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political risk insurance newsletter

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Inside this Issue:

Not another article on Basel III…?

David Neckar *is a Product Development Director at Willis Financial Solutions. In this article he brings us up to date on the long-running saga of efforts to craft international regulatory standards for banks, and the role of insurance in responding to those standards.*

Basel III sounds unnervingly like the latest in a Hollywood pattern of sequels, reminiscent of the Stallone *Rocky* films. We're not yet at Basel V, the bankers haven't yet come to physical blows with the regulators, but bankers look increasingly punch drunk from the multitude of onerous new rules coming from regulators.

To outside observers the whole Basel business is often hard to fathom. When Jamie Dimon says that it is "anti American" (Interview with *Financial Times*, Sept. 2011) and implies that it is a European attack on US banks, it is clear that discussion has moved into a highly charged atmosphere which makes it difficult to consider the issues with objectivity. In the US, moreover, the controversial Dodd-Frank Act is tightly bound up with Basel III and threatens to pull us into the realm of politics.

Those of us working in the specialist area where banking and insurance overlap have glimpses of what is at stake. We continually strive to understand what is going on and what the impact of Basel III may be on our businesses and on our livelihoods. This article is an attempt to find some perspective on the current confusion and consider how Structured Credit insurance (SCI) may develop in 2012.

It is perhaps worth recalling that SCI is a relatively recent arrival on the insurance scene. It grew out of the private Political Risk Insurance (PRI) market in London in the early 1970's and started to become a serious proposition after PRI's defects were revealed by the Argentina crisis in 2002.

(Continued on page 5)

An Interview with Our Editor

Felton (Mac) Johnston, *editor of this Newsletter and adviser on political risk and arbitration for robert wray PLLC, is interviewed by Jordan Dansby, the newest member of the firm (see page 8 to meet Jordan Dansby).*

Jordan Dansby: Let's start with the *Political Risk Insurance Newsletter*. How did you get the idea to launch it?

Felton (Mac) Johnston: I didn't. It was the brainchild of Robert Wray, our firm's founder. He saw a need for a non-scholarly but serious journal dedicated to the subject, and one that drew contributions from PRI professionals and other authoritative sources, not just from ourselves here at the law firm.

JD: How's it doing?

FMJ: We have close to 1,000 email subscribers, and it probably gets forwarded to many more. We get a fair number of compliments.

JD: The *Newsletter* seems to evolve in terms of content. What's in store for the future?

FMJ: We've done a bit of experimenting since we first started publishing the *Newsletter* in 2005. The most significant development to date is that we have incorporated more articles relating to investment disputes and arbitration. Political risk insurance and international arbitration intersect in a lot of ways, so it made sense to do that. Besides, international arbitration is one of our areas of specialization.

(Continued on page 4)

Performance Requirements & Investor Recourse: The Mexican Movie Caper

As Mariano Gomezperalta *explains, failed efforts to protect Mexican film makers illustrate how international treaties can benefit both local and international investors. Mr. Gomezperalta represented Mexico's National Chamber of Film and Video (Canacine) in this matter.*

I. The Mexican Movie Quota

Four of the ten worst movies in 2011 remained in Mexican theaters almost as long as some of the best movies of the year. Theaters showing the former were almost entirely empty while those showing the latter were completely full. Why would any reasonable businessperson allocate movie space for films with very low demand and maintain empty theaters at a significant cost for prolonged periods of time?

Mexican movie theaters owned by foreign or local investors have been subject to local content provisions that require them to allocate a percentage of the theater's screen time to movies produced in Mexico (regardless of their quality or audience). The local content requirement was first established in Mexico in 1992 at a rate of 30%. Given that this movie quota was clearly a violation of NAFTA's national treatment and performance requirement clauses, Mexico negotiated an exception with the US and Canada that became part of the treaty (NAFTA Annex I - CMAP 94 1103). Mexico could have maintained the Movie Quota indefinitely under NAFTA, but it chose to gradually phase it out and finally eliminated it in 1998.

