International Insurance Interest Group
Volume 25 • Number 2 • September 2011
International Perspectives

Against the Gods and Against the Odds

A Look at How India Is Reacting to the Ever-Changing Face of Risk

by Aditya Khanna and Anuraag Sunder, CPCU

Aditya Khanna is senior vice president of Almondz Insurance Brokers.

Anuraag Sunder, CPCU, is principal consultant of PwC India.

Circa 1960, India cartoonist R.K. Laxman's "Ordinary Indian" or characters in the Indian TV series *Malgudi Days* appeared reasonably content with their daily grind of nine-to-five jobs, vegetable shopping, teaching kids' schoolwork, neighbourhood chat, followed by one to two hours of Doordarshan on EcTV in the evening. Ah, those were the good old days. Today's "aam aadmi" (or "Common Man") juggles between a choice of multiple modes of transport to his office — train, metro, cab, pool car, personal car — flexi workstations, perhaps more than one mobile phone number, if not the endless choice of handset models, several credit/debit cards, multiple bank accounts, multiple email IDs — usually at least one official and one personal — different time zones and the resulting "calls," different brands of television sets and nearly 400 channels. Today, choices have increased manifold and so have our exposures to living.

This growing complexity of daily existence provides a window to the growing complexity of risks that we, as a society, face. Today, we are unarguably more exposed to newer and more complex stress points or risk ulcers. For people reaching adulthood around or earlier than the economic reforms of the '90s, stress levers include their personal health and healthcare expenditure, depending on varying states of their economic capabilities, pensions or superannuation, an aspect perhaps their parents might have never bothered about due to varying comforting factors, employment — good private sector jobs are only as secure as the last appraisal, or even security. These are at great variance

Continued on page 2

What's in This Issue

Against the Gods and Against the Odds

Continued from page 1

from the previously perceived risks of acquiring good education, securing government employment, improving the prospects for marriage and security against eventualities. Most of the recently growing risks were well absorbed within the larger confines of joint families.

Government has also recognized and responded with various measures including the National Disaster Management Authority, New Pension schemes, Rashtriya Swasthya Bima Yojana, National Rural Health Mission, National Rural Employment Guarantee (NREGA) and other such initiatives. These may be seen to benefit Laxman's common man, and through his supposed betterment, the overall health of the economy. What this entails is that the changing risk profile is being responded to by appropriate initiatives both at the individual level and, as we shall see, at the corporate level as well.

Corporate existence has turned out to be more dynamic and fast-paced than it was yesterday. The previously perceived high risks of asset protection, fewer avenues of financing, license approval, better quality of imported products, or pitched corporate "wars" of the takeover wave in the '80s, have given way to newer forms of risks that may range from complex geo-political, societal, governance, merger and acquisitions, to geo-environmental ones like pollution, oil spills, nuclear contamination, or the more politically sensitive such as the displacement of native inhabitants following industrial development. Corporate institutions are now increasingly benchmarked on corporate governance, ethics, environmental sensitivity or employee friendliness. Corporations are working in an 'open' world where any perceived wrong action may be judged, analyzed, juried and tried in cyberspace even before an official press release may be issued. As much is written about the CEO's golf swing as about his latest merger deal. Being proficient or efficient is no longer good enough. It is a complex world out there!

It would thus be imperative to pause at this stage and gather some of the new and complex risks to which corporations are already or becoming exposed, the idea being to bring to the forefront the changing risk profile and desist from providing a quick-fix, snap-finger solution. Not that the solution cannot be conceived but finding one is potentially a "risky affair" and a subject worthy of much deeper scrutiny and examination.

An Arab proverb says, "The mouth that eats should not talk, for it risks swallowing a fly."

Over the last few years, Indian business houses have gone global. Today, Indian conglomerates are owners of business groups from South Korea to Europe, Africa to Latin America, and the U.S. to Japan. At the same time and following post-strategic initiatives in 1991, markets of Indian businesses have also spread far and wide with trading volumes (increasing exponentially even) and businesses are breaking through new customer territories. As an Indian company's global footprint has increased, so has the exposure to new and complex forms of risks.

While traditionally we have been looking at risks relating to acts of God and man-made perils, there is a growing awareness of newer perceptions of risks in businesses. While it is agreed that some of these have been present in the past as well, the real difference, however, is the degree of increasing frequency and prominence the issue seems to be gaining, threatening to swamp the very existence of the businesses. How much of these risks may be insurable or what could be a comprehensive and most effective way of managing them is a much larger issue. The starting point might be awareness of the changing risk profile itself before embarking on the obvious.

