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ISSUE 5,597

QBE and Aviva face legal action over Covid-19 BI claims

p3

Watford Holdings faces sale call

p2

Legal Focus: D&O risk will grow as lockdown eases

p5

NEWS

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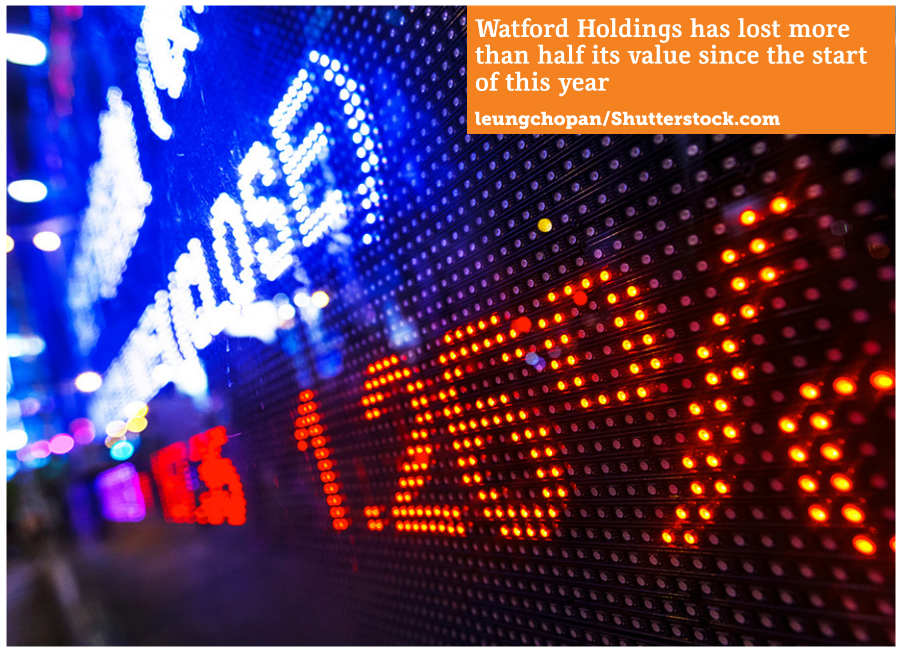
Watford Holdings faces sale call

Company accused of falling 'horribly short' of investors' expectations

Lorenzo Spoerry
Deputy editor



Watford Holdings has lost more than half its value since the start of this year
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Bermudian hedge fund reinsurer Watford Holdings has been urged to hire an investment bank and consider selling itself after losing more than half its value since January.

Investment firm Capital Returns Management said Watford has no "inherent competitive strengths or core competencies" and its performance had "fallen horribly short of expectations".

Watford Holdings, in which Arch owns a 13% stake, reported a loss of $268m for the first quarter. The combined ratio was in loss-making territory at 104.4%, in part owing to Covid-19.

However, the negative result was mainly driven by an investment loss of $263m caused by mark-to-market adjustments in the junk bond portfolio.

Watford's chief executive, Jon Levy, said the results were "heavily affected" by the investment market volatility caused by the global economic shutdown.

"The [Covid-19] pandemic has had significant impacts across the globe and Watford took its share of that impact, although not to a greater extent than anticipated for an event of this magnitude," he added.

Levy said the company was "optimistic" about its position in the marketplace, pointing out insurance and reinsurance market conditions are moving in a favourable direction. He also highlighted, on the underwriting side, the company's mix of business is less exposed to the classes of business likely to be most affected by Covid-19.

Levy, who was formerly the company's president, replaced John Rathgeber as chief executive on March 31.

After Watford revealed the scale of its first-quarter investment losses, AM Best placed Watford's A- (excellent) financial strength rating and a- long-term issuer credit rating under review with negative implications. The move was driven by concerns about a decrease in Watford's risk-adjusted capitalisation.

In a letter to management, Capital Returns Management's president, Ronald Bobman, pointed out the company's present public market valuation is equivalent to a 60%-plus discount to tangible book value.

By contrast, Bobman said, Watford's rivals Greenlight Re and Third Point Re trade at around 55% of their tangible book value, multiples 40% greater than Watford.

"The best course of action, I suspect," Bobman, wrote, "is for the company to be sold, possibly to a run-off specialist, or alternatively to forgo its ratings and self-administer its run-off."