Mexican theaters were…able to show that the proposed movie quota was contrary to Mexico's obligations under its international trade and investment agreements and that breaching such obligations would expose Mexico to substantial law suits in international and local tribunals.

The Mexican Congress reintroduced a 10% movie quota in 1999, but such a quota was now illegal since the "ratchet" principle prohibits NAFTA parties to reverse unilateral liberalization. The NAFTA violation, however, went unnoticed. There were no challenges in local courts or investment tribunals and the industry generally seems to have been under the impression that Mexico was underutilizing the original 30% movie quota.

In the summer of 2011, a group of Mexican congressmen, supported by local producers, directors and actors, decided to "bridge the gap" and proposed to increase the quota from 10% to 30%. The proposal also called for a minimum of 2 weeks of show time for Mexican-made movies. During the congressional hearings, supporters of the legislation argued that the Mexican state had a cultural responsibility to guarantee the audience with meaningful access to Mexican movies. Otherwise people would be left to watch Hollywood productions and would be prevented from an opportunity to view different types of films. For over five hours, the hearings were loaded with calls to defend the Mexican movie industry and the traditions and values that they represent. "The audience does not prefer Hollywood over Mexican movies. The audience simply does not have an alternative," actress Irene Azuela complained. "Harry Potter was released with 3,000 copies and occupied 46% of the theaters—how can this be?" demanded producer Leon Sermet.

For local movie producers, the movie quota represented the only way to stop the invasion of Hollywood movies and provide Mexican films with a space that the market alone would never provide. Local film makers viewed the movie quota as a necessary advantage in favor of the Mexican movie industry.

The theater association, however, argued that Mexican movie theaters resist showing Mexican movies because very few people want to see them. They claimed that Mexican movies are generally made without consideration for the audience or their tastes and are often of very poor quality. With a few exceptions, theaters showing Mexican movies are generally empty. Mexican theaters were also able to show that the proposed movie quota was contrary to Mexico's obligations under its international trade and investment agreements and that breaching such obligations would expose Mexico to substantial law suits in international and local tribunals. (Recent NAFTA cases addressing performance requirements, for example, resulted in some of the largest awards in the region (i.e., *ADM* and *Cargill*, which collectively hold more than 100 million dollars in awards against Mexico)).

The movie theaters' position seems to have been effective, as the new movie quota lost support after the hearings and it has become less attractive to Congress. It also now faces opposition from the Mexican Executive, which presumably does not wish to be involved in any new investor-state disputes regarding performance requirements. Some government agencies, such as Mexico's Competition Commission, even issued official opinion letters against the movie quota and recommended Congress not to approve it given its adverse effects to the market and its conflicts with national competition laws.

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II. International Regulations Regarding Local Content

The international regulations banning local content and performance requirements such as the Mexican movie quota are quite broad and addressed in multilateral (e.g., 1994 GATT and other WTO Agreements), regional and bilateral treaties.

At a multilateral level, the GATT (via Article III:4 – National Treatment) prohibits discriminatory treatment with respect to all laws, regulations and requirements affecting the internal sale, offering for

(Continued on page 3)

Performance Requirements & Investor Recourse: The Mexican Movie Caper (cont'd.)

sale, purchase, transportation, distribution or use of imported products. This provision usually catches any local content measure affecting international trade. In addition, local content measures are often prohibited by Article XI – Quantitative Restrictions, which prohibits non-tariff barriers, since they frequently contain "quantitative" elements such as conditioning investments upon exporting a certain percentage of goods or requiring the use of a certain amount of locally produced goods, etc.

> Local content proposals have historically appeared in many sectors—pharmaceutical, auto industry, government procurement, agricultural goods, to name a few—and even though many of them do not materialize or ever come into effect, they are a constant headache to investors.

The GATT's Agreement on Trade Related Investment Measures ("TRIMs"), which applies to investment measures related to trade in goods, also prohibits WTO Members from applying measures that are inconsistent with GATT Article III – National Treatment and Article XI – Quantitative Restrictions and lists local content requirements in its "Illustrative List" of WTO-inconsistent measures.

