24 years, Edward Susolik has come to be known and respected as one of the top litigation attorneys in the Western United States. Mr. Susolik is known for his powerful and aggressive interdisciplinary litigation practice, combining expert trial and courtroom advocacy skills with bold and decisive litigation strategies.

Mr. Susolik's many awards and accolades speak to his reputation in the legal community. For example, Mr. Susolik has been recognized by his peers as one of the "Top 100 Attorneys in Southern California" for 2010, 2011, 2012, 2013 and 2014 - one of only a handful of Orange County attorneys given that distinguished honor by Super Lawyer Magazine.

Mr. Susolik's accomplishments are reflected in his many judicial victories. For example, Mr. Susolik has recovered over $1.0 Billion on behalf of his clients during his career, including recent settlements of $50 Million and $28 Million, as well as hundreds of other seven and eight figure recoveries for his clients. Similarly, Mr. Susolik has obtained hundreds of dismissals and judgments, de minimis settlements and even affirmative recoveries when representing clients on the defense.

Stuart King - FR Global Advisors Ltd
T: +353 1 775 9511
E: stuart.king@frglobaladvisors.com
W: www.frglobaladvisors.com

Stuart is a British Chartered Certified Accountant. Prior to forming FR Global Advisors Stuart worked for leading insurance and advisory firms.

FR Global Advisors is an independent international advisory firm suporting business leaders to improve business performance via structured corporate insurance use.

Stuart is a leading expert in alternative risk financing strategies and international insurance accounting and regulatory compliance. Stuart has also advised a number of regulatory development authorities on enhancing insurance legislation.

Simon Calderbank - HCC International
T: +44 (0) 20 7680 2910
E: scalderbank@hccint.com
W: www.hccint.com

Simon is a Dip CII qualified professional with over ten years' experience working in London and Regional Insurance markets. Having gained a 2.1 honours degree in Business Studies Simon's career started at Hiscox, during which time he wrote professional indemnity, financial lines and commercial risks. Subsequent moves have seen him focus on Technology and Cyber Risks at CNA and most recently QBE where he was the Senior Technology and Cyber Underwriter. A frequent speaker at industry and client sponsored events, Simon's breadth of knowledge and underwriting ability ranges from the very small to the multinational risks seen in the London Market.

Martin Mankabady - Mayer Brown International LLP
T: +1 212 506 2650
E: mmankabady@mayerbrown.com
W: www.mayerbrown.com

Martin focuses on mergers and acquisitions (both private and public), joint ventures, and corporate finance, principally in the insurance and financial services sectors. Martin also advises on general company law, commercial and regulatory matters.

Commenting on his practice capabilities, Legal 500, 2010 praised Martin for his "quiet, effective, good humoured mastery of deals and details" and in 2007 noted Martin is "a highly accomplished lawyer with strong expertise in the financial services sector" (2007). He is "exceptionally respected" according to Chambers UK 2010 and in 2009 praised him for his "user-friendly, get-things-done approach". Chambers UK 2008 notes that Martin "is developing a strong practice in commercial matters," and previously observed that "peers expressed the "utmost respect" for Mankabady and his wealth of experience" (2006).
As part of his professional recognition, Martin is a regular speaker at seminars and conferences and a contributor to both the industry and national press on insurance market issues. Martin is the editor of the third edition of Tottel's Joint Ventures in Europe. Martin is also a member of the City of London Law Society Insurance Committee, and the Law Society's European insurance contract law working group.

John Barlow - Holman Fenwick Willan LLP
T: +44 (0) 20 7264 8188
E: john.barlow@hfw.com
W: www.hfw.com

John advises insurers and reinsurers of Financial Institutions in connection with their fidelity, computer crime, D&O, PI/Civil Liability and cyberliability programmes, and on claims that arise under these products. John has handled and settled many of the most significant claims to find their way into the London market over the last two decades. John has considerable experience of political risk, sovereign guarantee, credit default and protracted payment insurances, as well as the development of captive insurance programmes.

Clive O Connell - Goldberg Segalla LLP
T: +44 (0) 20 3371 5460
E: coconnell@goldbergsegalla.com
W: www.goldbergsegalla.com

Clive O'Connell, a partner in Goldberg Segalla's London office, has over 30 years of experience in the areas of insurance and reinsurance law. Clive has represented clients in some of the largest reinsurance disputes and transactions in recent years, including a number of disputes involving sums in excess of $100 million and multijurisdictional issues. He has acted for clients in disputes in a variety of forums including the Commercial Court and arbitration in England, the federal and state courts and arbitration in the United States, the Commercial Court and arbitration in France, as well as other jurisdictions such as Bermuda, Jamaica, Switzerland, Sweden, and Hong Kong. He has been involved in every aspect of run-off and exit strategies for reinsurers and insurers. Clive has a particular focus on esoteric complex risk transfer mechanisms and his recent work includes acting for various entities in relation to complex, insurance-linked security (ILS) transactions and disputes. He is a Board Member and General Counsel of the International Insurance Society as well as the U.K. country chair for DRI (Defense Research Institute) International.