Bobman, who owned 1.67% of Watford at the end of the first quarter, said the run-off of collateralised reinsurer Blue Capital Re is on track to return 92% of book value to its shareholders.

As long as Watford's stock price languishes below 85% of book, "no realistic underwriting, investment or acquisition opportunity is capable of generating recurring returns that match returning capital to shareholders", Bobman said.

Watford did not respond to a request for comment.

PartnerRe targets US casualty growth with Stanley hire

PartnerRe has targeted growth in the US casualty market with the hire of former TransRe executive Gareth Stanley, *writes Scott Vincent*.

Stanley, who held several roles during a lengthy career with Alleghany-owned TransRe, will serve as head of US casualty at PartnerRe.

His most recent role at TransRe was head of US broker market traditional casualty.

Stanley, who will report to Jon Colello, PartnerRe's chief executive for property/casualty (P&C) in the Americas, will be based in the company's office in Stamford, Connecticut.

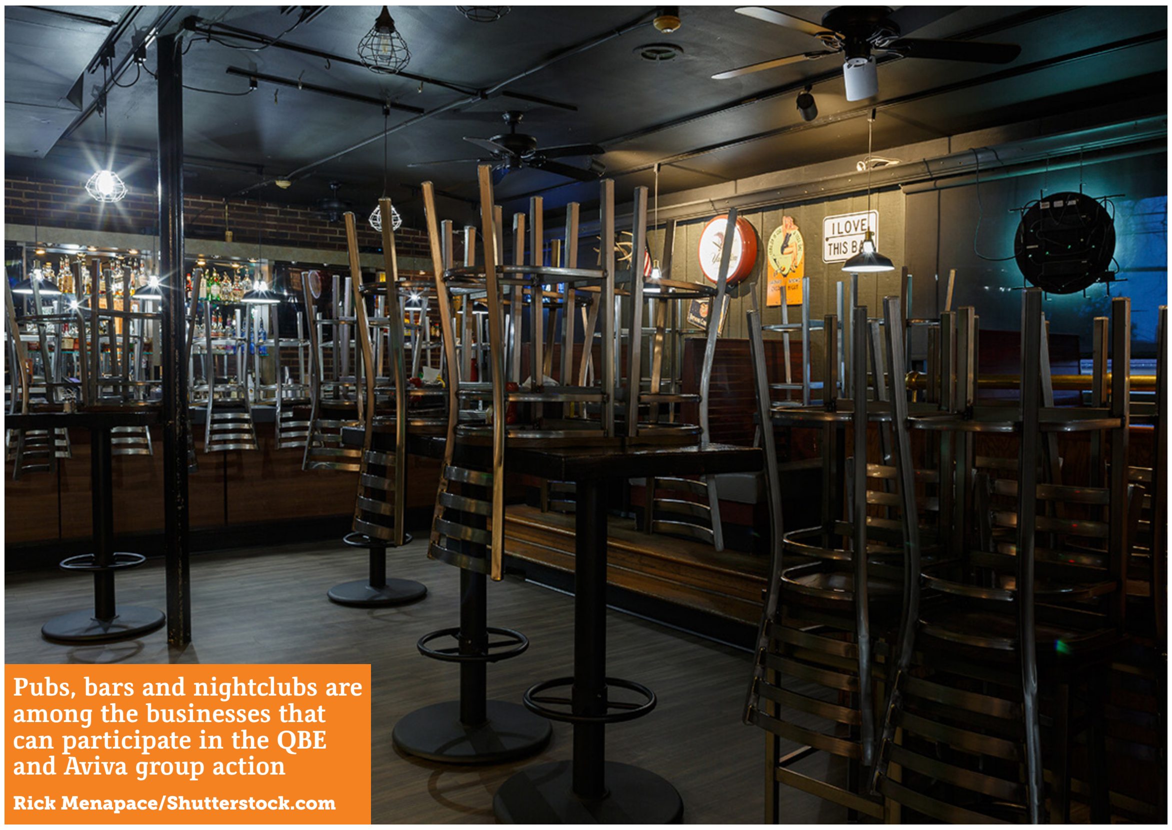
"His appointment is one of a number of recent external hires and internal promotions that will further strengthen our leadership position in the P&C market and underlines our commitment to offering best-in-class underwriting to our clients and brokers," Colello said.