At a regional level, international agreements such as NAFTA contain a significant list of prohibited performance requirements. Sections 1106(1) and 1106(3) of NAFTA, for example, provide that:

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

   (a) to export a given level or percentage of goods or services;

   (b) to achieve a given level or percentage of domestic content;

   (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

   [...]

3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

   (a) to achieve a given level or percentage of domestic content;

   (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

   (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

   (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

Most of the performance requirements listed under Section 1106 are self-explanatory: NAFTA parties are prohibited from requiring investors to employ a certain amount of local materials in their production, exporting a given percentage of their output, hiring local employees, etc.

The relationship, however, between performance requirements and investments (i.e., the meaning of the phrase "in connection with an investment" of Section 1106(3)) was the subject of discussion in three recent NAFTA arbitration cases: ADM, CPI and Cargill. The arbitral tribunals in these cases reviewed whether a special tax on soft drinks produced with sweeteners other than sugar cane (i.e., high fructose corn syrup, "HFCS") could constitute a prohibited performance requirement in connection with HFCS investments under NAFTA. The special tax was imposed on soft drink manufacturers, not on the claimants, the HFCS companies, which were suppliers of HFCS to the bottlers. The ADM and Cargill tribunals appear to have concluded that a performance requirement exists regardless of whether the investment is affected directly or indirectly by the measure. In other words, "in connection with an investment" was interpreted broadly and was not equated to "directly affected by." It seems that what mattered was whether the performance requirement was designed to affect the investment.

> [T]he chances of the everyday investor preventing or reversing a local content regulation are greatly enhanced if it can point to the specific international provisions that are being breached and demonstrate to government officials and other interested parties the cost to the state of violating treaty provisions.

Although a somewhat opposite conclusion was reached by the CPI tribunal, the ADM and Cargill findings are interesting, as governments seeking to circumvent the wording of Article 1106 through creative local content regulations might find it more difficult now that at least two tribunals have focused on the design and effect of the measure rather than the direct or indirect nature of the effect.

III. The Everyday Investor

The Mexican movie quota is just one of numerous instances worldwide where local groups strive to convince legislatures or governments to adopt protectionist measures in favor of local industries. Local content proposals have historically appeared in many sec-

(Continued on page 4)

Performance Requirements & Investor Recourse: The Mexican Movie Caper (cont'd.)

tors—pharmaceutical, auto industry, government procurement, agricultural goods, to name a few—and even though many of them do not materialize or ever come into effect, they are a constant headache to investors.

Given the natural connection between free trade/investment policies and market efficiency, it is often also viable to use competition laws as another element to repel performance requirements.

Despite the extensive regulations and the frequency of such proposed measures, the number of arbitration cases (whether investor-state or WTO) actually dealing with local content/performance requirements is very small. Why? One likely explanation is that performance requirements are usually financially relevant but not sufficiently severe to shut down a business. Investor-state cases do not provide a short-term or even worthwhile solution to investors facing performance requirements because proceedings are long and expensive and typically instituted as a last resort (or, in *Metalclad* jargon, prior to the enterprise packing up the metal). WTO proceedings are also often unviable since the chances of a government sponsoring a claim are very remote and the remedies in WTO proceedings, in any event, are of a prospective nature (i.e., no monetary damages are awarded).

The Mexican movie quota case shows, however, that the chances of the everyday investor preventing or reversing a local content regulation are greatly enhanced if it can point to the specific international provisions that are being breached and demonstrate to government officials and other interested parties the costs to the state of violating treaty provisions. Given the natural connection between free trade/investment policies and market efficiency, it is often also viable to use competition laws as another element to repel performance requirements. If articulated in the correct manner, lobbying efforts, together with the pressure of international arbitration, are frequently an effective combination against local content regulations. ■

An Interview with Our Editor (cont'd.)

As to the future, we're looking to attract more contributions from experts outside the North Atlantic PRI and investment arbitration arenas. So much has changed in terms of the sources and direction of foreign direct investment, and we want to reflect that. Also, there are many professionals out there with something important to say, and if it's relevant and authoritative, we want to put it in the *Newsletter*. I hope our readers are paying attention to this invitation.

JD: Is there anything in particular you'd like to see in terms of contributions?