Carol Lyons - McMillan
T: +1 416 307 4106
E: carol.lyons@mcmillan.ca
W: www.mcmillan.ca

Carol Lyons is a member of McMillan's Business Law Group and co-chair of the firm's Insurance Law Group. She advises clients on a variety of corporate/commercial matters, including mergers and acquisitions, corporate reorganizations, contract procurement, and formation of strategic alliances. Carol specializes in working with clients in the insurance, health care and other regulated industries and her practice includes assisting insurers and reinsurers with transactions and regulatory matters as well as community care access centres in Ontario. Carol is Chair and sits on various Committees of a leading Canadian reinsurance company, past Corporate Secretary of two Canadian property and casualty companies, Advisory Board Member and Audit Committee Member of an Ontario insurance reciprocal and has participated on various charitable boards.

Insurance & Risk Management 2014

In this roundtable we spoke with eight experts from around the world to discuss the current Insurance & Risk Management landscape. Among the highlighted topics, our chosen experts discuss challenges relating to mergers and acquisitions, policy reviews and the role of technology in transforming the insurance industry.

1. Can you outline the current insurance & risk management landscape?

Tisnadisastra: As the growth of business in developed markets is getting slower, insurance companies are considering new markets that might not previously have been their main focus of business. Indonesia is considered part of a new set of emerging economies, which offers a promising market with diverse economies and excellent demographics. Identifying opportunities in emerging markets will involve a careful assessment of the latent risks and therefore good risk management is increasingly needed to avoid substantial losses. The shifting of the insurance & risk management landscape from developed countries may create significant growth in emerging market countries, like Indonesia.

Susolik: More and more companies, especially large companies, are trying to save on premium by assuming more of the risk by buying policies with large self-insured retentions or deductibles. These policies are often accompanied by side agreements dealing with issues such as who handles the claims, payment, letters to credit to ensure payment, etc.

These side agreements are usually more complicated than the policies and often result in litigation
as the insured and the insurer often disagree as to what the parties intended. Since the insurer usually has more experience with these types of side agreements with other insureds, an insured needs to be careful in negotiating the term of such a side agreement.

O'Connell: The insurance market is evolving very rapidly, and this evolution will continue as regulatory and macroeconomic factors drive change. The repercussions of the economic crisis and a soft reinsurance market means that in many areas, insurance premiums are down. Risk managers have more scope to shop around and find better deals. At the same time, the role and function of brokers is also changing, and their position as corporate advisors is growing. The products available to assist risk managers are increasing with new lines of insurance cover available to protect against new perils.

Barlow: We are seeing an increasing convergence between insurance and risk management. Policies are being negotiated in order that the risks map in to coverages. Risk managers are realising that the current asymmetry of information needs to be addressed in order to ensure an alignment of the risks and cover and a more appropriate pricing of the risk. The corollary is that in some sectors (e.g. financial institutions) the risk managers are spurning insurance solutions and seeking to manage certain risks either because (a) they believe that they can manage the risks adequately or (b) certain coverages do not deliver best value.

Lyons: From the perspective of insurance companies, enterprise-wide risk management has become the catchword of the day. The Canadian federal insurance regulator has been active on the global scene for many years, working closely with other regulatory bodies, global organisations and think tanks to define and foster international best practices in risk management. In the past two years, the Canadian insurance regulator has brought forth a number of regulatory measures related to risk management, including:

- an updated Corporate Governance Guideline which now brings risk management to the forefront, prescribes a Chief Risk Officer and places oversight responsibility squarely upon the board of directors;
- an updated Regulatory Compliance Management Guideline to require internal audit (or other independent review function) to validate the effectiveness of, and adherence to, the institution's compliance framework by regular risk-based testing; and
- a new requirement for insurers to institute an Own Regulatory Solvency Assessment (ORSA), the prime purpose of which is to identify an insurer's material risks, assess the adequacy of its risk management and the adequacy of its current and likely future capital needs and solvency positions.

2. From your own perspective how is the risk management environment changing?

Tisnadisastra: The risk management environment has been changing rapidly for the past few years. Indonesia is now considered one of the most attractive investment destinations in the world and continues to attract increasing levels of investment from multinational companies. However, apart from presenting attractive investment opportunities, Indonesia also poses different types of risks for foreign investors (see answer to Q 5).

From Indonesia's perspective the growing number of foreign investments is driving the implementation of good corporate governance and proper risk management systems to a higher level. Companies continue to shift their risk management focus to improve their expectations of potential exposures and to mirror best international practices.

Susolik: Risk managers today seem more willing today to have the policies recommended by their brokers reviewed by a third party, usually another broker or an attorney who specialises in insurance coverage.

In this litigious era, more and more insureds have been hit with large verdicts or had to settle claims for large amounts that were only partly covered or not covered at all by insurance that the insureds thought would provide coverage.

Risk managers want to know if their broker could have procured a policy that would have provided full coverage or more coverage.

