

Asbestos bill in Senate

A bill has been introduced into the US Senate to set up a \$108 billion trust fund to compensate victims of asbestos. The trust fund would set a cap on defendant companies' and insurers' liabilities and put an end to the mass law suits that have swamped US courts. While the trust solution would set a cap on awards to claimants, it would also address the concern that insufficient funds will be left to compensate victims once defendants have gone bankrupt and their insurers have become insolvent.

The prospect of reform has already prompted comment from analysts that insurance companies' stocks should rise once they no longer have to increase reserves to cope with unpredictable asbestos awards. Leigh Ann Pusey, senior vice president, American Insurance Association, has said the trust fund 'has the potential to bring fairness and certainty to an asbestos litigation system that is currently out of control.'

But negotiations over the shape of the trust fund are still ongoing, with the US AFL-CIO labour unions pushing for a federal government guarantee that is unlikely to be forthcoming. If the bill is not passed before Congress recesses in August, insiders say there is little chance of it progressing later this year or next because of Presidential elections in 2004.

The draft bill proposes that insurance companies contribute \$45 billion to the fund, to be matched by \$45 billion from defendant companies with over \$1 million in asbestos liabilities. Companies with lesser liabilities would put in another \$10 billion, and further funding would come from existing asbestos trusts such as the Manville Trust. The top payment from the fund would be an award of \$750,000 for a person with mesothelioma. It is envisaged by the bill's sponsors that asbestos settlement deals not finalised by the time

any legislation is passed would have those deals incorporated into the trust.

Under the proposals, any worker claiming an injury from a product that contains asbestos would file a claim before the Asbestos Court. The panel would decide whether someone was eligible for compensation based on medical criteria approved by the American Medical Association. Workers would have to furnish chest X-rays showing evidence of asbestosis, mesothelioma, or other lung cancers and diseases caused by asbestos.

The cross-party groundswell for reform has been driven by the growth in claims from 'non-impaired' individuals in mass actions. Huge awards have raised the fear of widespread bankruptcies among US companies, now the primary wave of defendants – the asbestos manufacturers – are bankrupt and plaintiffs have been going after secondary and tertiary defendants, meaning thousands of companies that used asbestos in their products or premises now face lawsuits.

For more developments concerning asbestos liabilities see feature articles on pages 14, 17 and 20.

Admiral assesses run-off options

Having decided to leave Lloyd's, direct motor insurer Admiral is looking at options to sever its ties with the market when its 2002 year closes in 2005. Most claims from the final year at Lloyd's will have been dealt with by then, given the short tail nature of motor business. However, there will be a rump of business to put into run-off.

Finance director Andrew Probert says that the options under consideration are: reinsuring the business into another syndicate; completing a portfolio transfer; or leaving the syndicate open.

A portfolio transfer into Admiral's main business should be feasible under the Financial Markets and Services Act, but would be subject to court and Financial Services Authority approval.

'That would be the tidiest and neatest thing to do,' says Probert. 'It would have no real effect on the business, but we could close down the syndicate and everything that goes with that.'

Other motor insurers that have exited Lloyd's are likely to face a similar choice. Leaving a syndicate open would mean further costs at Lloyd's, something Admiral is keen to avoid. Finding another syndicate to take on the business could be difficult, since the portfolio should have only a few thousand claims outstanding in 2005.

ARC makes progress on protocol

The Commutation Protocol being developed by the Association of Run Off Companies (ARC) could go live as early as July. The draft protocol has already been approved by a QC. Responses to the final market testing stage were being considered as *Run Off Business* went to press.

ARC chairman David McGuigan says the Association hopes to present a final version of the protocol at a meeting of ARC members on 25 June. He adds that if the reaction is positive, the protocol will then be sent out to the rest of the market.

The aim of the protocol is to save time and money and introduce greater certainty into the commutations process. Signatories to the protocol would agree to settle, as both reinsureds and reinsurers, on the basis set out in the protocol guidelines.

But McGuigan is aware that the acid test will be the market's willingness to use the protocol. 'However much work we put into it and however right it may be, if nobody signs it, then it was a valiant effort, but that was as far as it got. If a lot of people sign it, then it was fantastically well worth doing.'