FMJ: One thing that I think would be of interest to our readers is a good article about PRI portfolio exposure management. And anything good about claims – that's the hardest thing to get at, other than what comes out of public agencies. Lastly, I'm sure there are aspects of PRI and arbitration that readers would like to see, but that we may not have thought of. We're open to suggestions, and we also welcome reader comments on the articles. Maybe we'll start a "Letters to the Editor" page!

JD: Can people get back copies of the *Newsletter*?

FMJ: Yes, they're all on our website. Better still, we have an archive index on the website, so that you can look for articles by subject. It's a pretty rich inventory.

JD: What do you do at the firm when you're not editing the *Newsletter*?

FMJ: I'm an adviser to the firm on political risk and arbitration. The work doesn't follow any particular pattern—mostly claims and arbitration matters, and PRI product improvement and development. My work dovetails into the lawyers' work here, in PRI, arbitration, and microfinance. And occasionally I do some underwriter training.

JD: That brings us to something else you have done—your *Primer on Investment Insurance Underwriting*, now on the robert wray PLLC website. Why did you write that one?

FMJ: There didn't seem to be anything out there like it. I decided to fill that gap. Underwriting investment insurance is something you learn pretty much by doing, but everyone has to start somewhere, hence the *Primer*.

JD: You're giving it away?

FMJ: Yes. I think there's a need for something like this but the audience is still too small to expect to make money out of it. We'll be glad to provide tailored training for underwriters on a fee basis though!

[T]here are many professionals out there with something important to say, and if it's relevant and authoritative, we want to put it in the Newsletter. […] I'm sure there are aspects of PRI and arbitration that readers would like to see, but that we may not have thought of. We're open to suggestions.

JD: How did you happen to get into this business?

FMJ: I stumbled into it. I started out to be a banker, which didn't grab me but was useful preparation. When I was hired at OPIC, I discovered that PRI was intellectually challenging and wide open for innovation. It was at the juncture of international business, econom-

(Continued on page 7)

Not another article on Basel III...? (cont'd.)

Sometimes called "Comprehensive Credit Cover," SCI denotes the product offered by a segment of the insurance market that is distinct from the short-term trade credit receivables insurers. It is estimated to be a segment with annual premium volume of about 1.5bn USD, whose major clients are banks, commodity traders and large corporations.

Since 2006 the SCI market has been growing steadily, as banks have come to see its value in mitigating credit risk, reducing capital requirements and enhancing returns: thanks to Basel II, banks could substitute the credit rating (or probability of default) of the insurer in place of that of the emerging market borrower. After 2008, the prompt and full claims payments by the SCI insurers finally convinced the banks that they had found a reliable product—just when the securitization, CDS and syndication markets deserted them.

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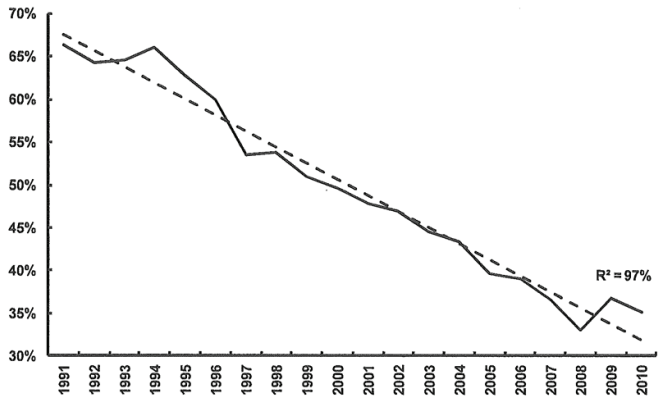
Basel background

"Basel III" is the name given to the latest set of regulations that are being applied internationally to banks. It takes its name from the Basel Committee on Banking Supervision (BCBS) which operates under the auspices of the Bank for International Settlements (BIS), based in Basel, Switzerland. The BCBS was created in 1974 by the then "G10" in the wake of the failure of Bank Herstatt in Germany.

