

IntAP, the alliance of European reinsurers created to defend against asbestos and pollution-related recoveries from London insurers, is enjoying a new relevance, finds **Adrian Leonard**

European defence force

Masterboiler Company is practically swamped by asbestos claims. The industrial manufacturer, launched in 1954, builds boilers at Energyville, New York for electricity generators. From 1955 to 1979 it constructed 20 such systems, and during that time it had just one primary and excess insurer: London's Blackhole Insurance Company. Under the premises coverage provided by the policies, Blackhole has indemnified asbestos-related compensation awards paid by Masterboiler to its injured and unimpaired former employees.

Europe's BlackForest Reinsurance Company has a ten per cent share of Blackhole's excess of loss treaty. BlackForest has balked at the insurer's attempt to recover \$810 million under premises cover based on an 'occurrence per installation' approach to premises claims, and instead reads 'occurrence per victim' into the intent of the wording. The dispute is to go to arbitration under New York law. If Blackhole fails, it

intends to propose an 'occurrence per toxic substance' interpretation of the asbestos-related claims.

These details are fiction, of course, but the scenario is all too real. European reinsurers are facing a massive third wave of claims for asbestos-related indemnities, many paid under the premises coverage of US commercial insurance policies, and the potential cost is enormous. Hardly a quarter passes without the announcement by an insurer or reinsurer of a major reserve strengthening to cover asbestos-related losses. Policy coverage is being stretched to its limits; wordings are being dissected syllable by syllable.

The re-emergence of swelling US asbestos claims has given new importance to IntAP, the International Alliance of Asbestos and Pollution Reinsurers. In mid December, a who's-who gathering of claims managers from 38 European and Asian reinsurers, both active and ceased, will stage a mock arbitration of the Blackhole/BlackForest dispute. Their

goal is to better understand the laws governing insurance and reinsurance claims in the various jurisdictions that count when considering reinsurance recoveries related to latent disease claims paid in the US and channelled through London to foreign reinsurers. The mock arbitration is just one IntAP initiative intended to help its members dispose of their asbestos and pollution claims emanating from London.

IntAP was established in December 1991 as a co-operative venture to help deal with the relationships between London market insurers and their European reinsurers. Its stated purpose is to provide 'an instrument for reinsurers to better match the difficult task of running off their discontinued commitments with their London market reassureds, Lloyd's syndicates and London market companies, since the '50s affected by US latency losses, including asbestos, pollution, and other health hazard issues.' IntAP was formed at the initiative of Cologne

Re after the reinsurer, along with Munich Re, Swiss Re, M&G Re, Gerling Global Re, and NRG, met with the London market's Asbestos Working Party to establish LARI, the London Asbestos Reinsurance Information, a standard form for reporting asbestos-related reinsurance claims.

'IntAP arose out of the need for information,' says Graham Jackson, general manager of the London branch of IRB Brasil Resseguros SA, and IntAP's London representative. 'Reinsurers of London market companies and Lloyd's syndicates needed information to verify the asbestos-related claims that started to appear in the 1980s. Although it may have been clear to London market insurers which asbestos-related claims were covered and for what amounts they were liable, it was far from clear to many of their reinsurers whether these claims were covered under their reinsurance treaties,' explains Jackson. 'As for the latest wave of claims under non-products policies, the jury is out. We have a lot more investigation to do to assess whether we are liable to pay those claims.'

Jackson says that IntAP members have paid 'a large slug of the asbestos claims that have come through, but have resisted them when they thought they were not liable to pay.' New coverage theories, such as those that seek indemnification under premises cover, mean more work for IntAP – and further, serious examinations of reinsurers' liability under contracts often issued decades ago.

IntAP's ultimate goal, as stated in its mission, is: 'To help both parties [to a reinsurance contract] negotiate a final release on all US latency losses, by commutation or other means, in order to leave aside controversial issues and reduce administration costs on both sides.' This goal reflects a remit which has evolved since the early days when IntAP's technical focus was on analysing claims information. In the first half of the 1990s, IntAP received and processed

London market insurers' claims data, in order to produce reports allowing members to assess their APH exposures and adjust their inwards LMX claims. The organisation faced a lull when the data flow dried up (presumably because insurers opted to cease providing it), but saw a new opportunity when NewCo (later Equitas) was formed, pronouncing its desire to commute outwards contracts where possible.

'We changed to become an organisation dedicated to finding tools and information to help members shut down their asbestos and pollution exposure once and for all,' recalls Jackson.

'We developed a pro forma standstill agreement, which is the first step in a commutation – an agreement to agree – and it ensures that arbitration is avoided in the meantime.' In addition, he said, the standstill agreement has provisions to stop the clock on claims, to agree interim payments on account, and to establish a commutation time frame.

The organisation comprises two operating units, including IntAP eV, a German not-for-profit association whose purpose is to educate and assist its members. Its technical meetings include events such as the mock arbitration described above, panel discussions, and presentations

to get involved in coverage issues); and the impact of the Fuller-Austin decision (in which a Los Angeles court ruled that insurers must fund a bankruptcy trust for Fuller-Austin to the limits of policies, including those triggered by unreported asbestos claims, even though court-ordered damages have not been assessed against the insured. The decision requires excess and umbrella insurers to drop down and contribute to the fund).