NEWS

QBE and Aviva face legal action over Covid-19 BI claims

Insurers are named as part of group action by UK hospitality firms over denial of BI claims

Scott Vincent
Editor, news services



Pubs, bars and nightclubs are among the businesses that can participate in the QBE and Aviva group action

Rick Menapace/Shutterstock.com

QBE and Aviva are facing a group action over the denial of Covid-19 business interruption claims for the UK hospitality sector.

The two insurers have been identified by the Hospitality Insurance Group Action (HIga) legal team as the focus of its intended group action following a review of more than 500 business interruption policies.

Higa said specific coverage clauses within policies underwritten by Aviva and QBE (UK) had been identified by its legal advisers as those "which Higa is best advised to challenge through a group claim".

The action group said it had now written to all hospitality industry businesses with relevant policies with the two insurers to confirm they are still interested in participating in a funded group claim. Policyholders have been asked to join the intended group action by June 5.

Hotels, restaurants, bars, pubs, nightclubs and leisure businesses are among those that may participate in the group action.

Law firm Mishcon de Reya, Higa's legal adviser, said it was in discussions with third-party funders to support the costs of the litigation. It expects to be able to move forward by June 10, with the aim of issuing a claim "as soon as possible" thereafter.

Sonia Campbell, partner and head of the insurance disputes practice at Mishcon de Reya, said the group action was "the best way to ensure some financial recompense for these policyholders following their sudden and enforced closure".

For Aviva policyholders, the lawyers identified its Material Damage & Business Interruption Policy as providing the relevant wordings that can be challenged through the action.

For QBE policies, the lawyers highlighted PHOT010419 (Hotel Insurance Policy), PLSC010419 (Leisure Combined), PBCC170619 (Business Combined Insurance Policy) and PNML010119 (Nightclub and Late Night Venue Policy) as the relevant policy wordings.

Mishcon de Reya is also leading the group action against Hiscox over unpaid business interruption claims.

More than 400 policyholders are represented in the Hiscox Action Group action, disputing claims with an aggregate value of around £40m ($48.5m).

MS Amlin forecasts £105m net loss for full-year 2020

MS Amlin said it expects to post a net loss of £105m ($128.6m) for the full-year 2020 as a result of Covid-19's impact on its investment return, *writes Scott Vincent*.

But the Lloyd's insurer has forecast its underwriting loss will fall to £37m this year, down from the £55m underwriting loss the business reported in 2019.

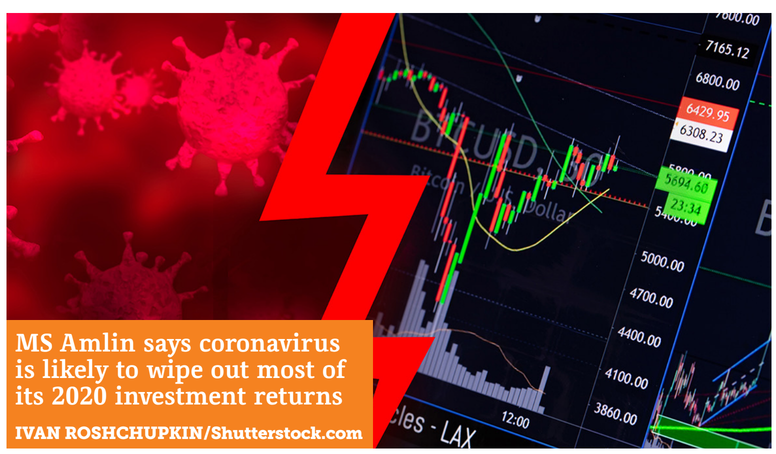
The 2019 result represented a four percentage point improvement in its combined ratio compared with 2018, which it attributed to a reduction in major natural catastrophe losses, as well as an improvement in the contribution from prior-year reserves.

MS Amlin's combined ratio of 105.7% for the full-year 2019 comprised a loss ratio of 71.2% and an expense ratio of 34.5%. These represented improvements of 3.8 and 0.2 percentage points, respectively.

Net premiums written climbed to £3.2bn, an increase of 6%, while incurred losses of slightly more than £2.1bn represented a 2% reduction.

An investment gain of £263m helped MS Amlin generated a net profit of £55m for the full year, compared with a net loss of £94m in 2018.

In its 2020 forecast, MS Amlin said it expects an underwriting loss of £37m, with its investment return expected to fall to £30m for the full year.