Risks bearing an immediate and hard impact for Indian businesses:

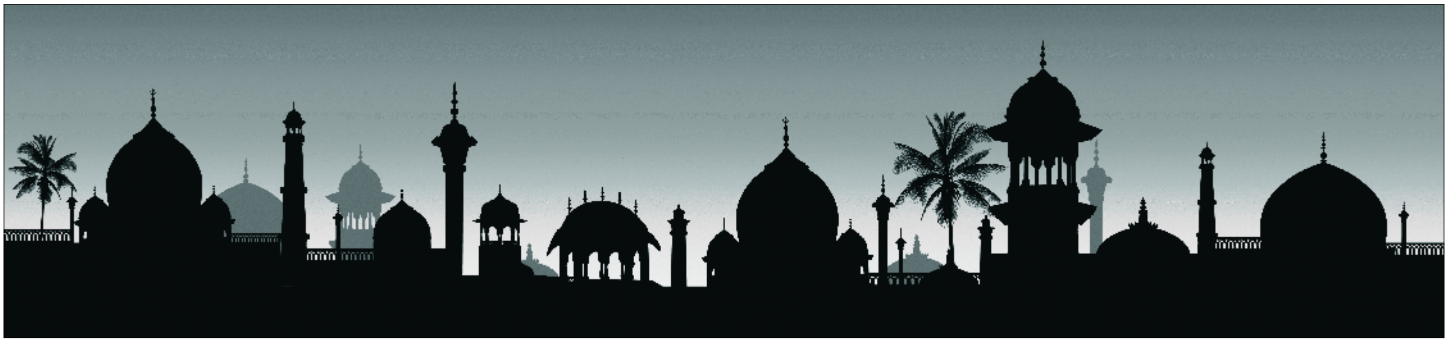
(1) Political risks governance — government and corporation.

(2) Volatility of supplies and price — commodity/raw materials.

(3) Geopolitical and geoeconomic.

(4) Climate change.

(5) Technology — theft and obsolescence.



Governance — Government and Corporation

Governance failures create and exacerbate systemic risks and expose the constituents to a greater degree of uncertainty. These risks have been the watershed of many an institution in the recent past. Recent instances of unrest in the Middle East and North Africa highlight the deafening gaps between the governed and the governors. Loss of faith, trust, confidence, lives and a great amount of economic backpeddling lead everyone into a zero-sum game. For corporations, examples of Arthur Anderson, Enron, Lehman Brothers and the casualties of the 2008 economic crisis, elucidate the lack of governance structures. Closer to home, both 2009 and 2010 have gone down in history as two of the most acerbic periods from a governance perspective. Analysis of the reasons, their implications and inquiry have resulted in "governance and/ or trust deficit" as outcomes, further eroding the confidence of businesses. Latest FDI factsheets from the government of India suggest a 50 percent drop in the FDI in January 2011 over January 2010, or a 29 percent drop (on a today basis) as compared to January 2010 — perhaps a result of this governance deficit?

Governance issues can lead to collapse of the financial structures of an economy such as banking systems or even sovereign defaults in extreme cases (U.S., Greece, Ireland and now Portugal). There have been immediate social adjustments through push to domestic demand rather than exports; for instance, one can regard the various financial stimuli provided by countries in 2008. It can also lead to currency adjustments and protectionist methods. On the micro-side, governance failures can also lead to a flurry of illegal activities, which then back-feed into further governance deficit, thus creating a downward spiral. A natural corollary of such events is high pressure for insurance. Trends have suggested an upswing in claims during times of overall chaos and catastrophe.

With Indian corporations going global, exploring new markets, picking up infrastructure contracts in new markets, investing and creating industrial conglomerates, exposures to such risk which are 'political' can never be exaggerated. Both organizations in the public sector and those privately owned are affected with varying degrees of sensitivity.

For the insurance environment, such factors show trends that are catastrophic in nature and not isolated incidents. Panic reactions are common in the market where relevant products fail to respond to the market need when they are required most.

Volatility of Supplies and Price — Commodity/ Raw Materials

India's vulnerability to commodity price mismatch has been demonstrated more than a reasonable number of times in the recent past. From the food crisis of 2008 to the recent onion and sugar scarcity, fragile commodity supply structures become more and more visible. For the corporate entities, commodity prices have reflected volatility, especially in metals like copper and silver. The international price per barrel of crude and its direct impact on company and household budgets remains a matter of discussion. Companies have been taking measures to not only hedge against such volatility but also ensure supplies of raw materials in the long run. These events become glaring in the eye when looked at from the long-term view of increasing population, greater pressures on these resources with increasing consumption on one hand and reducing farm land/ produce, shift of land use for commercial purposes, etc., on the other. Supply-side capacity issues are steered through technological interventions, process innovations and the like. In an emerging economy like India where need of inclusive development is felt stronger by the day, such approaches may lead to another set of political perspectives. Until the time technology intervention marries inclusive growth, risks of continually increasing prices or worse, a shortage of commodities, remains a real threat.

Increase in resource efficiency through technology and transformation of user behavior can reduce demand and pressures on finite resources. Motivation for sustainable consumption, governed through holistic perspectives, should reduce the propensity and impact of this risk.

Geopolitical and Geoeconomic

India's increasing business interests outside the political boundaries of the country expose Indian businesses to political and economic risks of the resultant geography. Recent developments in Egypt, Libya and Japan, including the economic collapse of 2008 (triggered in the U.S. and Europe), have brought this stark reality to life.