Mankabady: From the perspective of a lawyer, I would say that I have seen the environment change in two ways. Firstly, we are asked to advise much more often now on regulatory issues, including corporate governance. As many surveys have shown, regulation is firmly ensconced as a top risk factor for many businesses in the insurance sector. For obvious reasons, we expect to see growth in this area as regulators continue to become more intrusive and interventionist. Secondly, clients are looking for us to share more of the execution risk with them when we advise them on transactions and other matters (for example, by agreeing to abort fees on matters which do not complete) and to generally provide a more cost-effective service. We are in the vanguard of firms looking to achieve efficiencies in our business model so that we can better meet our clients' needs – this includes different fee structures for different types of work (for example, fixed fees for more commoditised work); investing further in "northshoring" which involves ramping up our more northern regional offices so that we can offer even lower rates; and continuing to grow in our key sectors, most notably insurance (as being a market-leader helps to drive further efficiencies). However, we need to be careful to balance all of this change, which in itself brings risk, with getting the law right and providing relevant and commercial advice to our clients.

O'Connell: Risk managers have more information available to them than they have ever had before, and so do insurers. The ability to model catastrophic events and their potential effect on a business is as never before. For certain types of risk, this enables a better understanding of potential perils and a greater ability to price them accurately. It also enables risk management to focus on key areas of potential loss and to seek to mitigate that loss. At the same time, new areas of exposure are emerging. Cyber liability and reputational risk are two areas which will challenge risk managers and insurers as they attempt to assess the best ways to protect companies from them.

Calderbank: From what I am seeing the focus is changing from the tangible items that have historically been insured such as desks, computers, buildings etc., to the intangible – Data. Companies are realising that they can work without desks and computers, they simply hire a managed office spot. What they can't trade without though is their data. Loss of data can be crippling to a company and with the increased use in cloud computing and third party data centres this data is at more risk than it may have been when kept 'in house'. With the uptake in VoIP telephone systems you might not even have access to your clients telephone numbers to tell them what is happening.

3. Have there been any recent regulatory changes or interesting developments?

Tisnadisastra: The Indonesian Insurance Law is over 20 years old. Amendment is needed to accommodate the growth of the industry and developments in the insurance market since the current law was promulgated. A draft revision has been circulating for several years and is being discussed within the government. In spite of the absence of a holistic revision of the Insurance Law, the government has been active in issuing new regulations to address the current realities of the market.

Of recent concern to business policyholders is the list of mandatory property insurance tariffs that took effect on 1 February 2014. The government's intention is to shore up the solvency of domestic insurance companies (there are currently 85 insurance companies in Indonesia) by stabilising and increasing premiums, and the tariffs seem to have been regulatory, rather than market driven, with increases ranging from 30-200%. A key feature is the setting of some deductibles as percentages of loss, rather than fixed amounts, so that policies for industrial FLEXAS risks, earthquake and flood effectively operate like "co-insurance" for policyholders.

Mankabady: As regards the UK regulatory landscape, the industry is becoming more accustomed to the "twin peaks" regime involving regulation by the PRA and the FCA. This is not a brand new development, of course, as this regime with its forward-looking philosophy has now been in place for over a year. However, it is worth taking stock as to what changes have been introduced. There has definitely been a significant increase in the use of thematic reviews which the FCA has undertaken and which, as the FCA has put it, allows it to "take a step back and kick the tyres". These thematic reviews are intended to better inform the FCA so it can intervene early to pre-empt and prevent widespread harm to consumers (and avoid a market failure). The PRA has perhaps kept a lower profile to date, but some recent comments by Mark Carney, Governor of the Bank of England, were carefully scrutinised for any evidence that the Bank of England, of which the PRA is part, may seek to apply banking sector policies and approaches to the insurance sector. Finally, the regulators are improving in terms of co-operating in relation to dual-regulated firms although it is probably fair to say that this is still work in progress.

King: Solvency II is a major piece of regulation for the European insurance industry. Notwithstanding the numerous challenges and implementation costs to the industry over the years I personally believe a risk-based approach to setting capital is appropriate. One benefit the regulation brings is more accountability and greater transparency that can only benefit shareholders and policyholders alike. In a general sense the recent financial crisis and lack of global regulatory harmonisation has resulted in a major change in the regulation of international financial institutions. I am not convinced that combined central bank regulation of banks and insurers is a long-term benefit.

O'Connell: Regulation in insurance, as in all areas of financial services, is undergoing a radical review. Solvency II in Europe will have global effects as insurers and many of their commercial clients increasingly are global concerns. Regulators are also showing a desire to be relevant and forward thinking. In Vermont the Legacy Insurance Management Act (LIMA) is a fresh approach by a legislator and regulator to the issue of age-old liability insurance cover and demonstrates a desire to help policyholders have their insurance run off professionally in the US by US-regulated and supervised claims professionals.

Barlow: The regulatory environment is growing exponentially and is driving many of the insurance responses. From the Bribery Act and sanctions, cyber data breaches to mis-selling, individuals and corporations are finding themselves exposed. From a risk management perspective, the failure by senior management to put in place adequate processes can leave them exposed to regulatory fines and penalties (notwithstanding that they may not be the wrongdoers). Moreover, regulators are increasingly mandating settlements with customers/consumers e.g. Interest Rate Swap mis-selling, where the sale of certain swap structures to customers are held (effectively be default) to be mis-selling. In those situations insureds have no real prospect of contesting their liability.