MS Amlin says coronavirus is likely to wipe out most of its 2020 investment returns

IVAN ROSHCHUPKIN/Shutterstock.com

MS Amlin said it was targeting a net income of £168m for 2021 as a result of steady improvements to the loss ratio in non-catastrophe lines, as well as cost reductions through reorganisation.

Lockton Re names Stephenson marine and energy chair

Lockton Re has appointed Martin Stephenson chairman of marine and energy, *writes Lorenzo Spoerry*.

Stephenson will work closely with Jerry Ridge, head of marine and energy, and also Paul Upton, head of specialty lines.

Ridge described Stephenson as a "hugely respected and well-known market figure who will be a great addition to Lockton Re".

"His deep expertise in marine and energy and his experience of working with carriers who have some of the industry's largest, and most complex, portfolios will further add to our ability to help clients understand, mitigate and capitalise on risk in these challenging times," Ridge added.

Stephenson will join the company in July.

German court rules against insurers on Covid-19 and BI

Business closure initiated by hotel operator could be covered by business interruption insurance

Martin Bartlik and Claus Peter Knufinke
Taylor Wessing

In its ruling of April 29, the regional court of Mannheim decided damages resulting from a business closure initiated by a hotel operator itself could be covered by business interruption insurance.

In the underlying case, the hotel operator had taken out business interruption insurance, including cover if the competent authority closes the insured business on the basis of the Infection Protection Act (IfSG) due to notifiable diseases or pathogens. By “notifiable diseases and pathogens”, the general conditions of insurance understood the diseases and pathogens named in s6 and s7 of the IfSG.

The hotel operator had closed the business without an official order having been issued against the business. After the accommodation of tourists had been prohibited by a general ruling and business travel had collapsed, the continuation of the business was no longer economically viable.

The court came to the conclusion the hotel operator had a claim against the insurance company under the business interruption insurance as an insured as de facto closure of the business had occurred. In the view of the court, the insurance conditions must therefore be interpreted to the effect that such indirect effects of official decisions are also covered by the insurance.

In a second step, the court ruled coronavirus is “a notifiable disease and pathogen” in the sense of IfSG s6 and s7, although it is not explicitly mentioned in the IfSG.

However, the regional court of Mannheim did not grant the hotel operator’s application for reasons of civil procedure law. The judgment was issued in a so-called summary judgment.

The plaintiff hotel operator demanded from the insurance company by way of a temporary injunction early payment of the business interruption insurance. As a matter of principle, courts only grant such early payment in the most exceptional case.

The court was not convinced by the asserted claim. The hotel operator apparently did not properly substantiate its potential damage. In the opinion of the court, the claimed damage exceeded the amount the hotel operator would need to avert the existential emergency.

Furthermore, the court argued even if a verdict in a summary proceedings was issued in favour of the applicant hotel operator, it was still not certain the payment would be sufficient to ensure the survival of the hotel operator, especially since it is not to be expected the hotel operations would immediately resume as before the outbreak of Covid-19 after the restrictions have been lifted.

The court’s concept of an officially ordered “de facto business closure” is very interesting. According to this concept, this includes not only targeted direct closures of a hotel, but also orders that have an indirect effect on hotel operations, just as a direct, targeted closure order in individual cases.

The reasons the court gave for ultimately denying the claim are also interesting. The insurance company’s obligation to pay is negated by the fact this may not be sufficient to eliminate the hotel operator’s existential distress. Between the lines, the court is ultimately saying the insurer cannot reasonably be expected to make premature payments if the survival of the hotel operator is not assured and the operator may become insolvent anyway.

Should it turn out in the course of time the hotel operator becomes insolvent, the insurance company may still be confronted with a claim from the business interruption insurance; however, such a claim would not be asserted by the hotel operator any more but by the insolvency administrator.

However, before all policyholders file claims with their insurers, they should first check the scope of their respective business interruption/closure insurance. This can vary greatly and, for example, can range from specific coverage for certain natural hazards (for example, fire or tap water damage) to unspecific force majeure events. In the latter case, the question will then arise as to whether a pandemic constitutes a force majeure event. ■

Martin Bartlik and Claus Peter Knufinke are partners at Taylor Wessing

Irish insurers reminded of financial crime responsibilities

According to a Europol report, financial criminals are taking advantage of the Covid-19 pandemic and using phishing emails to target individuals.