Kuwait ruling upheld

The Court of Appeal has upheld the decision of the Commercial Court in the Kuwait case. It found that the destruction of planes belonging to Kuwait Airlines and of one belonging to British Airways following the Iraqi invasion of Kuwait were two separate events. The appeal by Equitas on behalf of the Scott syndicates was dismissed. This means the BA excess of loss claim cannot be aggregated as 'arising from one event' with the excess of loss claim arising from the Kuwait Airlines losses.

The Appeal Court decision confirms that the BA aircraft loss was a 1991 Gulf War loss, as the aircraft was destroyed during Operation Desert Storm, making the loss date 13-26 February 1991, whereas the Kuwait

Airlines planes were destroyed during the Iraqi invasion of Kuwait in 1990.

In addition, the Court stated that when deciding whether multiple losses arose from one event for claims aggregation purposes, a 'significant' causal connection between the event and the losses was required, and that the test of the four unities (time, place, cause and intent) was appropriate in determining not only 'occurrence' based aggregation but also in 'arising from one event' aggregation. It also ruled that the test for 'actual total loss' required the prospect of recovery of the insured item to have been reduced to a 'mere chance'. Law firm Holman Fenwick & Willan has more details on the ruling at www.hfw.com.

Morley takes over Cox run-off

James Morley, finance director at Cox Insurance Holdings, has taken charge of the group's run-off following the departure of Michael Lange on 29 April. Lange joined Cox in September 2001 as chief executive of Cox's commercial division. Last year the insurer decided to focus on its profitable retail insurance and put the commercial division into run-off.

Graham Sutton, head of group marketing, explains that Lange's departure was due to this change in strategy: 'Michael Lange came in as chief executive, not as run-off manager. We have now a technical team in place, including claims and underwriting, that will report into our finance director James Morley.'

The classes of business in run-off are power, marine, aviation, nuclear, property and casualty. 'All of our exposures in terms of underwriting have been identified and it's a question of handling claims in a normal manner as part of an orderly run-off,' adds Sutton.

Some 40 Cox staff are involved in the run-off. Cox used to specialise in insuring nuclear and other commercial risks before diversifying into retail.

Run off Centre up for sale

RI3K is seeking a buyer for the Run Off Centre in order to concentrate on its reinsurance hub for the live market. Run Off Centre's general manager Kelly Fegan told *Run Off Business*: 'Because we have been so successful on the live side we are looking to remove ourselves from anything that distracts us from our core activity.' He added that if negotiations for a sale proved unsuccessful, another option under consideration was that RI3K might contract with a third party manager to run the Run Off Centre, in which case RI3K would remain a shareholder. 'It's still a good product and there's money to be made from it,' stressed Fegan. As *Run Off Business* went to press, talks were said to be underway with more than one interested party.

events

16-17 June
Asbestos Litigation
 The Fairmont Hotel
 Dallas
 Contact: www.mealeys.com

16-17 June
Insurance Litigation
 Sutton Place Hotel
 Toronto
 Contact: www.canadianinstitute.com

23-24 June
Reinsurance Underwriting
 Kingsway Hall
 London
 Contact:
www.euro-legal.co.uk/reinsunderwriting

3-4 July
Insurance Exit Strategies
 Kingsway Hall
 London
 Contact:
www.euro-legal.co.uk/insexitstrats

6-11 September
Rendez-Vous de Septembre
 Monte Carlo
 Contact: www.rvs-monte-carlo.com

8-9 September
National Asbestos Litigation Conference
 The Ritz-Carlton Hotel
 Chicago
 Contact: www.mealeys.com

10 September
International Asbestos Litigation Conference
 The Ritz-Carlton Hotel
 Chicago
 Contact: www.mealeys.com

18-19 September
CII Insurance and Financial Services Conference
 Queen Elizabeth II Conference Centre
 London
 Contact: www.cii.co.uk

18-19 September
Reinsurance Summit
 The Westin Hotel
 Chicago
 Contact: www.mealeys.com

25 September
Reinsuring Asbestos Liabilities
 Café Royal
 London
 Contact: www.ibr-financial.com

8-10 October
Cavell Commutations Rendez-Vous and Seventeenth International Reinsurance Congress
 Fairmont Hamilton Princess
 Bermuda
 Contact: alan.quilter@cavell.co.uk;
www.hawksmere.co.uk

9-10 October
First Asian Conference on Commutations & Run-Offs
 Singapore
 Contact: www.asiainsurancereview.com