Lyons: In addition to the three recent initiatives referred to in my answer to item 1 above (Corporate Governance Guideline, Regulatory Compliance Management Guideline and ORSA), in October 2013, Canada's federal insurance regulator also released a memorandum and self-assessment guideline to assist insurers with assessing, developing and maintaining effective cyber security practices. In April 2014, the regulator issued guidelines on mortgage insurance which set out the regulator's prudential expectations for residential mortgage insurance underwriting. And, in May 2014, the regulator finalised a new advisory requiring insurers to pre-notify the regulator in writing as soon as a new nominee to the board of directors is identified and in advance of the appointment of a senior manager.

4. What are the key issues risk management professionals are focusing on at present?

O'Connell: Price is always at the forefront of a risk management professional's mind. Companies are still emerging from the economic downturn and budgets are still tight. Risk managers must negotiate the broadest possible cover at a lower figure than that for which less cover was purchased the year before. This is not an easy task. Risk managers are looking for ways to ensure that the cover they purchase fits the risk profile of the company with precision in order to avoid waste. At the same time, they must assess novel risks and determine how and at what price, these can be covered.

Calderbank: Cyber is the buzz word of the moment. As mentioned above data is the foundation of many companies, take it away and they are just an office with a few desks and chairs. However, whilst this risk is being considered more, many clients still go down the thought process that it won't happen to me and it only happens to the big boys. This is where they are wrong. Cyber criminals are cottoning on to the fact that it's easier to attack companies who trade with 'the big boys' and gain access that way rather than directly target the 'big boys' themselves who are spending much more on data security.

5. Can you talk us through the risks directly relating to M&A activity?

Tisnadisastra: A former head of the Indonesia Investment Coordinating Board is rumoured to have said, "If you invest in Indonesia, I can guarantee two things: No. 1 You will have problems. No. 2 You will make money." While investors get frustrated at the sometimes glacial pace of decision making, and bureaucratic obstacles seem to arise at every turn, Indonesia is a great investment destination if proper attention is paid to the risks. In addition to the typical risks faced by investors in emerging economies (lack of infrastructure and trained workforce, corruption, and uncertain land tenure), the risks that most commonly impact M&A transactions include:

- **Bureaucracy and licensing:** unlike jurisdictions that allow companies to conduct any and all legal business, Indonesia has strict licensing systems that can constrain companies from operating in multiple fields of business. This significantly limits the success of potential mergers.
- **Shareholding limitations:** Indonesia maintains a Negative Investment List, which stipulates specific foreign shareholding limits for a variety of fields. The list is updated every 3-4 years in response to economic, regulatory and political changes. Although companies usually enjoy protection from the grandfather clause, which allows approved foreign shareholdings to be maintained in case of acquisition, there are inconsistencies between the limitations in the Negative Investment List and industry specific regulations, which in many cases create confusion for investors.

Mankabady: Successful M&A activity can help businesses achieve their strategic goals - for example, it can help sellers divest non-core business lines and free up capital and it can help buyers grow market share or enter a new market or territory. When M&A activity is unsuccessful, this is quite often because it has not been planned or managed properly and risk has not been fairly allocated – this can destroy value rather than create value. For sellers, unsuccessful M&A could mean, for example, that they do not achieve a clean exit or they do not maximise the price paid for the business sold. For buyers, unsuccessful M&A could mean, for example, that they overpay for the business acquired, or they inherit issues which require a great deal of management time and cost to try to sort out after the event and in respect of which they have little or no legal or practical recourse against the sellers. M&A in the insurance sector will very often require regulatory approval, and careful and early thought should be given as to how best to ensure that this is obtained without too much fuss – it will be in no-one's interests for approval to be delayed or to be given subject to certain conditions, or in the worst case scenario, for approval not to be given at all.

King: Removing deal uncertainty by challenging methodologies for setting historical balance sheet provisions or accelerating claims closure can improve the sale price and associated allocated capital required in the sale agreement. It doesn't take a lot of resource or time to perform a due diligence review of the merged or acquired assets insurance arrangements but unfortunately this is often neglected. By analysing keys risks available in risk registers and comparing and contrasting to existing insurances purchased you can very quickly build up a picture of insurance inefficiencies. By understanding the acquired assets insurance purchase philosophy many firms benefit when integrating programs.

O'Connell: Mergers and acquisitions throw up numerous risks. Perhaps at the forefront is the risk of breach of warranty. The speed and, often, confidentiality of negotiations sometimes precludes the ability to do or to allow full due diligence. Warranties are demanded and the vendor is then at risk should the warranty prove to be inaccurate. A growing market has emerged in providing cover against potential losses incurred through breach of warranty or indeed as a result of unknown liabilities. This cover is not inexpensive but the cost, which provides certainty, can enable deals to be completed swiftly.