In the Republic of Ireland, police service An Garda Síochána also published a coronavirus scam warning at the beginning of the epidemic, highlighting increased risks of phishing and associated frauds, fraudulent selling/trading and social engineering scams.

Against this backdrop, regulators have provided guidance on their expectations in managing financial crime risk. The European Banking Authority (EBA) has issued a statement on actions to mitigate financial crimes during the Covid-19 pandemic, calling on competent authorities to support credit and financial institutions’ ongoing anti-money laundering (AML) and counter financing of terrorism (CFT) efforts.

The EBA has requested competent authorities make it clear financial crime remains unacceptable, even during the pandemic; continue to share information on emerging AML/CFT risks; set clear expectations on the steps financial institutions should take to mitigate those risks; and consider how to adapt their supervisory tools to ensure ongoing compliance by credit and financial institutions with their AML/CFT obligations.

The Central Bank of Ireland’s website has also been updated with FAQs for regulated firms, providing guidance on what firms should do to manage increased financial crime risk.

The regulator continues to emphasise the importance of maintaining effective systems and controls to ensure the financial system is not abused for the purposes of money laundering or terrorist financing.

Firms should monitor and assess regulators’ ongoing guidance in this area as matters develop. The Central Bank of Ireland emphasises firms should remain up to date on the changing AML/CFT techniques and how they might change due to an economic downturn. This will involve in particular reviewing and, if necessary, updating AML/CFT risk assessments and transaction monitoring processes, paying particular attention to changing spending patterns, funds flows and a migration to online payments.

In terms of suspicious transaction reporting, it said suspicious transaction reports (STR) should continue to be made to the financial intelligence unit of An Garda Síochána using the GoAML electronic process.

The usual requirement to also submit STRs to the revenue commissioners may not be possible as a result of working from home arrangements. The revenue commissioners have indicated money laundering reporting officers who are unable to print STRs remotely can provide a paper filing when they return to the office.

In terms of customer due diligence, a statement by the Financial Action Task Force (FATF) highlights the innovative ways in which financial institutions can onboard customers and deliver digital financial services and refers to its recent guidance on DigitalID.

The FATF statement also reminds financial institutions to use a risk-based approach to ensure legitimate non-profit relief work is not hampered so aid can be delivered to its intended recipients.

Regulated firms should consider what appropriate actions they need to ensure they continue to meet regulatory expectations during the crisis, including potential changes to their risk assessments and transaction monitoring systems. ■

Dario Dagostino and Patrick Brandt are partners and Eimear Caher an associate at A&L Goodbody

D&O risk will grow as lockdown eases

There is a growing threat of claims against directors and officers and the possibility of increasing claims costs for insurers as the coronavirus pandemic wanes

Alex Traill
BLM

Directors and officers may face claims from creditors, shareholders and trustees for poor financial performance in the wake of the pandemic
Adam Vilimek/Shutterstock.com

The coronavirus threat may have receded, but the insurance risks will continue to grow as the nation goes back to work, largely unprotected and with social distancing hard to enforce.

In these unprecedented times, business interruption losses seem to be the first main focus when assessing the consequences of the coronavirus pandemic. However, the effect of company activities in response to Covid-19 issues will also come under scrutiny, as the corporate world attempts to return to some vague sense of normality as government restrictions are relaxed.

In this regard, the directors and officers of such companies should be mindful of the decisions taken at board level when responding to the potential impact of the coronavirus to the business community and the potential exposures this creates for them – and their insurers should be keeping a watchful eye on potential claims.

Claims against directors and officers from Covid-19-related disclosure obligations may be particularly pertinent for publicly listed companies. Management predominantly, but not exclusively, in severely affected industries such as travel, retail, property and real estate finance are perhaps more exposed to rigorous examination by the Financial Conduct Authority (FCA) to ensure compliance with the disclosure guidance and transparency rules.

Furthermore, the Financial Reporting Council has urged company boards to consider what additional, specific risk disclosures should be included in their year-end accounts and annual reports, considering the nature of the company and the way in which it may be affected by Covid-19. For this reason, the FCA has temporarily relaxed the rules to permit listed companies to delay publishing their audited annual financial reports from four to six months from the end of the financial year.