The objective of the Basel process was, and still is, to establish common regulatory standards to be applied globally to banks to ensure that they are solvent, liquid and secure. The Basel process began in earnest in 1988 when the Basel Committee introduced the concept of Risk Weighted Assets (RWAs) and announced minimum capital adequacy requirements of 8% of these ("Basel I"). As the shortcomings of this initial approach became evident, the Committee proposed a more detailed framework that ultimately became "Basel II," issued in 2004 to 2006, with implementation in Europe starting in 2007. In the US the implementation was delayed until 2011 and is still being rolled out.

Faced with the new rules, the behavior of the banks was unsurprisingly to seek to maximize profit and minimize (expensive) capital. A study by Patrick Slovik ("Systemically Important Banks and Capital Regulation Challenges," OECD Economics Department Working Paper No 916) shows that since the introduction of Basel I, certain major banks steadily reduced their RWAs and significantly increased their leverage. The following chart (taken from Slovik's article) provides a graphic illustration. The implication is that banks have been "gaming the system."

Figure 1. Historical development of the RWA/TA ratio of systemically important banks



The 2008 Crisis

What can one say about what happened to banks in 2008, particularly in the US and the UK? Why were so many found not to be solvent, liquid and secure? Did Basel II fail to work?

It is hard not to conclude that Basel II failed to do its job properly. The defenses raised by the regulators and bankers have varied from "the new regime hadn't been fully implemented" to "Basel II did not address key issues such as market risk and liquidity." Whatever the right answers to those questions are, it is clear that regulators are now responding with a comprehensive set of controls and tools, designed to strengthen banks' capital and liquidity. The soundtrack to Basel III is filled with the noise of many stable doors being vigorously but tardily closed.

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The Basel III Response

The first reaction of the BCBS was in fact "Basel 2.5," which was agreed in July 2009 and addressed the risks in the banks' securitizations and trading books, with implementation set for January 2012.

Basel III was issued in December 2010 by means of two documents, one concerned with liquidity and the other with capital requirements and the regulatory framework. Progressive implementation is to start in 2013 and continue to 2019.

The requirements of Basel III are onerous. They will affect banks in several areas:

- Firstly, in the area of bank permanent capital:

(Continued on page 6)

Not another article on Basel III…? (cont'd.)

- the level of the highest quality capital, Common Equity, is to be increased to 4.5% of Bank RWAs (from 2%);
- a new Capital Conservation Buffer (CCB) of 2.5% is to be introduced, thus raising the Common Equity requirement to 7%.

Although the original figure of 8% for Minimum Total Tier 1 capital requirement is maintained, the new minimum level including CCB is to rise to 10.5% by 2019. In Europe, banks are being required by the European banking authority to reach a Tier 1 ratio of 9% by June 2012. The burden of these requirements is increased by new, more stringent eligibility criteria for what can count as Tier 1 capital.

> Basel III is not the cause of [the banks'] difficult situation, but it is clearly proving to be a major aggravating factor.

- Secondly, banks are being required to address two other areas that were identified as major problems in the 2008 Lehman crisis:
  - Funding: new ratios to ensure that banks have ready access to short term (30 days) liquidity (Liquidity Funding Ratio) and secure assets to provide longer term funding (Net Stable Funding Ratio).
  - Trading Book/Market exposures: more capital is required for Counterparty Credit Risk (CCR), which in turn is subject to stricter criteria for extreme scenarios.
- Thirdly, a Leverage Ratio is to be introduced as an overall "blunt instrument" test to be applied to banks' Total Assets ("TAs") with no allowance being permitted for mitigants such as guarantees or credit insurances. Common Equity must be at least 3% of TAs.
- Fourthly, in Trade Finance, an area where many banks have operations that are active buyers of SCI, the pressures continue because the Credit Conversion Factor for Off Balance Sheet items such as Letters of Credit is seen as being excessively penal. There has been some relaxation here by the BCBS in October 2011.

Basel III impact on banks

It is hard to overestimate the severity of the pressures that banks now face. They need to raise more capital and to restructure their balance sheets, at a time when equity markets are unwilling to provide new capital, when traditional bond investors such as insurance companies are being disincentivized by the new Solvency II rules (sometimes described as "Basel II for insurers") and when politicians are calling for increased lending to promote economic growth.