Lyons: From the perspective of a purchaser, when buying corporate entities or business assets, there is always the overall risk that the entities or assets are overpriced, may not provide the benefit hoped for or, in fact, may bring with them more problems than the transaction was worth. These risks underscore the necessity for a proper due diligence investigation by the purchaser and a legal agreement that contains representations and warranties from the seller as to the condition of the entity or assets, commensurate with the price paid. From the perspective of a seller, even though the seller (as current owner) has inside knowledge of the quality of the assets and the future prospects of the organisation, there is a risk that the seller could unintentionally make inflated promises – through representations and warranties required by the purchaser – as to those matters. And, if the representations and warranties don't hold up, the seller may be financially liable to make good the shortfall to the purchaser. Some of this latter risk can be mitigated by purchasing representation and warranty insurance.

6. How often should an organisation renew their policies and review their strategies?

Tisnadisastra: Policy needs are as individual as the policyholder, so we recommend growing businesses to reassess their coverage needs on an annual basis in coordination with a licensed insurance broker and the company's risk management team. As the Indonesian insurance market is both highly regulated and rapidly evolving, priorities and opportunities are constantly changing, so even mature companies with stable prospects should pay close attention to policy needs. Smart policyholders will shop around to see what options are available on the market, at least with respect to policies that are not subject to mandatory tariffs.

Susolik: Policies typically run for a one year period, so renewals are usually on an annual basis.

Insureds should explore their insurance options on an annual basis. Insurance companies are typically required by law or policy provisions to send an offer of renewal or notice of nonrenewal 60 to 90 days before the policy expiration date.

After the insured has received the current insurance company's offer of renewal, the insured should explore with the broker options for other coverage.

King: My personal belief is that the risk register (as it is generally readily available and up to date) should be reviewed and compared regularly with the firms' insurance arrangements. Unfortunately risks in a firm change whereas the insurance cycle is typically annual. Corporates need an early warning mechanism within their insurance strategy to accommodate such changes. An effective insurance strategy is one that continually keeps pace with the changes of the group and one that is directly linked to support the corporate strategy. I expect this linkage will improve as there is a growing trend for Chief Risk Officer appointments.

O'Connell: The market is evolving so swiftly that a constant eye must be kept on policies and risk management strategy. If insurance rates move down, the opportunity presents itself to increase or improve terms of cover. Similarly, tightened budgets require risk managers to look to alternative ways to mitigate risk and, potentially, alternative providers in an ever more competitive market. Gone are the days when a risk manager could simply ask a broker to renew cover. Even the relationship with a broker, and the role that professional plays, requires assessment and justification on a regular basis.

Calderbank: It shouldn't be a case of renewing policies and activities at certain points. This should be an on-going process that is embedded into the culture of the company. The policies in place should be tested regularly and updated accordingly. Its far easier to plan for events before they happen rather than trying to do things once the event has happened and running around not really knowing what is to be done by whom and when.

Barlow: Whilst policies continue to be renewed on an annual basis, there is no compelling reason why this state of affairs should not continue. Given the fast changing regulatory environment (and remember that large organisations may be subject to a number of regulators in different jurisdictions) a constant eye has to be kept on the risks which businesses may be subject – one only has to look at the changing sanctions environment (at least from the perspective of risk management rather than with regard to insurance) to see how the prohibited parties can change overnight.

7. What areas of risk management are most frequently neglected?

Susolik: An area of risk management that we see frequently neglected is wage and hour claims liability.

Many employers do not seem to realise the tremendous liability they potentially face under state or federal for failing to properly pay their employees for overtime, failing to pay proper commissions, failing to provide required breaks, failing to pay for compensable travel time, failing to properly document hours worked, failing to provide itemised pay stubs, etc.

It is possible to obtain wage and hour coverage, but this coverage usually only covers defence costs and the typical limits are $100,000 to $250,000. Insurance is usually not available to cover any damages that may be awarded.

King: Often the basics of accurate data collection and monitoring is neglected, however, this is improving with more sophisticated risk management software available. Communication across various functions in a firm could be improved. Each stakeholder (legal, treasury, finance, operations etc.) view risk and insurance differently, however, each one has a direct or indirect influence on insurance. It is important to create an environment where each function is aware of the inter-connectedness of their individual actions to the overall insurance environment. Risk management is a process driven task whereas many neglect to adopt the same principles when managing insurance.

O'Connell: From speaking with brokers and underwriters, novel areas of liability and exposure are being neglected. This may be due to ignorance; not the ignorance of risk managers but the ignorance of those to whom they report. In a time of cost cutting, it is hard for a risk manager to propose the purchase of cyber liability cover or cover for reputational risk when these will be new products and no loss had been experienced. Sadly, after a loss, questions may well be asked as to why cover was not in place.

Barlow: Ask any risk manager about their risk management procedures and enforcement and they will tell you that they have the best in the world. So why do claims and losses occur: failure to implement e.g., certain financial transactions require dual controls; losses invariably arise when this requirement is not observed (and as part of the risk allocation process this is normally an insured's risk and not insurer's). It is the failure to embed the ethos of management of risk within corporations from the top to the bottom which gives rise to losses.