Prospectus scrutiny

The FCA is also likely to scrutinise any company under the Prospectus Regulation Rules looking to raise additional funds, given the present economic climate, and will view unfavourably any directors and officers who fail to properly update any company prospectus with regard to Covid-19 risk factors.

Shareholders might question how transparent their boards were in disclosing the financial effect of the virus on companies. Management is under immense pressure to take wide-ranging decisions that protect the interests of businesses and employees, as well as clients and wider stakeholders, under constantly changing circumstances.

Indeed, against the backdrop of global market volatility, most companies will have investors who are likely to enquire what alternative steps could have been taken by management to limit losses in share value. This opens the potential for independent actions by investors against them for their failure to manage the company appropriately in terms of its operation and financial performance, when pre-empting and adapting to the effects of the pandemic on business.

There is also the prospect of derivative claims against directors and officers seeking redress on behalf of the company for wrongful acts committed in their response to Covid-19 issues, although given the high bar imposed by the courts for any derivative actions, such claims may be more remote.

There may also be a spike in claims by disgruntled shareholders and third parties when assessing the impact of Covid-19 on mergers and acquisitions, initial public offerings or any significant business transaction, as and when the delay or loss of those opportunities has adverse financial consequences.

As more companies struggle financially in the wake of the pandemic, their managers may face claims from creditors, shareholders and trustees as revenues slide and possible corporate insolvency looms. In particular, a director who continues with normal trading past a point when liquidation or administration cannot be reasonably avoided is culpable of wrongful (and possibly fraudulent) trading (s214/s213 Insolvency Act 1986 respectively).

Wrongful trading

However, the practical determination by directors and officers that insolvency cannot be reasonably avoided in the present climate may be much more difficult. Accordingly, the government intends to retrospectively relax wrongful trading rules from March 1. That said, while welcome to many managers, this may also create a hidden risk; that companies which were not viable before the pandemic's full impact became clear, continue trading and thereby incur additional liabilities for longer than they might have done without the proposed changes.

Companies will undoubtedly prioritise their response to the unique set of circumstances faced but that should not mean boards lose focus when it comes to cyber security. The prospect of distracted employees, an unprecedented scale of remote working and strained IT capabilities renders businesses susceptible to electronic fraud and cyber incidents generally.

The effects of any cyber breach can be extensive: directors' and officers' inability to protect company data and/or have enough security systems in place sufficiently leaves them vulnerable to regulatory action as well as privacy claims if data is lost. A drop in company share value or the onset of insolvency as a consequence of a cyber incident is likely to see them face claims by shareholders and liquidators, respectively.

Naturally, with employees' health and safety of paramount importance, directors' duties to safeguard the health and safety of their employees and non-employees will fall under the spotlight. Reviewing and implementing an appropriate response to the Covid-19 risk will be expected and companies and their directors and officers will be vulnerable to investigations, prosecutions and claims if they fail to protect their employees appropriately.

Practically, insurers should be aware directors and officers would also be wise to review how their insurance renewals may be affected, since the pandemic has already imposed significant reductions in coverage generally. To avoid criticism, they should be conscious of broad exclusion clauses in all types of policies which are likely to exclude any remote causal connection with Covid-19. One such clause might be pollution/contamination exclusions as definitions are expanded to include viruses and other diseases. Insurers can expect more questions as directors and officers should be considering how such terms might affect company operations. ■

Alex Traill is a partner at BLM, a member of Global Insurance Law Connect

VIEWPOINT

Club correspondents on the front line as P&I sector steers way through pandemic

Correspondent networks have been essential to the ability of P&I clubs to maintain service levels despite the restrictions imposed on the maritime industry as result of the pandemic

Rebecca Hamra
The Standard Club

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There have been various ways in which Covid-19 has affected the maritime industry, one of the most significant being the international travel bans that have been put in place by governments across the world.

Media attention has centred on how the restrictions affect the ability for cruiseships to disembark passengers and crew. Equally important is the fact these restrictions have left crew members on all types of ships stranded at sea and those who service them unable to board.

The inability to send crew replacements, surveyors and other casualty responders from international locations presents difficulties for marine risk managers and insurance providers. Fortunately, protection and indemnity (P&I) clubs that are part of the International Group of P&I Clubs – which provides P&I liability cover for 90% of the world's ocean-going tonnage – have long recognised the need to maintain competent representatives in almost all ports worldwide. This person is often referred to as the "club correspondent".

