



# A new brief for lawyers

**Steven Bazil & Parker Stanhagen** of US law firm Bazil McNulty examine the role of the lawyer in the run-off industry against the background of the current global financial crisis

**T**he reinsurance industry has long represented one of the very few recession proof business practices in the world. The expansive stretch of money circulating throughout all parts of the planet has enabled the industry to operate successfully even when financial struggles have crippled different areas of the globe. It appears however, that the safe waters in which the reinsurance industry has been operating have begun to get choppy.

As the recession has spread throughout the globe, the safety of diversifying business operations across all areas of the world has faded. The failures in other industries, including the primary insurance market, have finally hit the reinsurance field and the inevitable changes are beginning to take shape.

Those operating directly within the reinsurance practice are likely to see the same consolidation and cut-back trends that other industries hit by the recession have had to face. Companies continue to place lines of business into run-off. What is more

difficult to answer is how this economic situation is going to affect service providers in the reinsurance market, such as lawyers.

## **The expanding role of lawyers in run-off**

### **The janitor**

Drawing a comparison to the reinsurance field, attorneys have also long been regarded as recession proof. Lawyers traditionally maintained security in their positions by providing the services needed in all economic climates. They have been called on to act as janitors and clean up messes during bad times and to make sure of continued success in good times.

In addition, the flexibility to operate within varying practices in order to tip-toe around financial hardships faced by different industries was another option lawyers held. As time has passed and clients have demanded greater expertise and specialisation, the ability to move between fields has faded.

So what the industry is faced with

now is a group of lawyers who have dedicated their professional lives to becoming experts in the reinsurance field and with no other choice they are lining up, mops in hand, to utilise their custodial services and clean up the mess the global financial crisis has created in the reinsurance field.

Although describing the role of reinsurance lawyers in the current market as 'janitors' may not adequately represent the new challenges they are facing, it does however reflect the changing roles of lawyers in the field. As cash strapped companies struggle to keep their capital, lawyers will be facing heightened pressure to vigorously defend claims and conversely to chase outstanding liabilities. In an effort to track down money or hold onto current funds we are seeing reinsurance companies reopening books of business on claims that previously were written off as a loss.

Lawyers are essentially being asked to vigorously pursue funds and collect upon the uncollectible. These new requests by reinsurance com-



panies are demanding that lawyers institute new collection practices that require both an in-depth knowledge of the law as well as an unwavering persistence to pursue valid, yet difficult, claims. The new emphasis on vigorously defending claims has also required that lawyers institute dispute resolution techniques that previously were uncommon or unused within the field. The financial status of many reinsurance companies and their parent companies has demanded that no method of negotiation go unappreciated.

### The deal maker

The current financial condition of parent companies in charge of many reinsurance companies is also opening up new issues being faced by reinsurance lawyers. Like so many other fields, we are seeing companies consolidate and divest company lines that do not match with the parent companies' focus.

We are also witnessing cash strapped companies pursuing all possible avenues to raise capital. This has resulted in reinsurance companies either entering into run-off, which opens up an entire field of legal issues for lawyers to face, or quickly looking to dispose of all outstanding business through outright sales. Never before have the sales of entire books of business occurred on such a massive scale.

AIG, for example, represents what will likely be the largest dispersal of reinsurance liabilities to other firms in the history of the industry, and they are only one of the many companies looking to send their books of business elsewhere. The volume of legal work created through AIG's divestments in the reinsurance field is enough alone to create headline news in the legal world, and with the staggering number of other companies looking to lawyers for exit strategies the workload is likely to only increase.

The failing bond market and

unavailable backing by financial institutions are just two of the reasons reinsurance companies are resorting to such extreme measures to ensure that capital is available. Firms are also looking to their lawyers for out-of-the-box thinking, and treating them as a type of new wave financial advisor in addition to their traditional role as legal experts.

### The guide

Lawyers' roles in the depressed reinsurance market however are not simply limited to protectors and collectors of money. As Washington DC, and the rest of the world, is trying to figure out just what caused the financial crisis to occur, new regulations are being proposed and introduced that are going to modify how the reinsurance market functions. New regulation always brings an uneasy feeling to lawyers, and given the financial status of many of the companies at issue most attorneys will be extremely nervous to give advice on how the legislation will be interpreted and affect a variety of companies. This however, is exactly what lawyers will be asked to do.

It is unclear at the present time just how substantial the new legislation will be, but all indications point to a major overhaul in several key areas of insurance and reinsurance regulation. Increased supervision or an FSA-style approach towards oversight has been suggested.

These regulatory changes will mandate new operating procedures and safety nets designed to monitor business activities to be put in place, all of which will be designed, or at least heavily influenced, by lawyers. Interpreting the legislation will just be the beginning of the legal work that lawyers will face, as the responsibility for constant monitoring to ensure compliance is another task that will likely fall on lawyers. It is a lawyer's responsibility to help guide clients through these regulatory changes.

### A changing role in changing times

The previous recession proof status of reinsurance companies enabled the industry to operate, to some extent, without regard to the world's economic climate. As the recession in the US quickly blossomed into a worldwide financial crisis, the reinsurance industry was unable to avoid the economic result of the financial downturn. The effect on the industry is undeniable and has spread to not only those directly involved in the field but secondary players as well.

Lawyers in the practice are faced for the first time with a need to drastically change how they operate. The need for legal services remains, for the most part, unchanged; and with the new legislative environment the need for lawyers is likely to increase. The services requested however, are substantially different than those reinsurance lawyers have had to tackle in the past. They are being asked to salvage what remains of the industry in the wake of the current financial crisis. Clients are demanding new techniques and methods of operation never before employed in the reinsurance field. Lawyers are also being asked to prepare companies for the regulatory changes that are forthcoming and create strategies to ensure a successful future.

Returning the reinsurance field to its previous state will take some time and it is unclear when lawyers will be asked again to take the role of ensuring the continued success of companies in good economic times, rather than cleaning up the mess resulting from a poor financial climate. For the foreseeable future, however, it appears that lawyers will be walking into boardrooms, mops in hand, trying to use new techniques and legal strategies to clean up the mess the global financial crisis has caused the reinsurance field. ●