8. How can risk intelligence be used to drive performance metrics and business critical processes?

Mankabady: It is probably helpful to briefly clarify what is meant by risk intelligence - I take this to mean gathering information on risks based on experience and past performance (including how these risks have materialised and how they can be mitigated), and building this into the decision-making process. This should not only minimise potential damage to businesses and their reputation but it should also help businesses to improve on failings and deliver a better client service and hopefully to help identify possible opportunities to grow further. This intelligence can be captured and presented in different forms – however, this on its own will not be sufficient. The information (in whatever form it is) needs to be intelligible and digestible and presented in a timely fashion to relevant people with key points having been highlighted. In very general terms, some of this information will be more operational, whereas other will be more strategic. What risk intelligence should not be about is avoiding risk all together – rather it should be about informing the key decision-makers as to what a business is doing or planning to do, so that they can then determine if the relevant activity falls or is likely to fall within the business' risk appetite. As Warren Buffett once said "risk comes from not knowing what you're doing".

O'Connell: There are two key ways in which risk intelligence can be used to drive performance metrics and business critical processes. The first is that risk intelligence can be used to ensure the correct pricing of insurance and the correct terms of cover to be purchased. The second is perhaps more fundamental, and that is in the area of mitigating or otherwise reducing risk and, through it, ensuring more efficient operations. Risk management is more than just buying insurance. If risk intelligence can be used to eliminate or reduce risk, it is playing a huge role in risk management.

9. How can new and developing technologies be effectively utilised to better control risk management?

O'Connell: There are so many ways in which new technologies can help risk management. Improved and more specific data can ensure that an accurate risk map can be created. Monitoring workflows and other operations can assist in identifying increased risk areas or practices and eliminating or managing them. Developing technologies can be used to educate and train staff and make processes more efficient and less risky. Of course, developing technologies come with their own new risks and the greater the reliance on new technologies, the greater the potential impact of cyber and other threats.

Calderbank: Technology can be a company's friend, but also its foe. With an increased use of technology comes an increase in reliability on that technology and therefore vulnerability. It's simple to implement software to monitor or control certain aspects of risk, whether it be password controls, firewalls, virus software etc. But, it also has to be recognised that these 'protections' have their weaknesses and cannot stop all risks. There needs to be a blend of technology, physical and most importantly people management to produce an all-encompassing embedded culture to better control risk.

Barlow: 1. Encryption technologies are constantly being updated to address fraud and hacking as well as loss of personal data (simple steps such as removing USB ports form computers can reduce the potential for loss data).
2. Compulsory PC training for employees on issues such as sanctions, money laundering and regulated conduct.
3. Collation of information on a granular level can identify risk trends as well as (as observed above) provide information to insurers to allow them to scope and price the risk.

Lyons: In Canada, ever since 2003, financial institutions have been required to manage compliance risk by providing a control framework that includes a process for identifying and assessing regulatory compliance risks, and implementing key controls through which such risks are to be managed and mitigated. Financial institutions responded to these requirements in various ways, largely depending on their size, complexity of operations, nature of business, structure and ownership.

Many institutions in Canada have purchased software solutions from third party vendors in the form of web-based automated compliance systems. These automated compliance systems must surely be the way of the future as the sophistication required to perform risk assessments and apply risk management processes (as now required by ORSA, for example) is beyond any manual or checklist type approach. I expect we will see continued augmentation of such automated products and new entrants into that service sector.

10. How is technology transforming the insurance industry?

Tisnadisastra: It is a fact that technology has transformed many industries, from entertainment to financial services. With the ever-growing variety of insurance products it is inevitable that technology in the insurance industry is rapidly evolving. This transformation impacts the entire insurance value chain, from carriers to intermediaries to customers. In many developed countries, mobile- and internet-based insurance applications have become major selling points for insurance carriers. Data analytics, distribution channel management and social media have been utilised to enhance insurance business practices.

Indonesia is not there yet in terms of full-fledged implementation of technology in its insurance industry, but it is heading that way, especially with the emphasis on rolling out micro-insurance products across the country by 2016. However, as insurance in Indonesia is a highly regulated industry which requires a high level of regulatory compliance, technology transformation will have to be aligned with the development of the regulatory platform to ensure protection for policyholders.

Susolik: One way technology is transforming the industry is that claims handling is becoming much more transparent with the use of computerised claim notes. Insureds benefit in that claims adjusters are more aware of the deadlines they must meet and the potential liability the insurer faces for bad faith if the claims notes show unreasonable conduct in the processing of the claim.

Another way that technology is transforming the industry is that insurers are able to more readily access information about an insured and the insured's claim. This quicker access to information has allowed insurers to be able to deny a claim based on fraud in procurement of the policy or in the presentation of the claim in a shorter amount of time, thus lessening the risk of being sued for bad faith delay.

King: Analysing and understanding own firm big data is a common challenge for all industries. The insurance industry is not an early adopter and could perhaps do more to embrace technological changes that impact their customers. Underwriters have always been keen to receive as much data as available when pricing risk, however, the challenge they now have is that there is too much data. It is sometimes difficult to identify meaningful observations and data relevance. However, data analytic services are improving, particularly in the broking community where many firms are investing heavily to provide their clients with powerful insight in to their risk profile.