Thanks to this network, International Group clubs continue to support their members by providing on-the-ground assistance and a physical presence to assist with any marine incident or casualty that may arise.

Correspondents

Almost since their inception, the International Group member clubs have built up an international network of correspondents. The first record of a club correspondent being appointed was in 1875; today there are close to 1,400 correspondents worldwide. A listing of club correspondents can be found on each club's website, arranged by country and port.

There is a variety of different types of individuals who serve as a club correspondent. This includes local maritime lawyers, specialist P&I club representatives, ship agents and surveyors. The relationship between the club and correspondent is, typically, long-standing. Correspondents often visit the club's headquarters and regional offices to maintain connections with claims handlers.

The International Group provides additional support for these relationships through the International Group correspondent sub-committee. Correspondents also have access to the International Group's P&I Qualification programme, which provides high-quality, targeted training in all aspects of P&I for those working with the clubs.

Although the relationship is managed by the club, the main function of a P&I correspondent is to protect the interest of the club's member. There is no legal or agency relationship between the club and correspondent. The correspondent can be contacted at all hours of the day and night to attend the member's ships. The correspondent is expected to give guidance on local procedures to be followed after an incident to reduce the member's potential liability and to help save costs.

Correspondents also provide regular updates about the status of the ports and local conditions. They arrange surveys, assist with the release of the ship under arrest and, on occasion, provide security on behalf of the club/member. They are often relied upon to advise on the defence of claims and arrange local legal representation and advice.

Of particular importance at this time, club correspondents play a vital role in the repatriation of crew members and arranging medical assistance for those in need. This is often done in tandem with the member's local agent but is especially valuable if the member has deviated for emergency medical repatriation and has no local agent to assist.

Another service the correspondent provides is facilitating the repatriation of a crew member's remains to their home country after a death on the ship or in port.

Local

Another crucial function of the club correspondent is their local knowledge of regulations. In the early days of the lockdown, local regulations changed frequently and made it difficult for shipowners to stay abreast of requirements to enter port waters. To assist the member, the clubs have used their global team of correspondents to publish local port regulations and advice on the club's website.

Additionally, earlier this month, the International Group launched its online digital dashboard to deliver up-to-date Covid-19 information. This dashboard includes information for ports worldwide. It is sourced from the entire network of club correspondents and is now accessible in one location.

The international network of P&I club correspondents illustrates the ability of P&I clubs to maintain a standard level of service despite the restrictions that have occurred due to Covid-19. There is a saying no International Group club could operate without the correspondent network. Indeed, they are front line workers for the marine insurance industry, providing an essential service to shipowners and the club. ■

Rebecca Hamra is president and regional claims director, Americas at The Standard Club

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S&P revises reinsurance sector outlook to negative

Rating agency expects the sector to report COR of 101% to 105% in 2020

John Shutt, Los Angeles
US correspondent

S&P Global Ratings has revised its sector outlook for the global reinsurance industry to negative from stable, as business conditions are becoming increasingly difficult.

> **'We expect to take negative rating actions on reinsurers whose Covid-19 losses wipe out their earnings and become a capital event'**
>
> **Taoufik Gharib**
> **S&P Global Ratings**

Pandemic-related losses, combined with volatile capital markets and lower investment returns, could prevent the sector from meeting earnings expectations for 2020, the rating agency said.

The sector is expected to report a combined ratio of 101% to 105% in 2020, or higher if insured industry Covid-19 losses exceed $30bn, S&P said.

"We expect to take negative rating actions on reinsurers whose Covid-19 losses wipe out their earnings and become a capital event and that, in our view, will not be able to sufficiently rebuild capitalisation over the next 12 to 24 months," S&P analyst Taoufik Gharib said.

Palomar finishes programme in 'hard market'

US property catastrophe insurer Palomar Insurance Holdings has completed its reinsurance programme for the year starting June 1, *writes John Shutt, Los Angeles*.

The carrier has obtained around $200m in incremental limit for California earthquakes, $300m in incremental limit for all earthquakes zones and $80m in added limit for windstorms.

It said its reinsurance cover now exhausts at $1.4bn in losses for quakes and $600m for hurricanes, providing "adequate headroom" for growth and cover in excess of its one-in-250-year peak zone probable maximum loss.

Palomar has added 18 reinsurers to its programme, bringing its panel of carriers to 90.