With distressingly awkward timing, the European Union has thrown itself into turmoil over Greece, and European banks are struggling to find interbank funding from their peers as well as external US Dollar funding.

The likely outcomes are clear. Banks have to delever. In the absence of new equity capital, they have to reduce their lending and their balance sheets. Trade finance—which is predominantly a US dollar business—is severely crimped. Larger corporates may be able to bypass the banks and access the capital markets, but small and medium sized corporates are in for a difficult period.

Basel III is not the cause of this difficult situation, but it is clearly proving to be a major aggravating factor. Moreover, while most current public comment focuses on the regulations and the new requirements, we are in danger of overlooking the increasing amount of internal management time, resources and costs that banks must commit to the new modelling, measuring and reporting requirements.

Basel III impact on insurance markets

The headline issues which the bank users of SCI face are (a) funding and (b) pricing. Insurers, on the underwriting side, are structurally unable provide solutions to (a). As for (b), the struggle is on between supply and demand. Most frequently it takes the form of a vigorously allergic reaction by banks to the "70% of margin" premium rate that has been the default mantra intoned by the SCI underwriters. Since banks will not disclose their funding costs, the debate ranges from basic arm wrestling over premium rates to more subtle hints and suggestions to help guide underwriters. Either way, the brokers' role is interestingly varied. Banks who have spent time working on their relationship with insurers seem to be best placed to achieve the pricing they need.

> [I]t appears that [regulators] have been satisfied with the approaches taken by banks over SCI. […] The claims payment performance of the SCI market has been exemplary, prompting some banks to compare insurance favorably against derivative hedges[.]

Regulators' views on insurance

Regulators do not opine openly about matters; however, to date it appears that they have been satisfied with the approaches taken by banks over SCI. In the UK, the FSA are known to have taken the view that insurance policies with the "Nuclear" exclusion are not acceptable mitigants for Standardised and Foundation IRB status banks.

There were previous inklings of concern about whether insurance would pay out in a timely manner, but the claims payment performance of the SCI market has been exemplary, prompting some banks to compare insurance favorably against derivative hedges in light of uncertainties over the way CDS will perform for Greek debt.

It is a measure of the success of the SCI market that the issue of

(Continued on page 7)

Not another article on Basel III…? (cont'd.)

claims payment which used to dominate conferences is now merely covered in passing. At a recent Export Credit Conference in London, a leading French bank stated almost casually that it had just collected a claim of close to 100 million USD and was relaxed about the market's performance.

A new trend on the demand side is the appearance of non-emerging market credit risks which banks are offering and which many underwriters are willing to consider, particularly those who are able to provide cover that is not tied tightly to underling trade transactions.

Concluding perspectives

In the third quarter of 2011, the Eurozone crisis led to an abrupt halt of business from the leading French banks. So far in 2012, their business has not yet fully resumed. However, there has been a significantly increased level of interest from new banks who have not been buyers in the past and from banks that now want to coordinate their use of the product and buy more effectively.

It is likely that any loss of business from European banks will be more than made up by the new players, but it is highly unlikely that the former will be out of the market for long. The perspective on the demand side is therefore likely one of continuing pressure for capacity, especially in those countries such as Russia and Turkey where the market already has major commitments.

A new trend on the demand side is the appearance of non-emerging market credit risks which banks are offering and which many underwriters are willing to consider, particularly those who are able to provide cover that is not tied tightly to underlying trade transactions.

On the supply side, the 2012 reinsurance renewals went well and capacity has continued to grow. New entrants such as XL (the former QBE team) are not merely replacing their previous capacity but making a meaningful addition to the market.

Overall there is a strong feeling among all market participants—banks, insurers, reinsurers and brokers alike—that the rising tide of the Basel requirements will continue to raise all boats and make SCI a desirable product.

The only concern here is that this looks too comfortably predictable—what can go wrong to wrong-foot us all? ■

An Interview with Our Editor (cont'd.)

ics and politics, which fascinated me. And it brought me into contact with many fine and talented people. How could you not love a business like that?