O'Connell: The greatest change to the insurance industry through technology is almost certainly modelling of risk and with it the ability to create a picture of the insurer's exposure to particular perils. Big data is also having an important impact as it allows insurers to take an overview of society and predict patterns of behaviour and of issues such as disease. Instead of underwriters holding a finger in the wind, insurers are now able to predict, with far more certainty, what will happen, even if they cannot say precisely where or when it will happen and to whom. Fortuity is and will remain an essential element of insurance.

Calderbank: Hugely. From the way insurance is being purchased and processed right through to the risks that Insurers are being asked to cover. Technology is a huge part of everyone's lives and this is set to continue. Clients are now happy to receive documents on e-mail. Some clients are now happy to purchase insurance themselves through websites and speak to the underwriters directly. The place of the broker at the small end of purchasing insurance is being squeezed due to the technology that the industry is now embracing. Both insurers and brokers have to be able to sell themselves and embrace the technology to ensure that they are able to maintain their profit margins. With reducing rates across many lines nobody can afford to ignore where the industry is heading.

Lyons: On the insurer risk governance side, the increased frequency and sophistication of recent cyber-attacks, the increasing reliance on technology, the interconnectedness of the financial sector and the critical role that financial institutions such as insurance companies play in the economy have led regulators such as the Office of the Superintendent of Financial Institutions Canada to require insurers to have an appropriate and effective cyber risk management policy. This is in recognition of the fact that changes in technology are transforming the risks to which insurers themselves are exposed. On the product underwriting side, insurers are identifying technological advances, such as cloud computing, as high impact emerging risks due to the concentration of critical data and associated data vulnerability. The industry will need to change in order to adapt to these new risks.

11. What are the main business insurance types organisations should consider?

Susolik: The main insurance types most organisations need are commercial general liability, commercial property, commercial automobile, and workers' compensation.

These types of policies are usually occurrence based, which means the loss must occur during the policy period. Insurers often use the same standard form or similar policy forms so that the differences in coverage provided by different insurers may not be great.

Larger organisations typically have umbrella/excess liability, employment practices liability, directors and officers liability policies.

These types of policies are usually claims based, which means the claim must be made and usually must be reported during the policy period. The claim must also arise out an act that occurred after a specified date.

Insurers usually use their own forms so that it is important to carefully examine the differences between the coverages offered by different insurers for a particular type of risk.

O'Connell: Every business will buy Directors and Officers insurance and must buy Employers Liability/Workers Compensation cover. Property cover, business interruption and general liability cover is also essential. Of newer areas of cover, thought should be given to what type of cyber liability cover is required for the business and what reputational risk cover would be best suited. While reputational risk is intangible and it is difficult to quantify the loss, particularly if the company survives and re-establishes itself, some products operate by providing the PR support to enable that recovery to occur. In the area of business interruption, supply chain protection is becoming ever more essential.

Calderbank: It all depends on the activities of the client. At the basic level there are obviously the compulsory purchased such as EL, PL and some PI lines. Add to this property, which is often where the majority of investment is and upon which loans secured.

The 'newer' risks such as D&O and Cyber (or data security) should then also be considered. It's now frequent for directors to question if D&O policies are in place before they take up a new role as they don't want to be exposed to these risks themselves. With the growth of data that we are collecting, creating and using 'Cyber' insurance and protecting that data is then the next logical step for most insured's.

Barlow: Insurance types can be divided crudely into first and third party losses. With the former businesses should contemplate crime, computer crime, D&O, property, cyber, credit risk, EPL and in relation to the latter, civil liability, Public Liability and more targeted covers depending on the nature of the business e.g. product liability, construction all risks (which may encompass some first party liability covers). What should be remembered when large programmes are concerned is that there may be unnecessary duplication of covers (e.g. Tech PI and cyber liability) such that certain covers can be dispensed with.

12. Can you talk us through the process of structuring multinational insurance programs?

King: I believe there are a number of simple components when designing an effective insurance environment. These include: mapping risks to insurances purchased, analysing financial risk scenario tolerance of the consolidated and local balance sheets, assessing stakeholders risk appetite, optimising risk retention strategies and lastly (more importantly) establishing the total cost of the insurance program. This puts business leaders in a position to understand their insurance environment to reduce associated costs thereby improving business performance. For international programs these components hold true, however, more effort on communicating insurance strategy is required. In addition, aligning management performance and rewarding good risk management by lower premiums.

O'Connell: First, one must ascertain what insurances are compulsory in which jurisdictions and who can provide that cover. Must these be bought specifically or can they form part of a global cover? Secondly, one must look to what insurances the company needs on a group basis. Do individual operating units need access to cover to provide them with solvency protection, or is a group cover sufficient for all component parts? Will one insurer working with some local fronts be the most effective means of cover? What role, if any, can a broker play? What law and jurisdiction will apply to different aspects of the program?