IntAP Limited, in contrast, was incorporated in the UK in 1999, and exists to provide more specific services to members, including assistance with commutation. IntAP Ltd acts on mandates from individual IntAP eV members, groups of members, or associated third parties, usually under negotiating power granted by specific members for specific cases, to dispose of asbestos and pollution claims from London cedants.

'The favoured route is commutation, and by and large, we are a long way down our agenda to commute our members' London exposures,' says Jackson, managing director of IntAP Ltd, which also provides operational assistance to its members, including services such as inspection of records.

All commutation agreements hammered out by IntAP on behalf of

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Graham Jackson, IntAP

by individuals expert in various areas of the asbestos problem. Recent topics considered and assessed include the Equitas-inspired asbestos insurance and reinsurance documentation requirements [for more details on documentation requirements see the article about Equitas on page 29]; the remit and activity of the Coalition for Asbestos Justice (formed by US insurers in 2000 to defend primary claims, and which has pledged not

its members are confidential, but the group is widely known to have been instrumental in negotiating out a standstill agreement between Equitas and member reinsurers struck several years ago. It is understood that some IntAP members chose not to subscribe to the Equitas deal, which was designed as a precursor to commutation, but most did, giving finality to a large portion of their London asbestos exposures. ▶

'We have been particularly active in pools,' Jackson says, noting that they present a particular challenge. 'Everyone has a very small share, so unless you can get a cohesive group, it is difficult to make progress, but if we hear of a commutation offer from a cedant to a pool, we contact IntAP members and invite them to join.' IntAP will look for common ground among the members, negotiate with those goals in mind, and, when it has reached a prospective agreement, put the details to the relevant reinsurers. Members are then free to agree the terms of the commutation, and are required to draw up their own releases with the relevant cedant. The largest such agreement so far included about a dozen IntAP member companies, who shared the expenses of negotiating the commutation framework. In smaller commutations, IntAP charges a contingency fee.

In contrast to commercial commutation service providers, IntAP members are required to recognise formally that only limited liability resides in IntAP. That means the organisation is not required to carry errors & omissions insurance. IntAP also avoids the overhead costs and promotional expenses of commercial competitors. The cost savings are passed on to members. Thus IntAP charges about two thirds of the prevailing commercial rate for its services. Since the business side of IntAP was formed in 1999, more than half a dozen agreements have been negotiated, almost all on behalf of multiple members.

Following its Cologne Technical meeting, IntAP expects to host a booth at the Association of Run Off Companies' commutations Congress in London in March, providing facilities for those IntAP members who may need them, then to prepare for June's Rendez-vous in Norwich, at which IntAP's spring meeting is traditionally held.

In the meantime, the climate for multi-member group commutations

IntAP EV membership at 1.1.2003

Aegon, The Hague, Netherlands
 AGF, Paris, France
 Assubel-Vie SA, Brussels, Belgium
 AXA Versicherung Aktiengesellschaft, Cologne, Germany
 AXA Corporate Solutions, Paris, France
 AXA Royale Belge, Brussels, Belgium
 AXA Schade NV, Rotterdam, Netherlands
 Bulstrad Insurance and Reinsurance Co Ltd, Sofia, Bulgaria
 CTR Compagnie Transcontinentale de Réassurance, Paris, France
 Copenhagen Reinsurance Company Ltd, Copenhagen, Denmark
 DARAG Deutsche Versicherungs-und Rückversicherungs-AG,
 Berlin, Germany
 ELVIA Schweizerische Versicherungs-Gesellschaft, Zurich,
 Switzerland
 FGU Insurance Corporation, Manila, Philippines
 GE Frankona Rückversicherungs-AG, Munich, Germany
 General Cologne Re Rückversicherungs-AG, Vienna, Austria
 Gerling Globale Rück, Cologne, Germany
 Groupama, London, England
 Ingosstrakh Insurance Co Ltd, Moscow, Russia
 IRB, Brasil Resseguros SA, London Branch, London, England
 Kölnische Rückversicherungs-Gesellschaft AG, Cologne,
 Germany
 LWAB, Stockholm, Sweden
 Mutuelle Centrale de Réassurance, Paris, France
 Niedersachsen Versicherungs-Aktiengesellschaft, Hamburg,
 Germany
 NRG Victory, London, England
 Oslo Reinsurance Company ASA, Oslo, Norway
 Partner Re, Paris, France
 Provinzial-Feuerversicherungsanstalt der Rheinprovinz,
 Düsseldorf, Germany
 Riverstone (Stockholm), Stockholm, Sweden
 Schwarzmeer und Ostsee VAG – SOVAG, Hamburg, Germany
 Schweizerische National-Versicherungs-Gesellschaft, Basle,
 Switzerland
 SCOR Réassurance, Paris, France
 Sirius International Insurance Corporation, Stockholm, Sweden
 SNS Reaal Groep, 's-Hertogenbosch, Netherlands
 The Toa Reinsurance Company, Tokyo, Japan
 The Yasuda Fire & Marine Insurance Co, Ltd, Tokyo, Japan
 Transatlantica Reinsurance Co NV, The Hague, Netherlands
 Trygg Hansa, Stockholm, Sweden
 Winterthur Schweizerische Versicherungs-Gesellschaft,
 Winterthur, Switzerland

is getting more challenging. Even cedants keen on commutation may prefer a divide-and-conquer strategy when approaching reinsurers, and those facing great uncertainty over

the level of future health hazard claims may be reluctant to fix the value of their reinsurance asset, as the asbestos claims mountain continues to rise. ●