JD: What do you think about PRI brokers?

FMJ: Some of my best friends are PRI brokers. Really! I think few investors are equipped to deal with PRI without expert advice, and specialist PRI brokers can do them a great deal of good. Brokers perform valuable functions that others can't or don't. They have their fingers on the pulse of the marketplace, and they have seen a lot of deals. I emphasize specialist PRI brokers: not everybody who hangs out that shingle is going to do a crack job, and some brokers are better at some PRI products than others. The best way to find the right broker is to ask around, especially of other investors. Now ask me about the role of lawyers and other external advisers on PRI.

JD: OK, what about it?

FMJ: Lawyers and other external advisers can help in other ways. Remember, PRI isn't going to improve the risks of anybody's underlying deal, so you need to start thinking about political risk management before you go looking for insurance. That means, among other things, getting help in drafting and reviewing investment agreements and in understanding the risk environment you are stepping into. Beyond that, in complex cases, it's a good idea to get an expert adviser's final review of PRI policy wordings to be sure they fit well with those agreements and that environment. And finally, in loss and claims situations you'd better have expert legal counsel.

JD: You've been in the PRI business a long time. What are the biggest changes you've seen in the field?

FMJ: There have been plenty. Of course there is the proliferation of market players, public and private. One relatively recent development is the emergence of non-honoring coverage as the leading product under the rubric of PRI. Another is the burgeoning of treaties—BITs and MITs—and of arbitrations that proceed from them and from investment contracts between companies and sovereigns.

I discovered that PRI was intellectually challenging and wide open for innovation. It was at the juncture of international business, economics and politics… And it brought me into contact with many fine and talented people. How could you not love a business like that?

That's had a big impact on the way foreign direct investment risks are dealt with. I've heard people suggest that international arbitration kind of moots the need for PRI. I disagree. Ask yourself this: Would you rather have a paid claim or an expensive ticket to a prolonged arbitration bout with a sovereign, and maybe an award that you can then try to enforce? But I have no problem with arbitration. It's good for investors and for underwriters too.

(Continued on page 8)

An Interview with Our Editor (cont'd.)

JD: What developments would you like to see in the PRI marketplace?

FMJ: I'm keen on product development, better and more coherent policy wordings, and on creativity in the market. I think the envelope already gets pushed a lot, but mostly in the shadows on a case-by-case basis, not so much in boilerplate policy language. Anyway, there's always room for new things, because new problems and situations keep arising and there are lots of clever underwriters, not to mention aggressive clients and advisers. I'd also like to see more information on claims come to light. I know that's hard, and there are good reasons for underwriters and policyholders to cherish confidentiality, but claims are what this PRI business is all about. We learn from claims, even those that aren't valid under the policy, and paid claims validate the product—and the insurer.

> I'd also like to see more information on claims come to light. […] [C]laims are what this PRI business is all about. We learn from claims, even those that aren't valid under the policy, and paid claims validate the product—and the insurer.

JD: Are there any current world events that are particularly interesting from a PRI standpoint or in your opinion likely to generate substantial claims?

FMJ: Fragility within the Euro zone, upheavals in the Middle East, crunch time over Iran—there's plenty out there to dread, but it isn't obvious whether and how such events will translate into PRI losses and claims. Surprises could come elsewhere. In this business you learn to expect the unexpected.

JD: What do you do in your free time?

FMJ: I'm always busy with the details of life. I do some *pro bono* work. Also, I write novels that almost nobody reads and I have a puppy that takes me for long walks and is training me to do his bidding. ■

Jordan L. Dansby *is a recent addition to the robert wray PLLC team. Since joining the firm, he has been involved in numerous asset-backed aircraft financing transactions and has supported the firm's microfinance clients on overseas regulatory matters.*

Mr. Dansby joins robert wray PLLC from the Export-Import Bank of the United States of America, where he served as a clerk in the Office of the General Counsel and supported attorneys on project and trade finance deals and assisted with numerous inter-agency policy and administrative matters.

about this newsletter & about robert wray PLLC

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