Barlow: Broadly:

1. Comprehensive understanding of the risks in each jurisdiction. Can risks be self-managed (or managed up to a certain level) or do they need transferring to insurers? If risks can be self-managed to a level, can they be placed through a captive and what benefits might accrue to the insured? If the latter is the insured satisfied that it can provide the requisite information to insurers and carry out its part of the bargain in controlling certain aspects of the risks?
2. When negotiating the policies, are separate programmes required for certain jurisdictions (due to the nature or size of the risks, or local requirements as to non/admitted policies)? If payments are to be transferred to other jurisdictions what impact do funds passing into those jurisdictions have (will they be taxed)?
3. Once the policies are in place, what reporting structures are there in place to monitor (and manage) the risk and identify "hot spots" and collate loss data for the insured and feeding back to insurers.

13. What are the main insurance market risks to watch over the coming year?

Susolik: The increasing risks of cyber-attacks and breaches of data security, losses due to the effects of climate change and losses arising out the increasing number of conflicts in Europe, the Middle East Asia and Africa are some of the major market risks to watch over the coming year.

One cyber-attack can lead to the breach of the records of tens of millions of people as in the case of Target.

Climate change due to global warming will lead to greater losses as more and more unprepared areas are hit with unexpected weather related events.

The number of conflicts between various countries and religious groups in Europe, the Middle East, Asia and Africa seem to be increasing in number and magnitude.

Mankabady: A number of risks were identified in the CSFI survey of risks facing insurers called Insurance Banana Skins 2013. This index ranked a number of risks, the top five of which were regulation, investment performance, macro-economic environment, business practices and natural catastrophes. Interestingly enough, and representing one of the biggest changes, capital availability had dropped from the 2nd placed risk in the 2011 ranking to 16th. This is undoubtedly a reflection of the fact that there is now a great deal more capital available in the market, which to a fair extent is down to the availability of alternative capital. The investment of this capital has typically been channelled into the market through the use of cat bonds, side cars, collateralised reinsurance products and other insurance linked securities. It is to be hoped that this additional capital will, in due course, support the development of new products and the increased penetration of emerging markets. In the meantime, however, concern has been expressed that this capital is having a downwards impact on pricing as the providers of this capital can benefit from having a cheaper cost of capital (not least because in many cases they are not rated). Although this may in some instances be taking the edge off the insurance cycle and smoothing some of the peaks of the pricing cycles, this will not be universally welcomed. There is also a concern that there could be a mismatch between the risk being underwritten and the capital backing it in that the focus of the new providers is on returns and they may not necessarily be exercising sufficient underwriting discipline, and may not be focussing on ensuring that risk is properly assessed, priced and supervised. The bottom line, though, is that this capital is here to stay and the market needs to work with it.

O'Connell: The insurance market is in transition. Merger and acquisition activity is likely to increase as Solvency II gets closer. Insurance companies are looking to alternative means of protection for their own positions and there has been and will continue to be an increase in the use of Insurance Linked Securities (ILS) products. One major threat to some insurers will be inadequate or wrongly structured products protecting them when once tried and tested reinsurance operated. While ILS has many attractions to insurers (and regulators), if done wrongly, it could leave an insurer fatally exposed.

Barlow: Cyber liability is clearly in vogue at the moment (although as already noted existing covers need to be reviewed carefully to ensure that there is no unnecessary duplication). Whilst to date it has tended to be the large corporates which have purchased these covers the focus in now on the SME sector.

Whilst the D&O market has been growing significantly in recent years the expanded covers which are now being offered (way beyond the traditional Side A and B wrongful act covers) now mean that these products cover a considerable number of risks which were traditionally covered by other standalone products e.g. PI and EPL. Coupled with an increasingly active shareholder environment the demand for these products and for increased limits is likely to increase.

PI cover remains expensive and on some lines tends to be very restricted (and the suggestion with some professions where PI insurance is compulsory that required limits may be reduced). The suggestion has been that in some markets, a back to basics approach may be needed whereby insurers offer basic cover for negligent acts, errors and omissions (without the "whistles and bells"). Failing this development, insureds may wish to manage the risks themselves.

Lyons: One market risk that reinsurers face is the proliferation of catastrophe bonds and insurance linked securities which threaten the market share of reinsurers by providing alternative capital. Although there are mitigating factors that should prevent these vehicles from putting an end to the business of traditional reinsurance entirely, they may pose a threat to long-term reinsurer sustainability, at least for the status quo. Turning to a different understanding of "market risk", insurers are particularly vulnerable to the volatility of stock prices, interest rates and exchange rates. This volatility affects the value of the insurer's assets which are required to meet the insurer's liabilities. For example, it is a continuing challenge for insurers to maintain sustainable profitability in the present low interest rate environment. This issue is very high on the insurance regulatory radar screen.

mcmillan

holman fenwick willan hfw

HCC

GS GOLDBERG SEGALLA

FR GLOBAL ADVISORS™
Dublin • London • New York

CLYDE&CO

CALLAHAN & BLAINE
CALIFORNIA'S PREMIER LITIGATION FIRM℠

akçet