Recent events in the Middle East saw several Indians who had emigrated years

Continued on page 4

Against the Gods and Against the Odds

Continued from page 3

or decades ago, return to their homeland. Though they had no role to play in these incidents, they had to leave behind every asset or penny that they had made during their stay. Similarly, economies requiring specialized skills or experiencing a talent deficit open up floodgates for Indian passports without much ado. Famous last words have been heard by the Taj Group in the U.S. and Mittal before Arcelor-Mittal.

2008 witnessed the return of thousands affected Indians who either had no jobs in their adopted countries or were no longer welcome, given the job deficit amidst cries of protectionism and jingoism. Indian IT giants and celebrated BPOs were impacted due to their clients shutting shop in faraway locations. We were hit adversely for no act of omission or commission at our end.

Even when we look at scenarios leading to economic impacts of a global catastrophe like the 2008 depression or the recent spate of earthquakes, tsunamis and flash floods, Indian business interests have been exposed to and have suffered defaults from their customers on account of increasing insolvencies in their markets. It is a stark reality that such risks of buyer default are common in countries to which India is exposed in terms of trade destination. As per the leading specialist insolvency research firm, Hardman & Co, corporate insolvencies in the U.K. have a possible upward shift anywhere between 8 and 21 percent this year.

As we spread our wings from Telecom in Africa to Petrochemical in and around Latin America, Africa and Europe or mining interest in Australia, understanding and respecting geo risks is critical. Of late, Indian insurers have been reportedly besieged with requests of quotations from Indian MNCs to seek cover against political, credit and other risks. Traditional policy wordings provide only as much protection. Would it be time to consider alternative risk transfers for such high impact risks?

Climate-Related Risks

To assert that the Indian weather patterns are showing signs of change would not require intense debate. The only point of discussion remains by how much and when do we witness its impact.

Climate change has the potential to transform our lives in a phenomenal way. It may impact severely on temperature trends, precipitation and extreme rainfall, drought, river and inland flooding, sea storms, coastal flooding and also environmental health risks. Our infrastructural and managerial vulnerability to nature was exposed during the Commonwealth Games preparation when incessant rainfalls either stalled or disturbed the construction process. Population pressures combined with demands on limited resources bring climate vulnerability to a whole new level.

As part of a global study by Maplecroft projecting results for a 30-year period, India has been ranked as the second most vulnerable country to impacts of climate change. This is a significant statement as we prioritize our risk perceptions.

Acts of God have hit areas that were hitherto assumed to be "safe," and the vagaries of weather have become more unpredictable despite a host of simulated models of climate prediction. The accurate prediction of the monsoon remains as elusive as it was in the past. This has not made businesses surer of their forecasts and planning of operations, and thus increased brand/customer loyalty. Actuarial calculations and development of appropriate risk management techniques will only follow innovations on these fronts.

Technology — Theft and Risk of Outdating

The virtual world's control and competency to inflict damages on the real world are still not adequately mapped. Online crime has moved up the curve from password theft, phishing, credit-card theft, etc., to shaking up governments and personalities. The cyberworld has shaken up governments, presidents and dictators like never before through Wikileaks — the largest expose or theft of its kind. Social media tools like Twitter and Facebook have provided enough ammunition to evict ministers and heads of powerful sports bodies in India or Hollywood celebrities. Cybertheft brings action from countries that suffer from economic disparities but enjoy good access to global communication technologies.

The cyberworld's economy is fast-paced and dynamic. It also has a greater repository of WMD on a company's functional systems, data privacy, brand and consumer confidence. Today, cyber-insurance policies provide minimum or no coverage against such phenomenal exposures. As businesses increase their Web presence and seek online identity, cyberprotection becomes critical. ■

References

(1) Thomson Reuter and Hardman & Co.

(2) World Economic Forum.

(3) OECD.

(4) Department of Industrial Policy and Promotion, government of India.

(5) Maplecroft.

The UK Bribery Act 2010

by Birgit Vosper, CPCU

Birgit Vosper, CPCU, is a German lawyer working as technical regional claims manager at Chartis Europe, based in London. Working in the insurance industry since 2002, she has worked at GE Frankona Re, Munich Re and BritInsurance. She has been based in London since 2009.

The corporate community has become used to U.S. authorities investigating and prosecuting offences under the U.S. Foreign Corrupt Practices Act, the Italian government investigating re machinations of Silvio Berlusconi, German authorities investigating in Siemens headquarters about off-book accounts and back suitcases, and the European Union investigating about France paying bribes in low-income countries.

Until quite recently, the U.K. couldn't be added to the list. The reason for that might be lack of impetus by the Serious Fraud Office, or a result of the antiquated and scrappy nature of the U.K. law on bribery and corruption. With the enactment of the U.K. Bribery Act 2010, this might change quite quickly.

Don't let its title mislead you! It is worth continuing reading even if you think you have nothing to do with the U.K. It might be called the U.K. Bribery Act 2010; however, there is more to it than meets the eye.

To start with, the Bribery Bill received Royal Assent in April 2010; however, it came into force in April 2011. After its implementation, the new law will replace the U.K.'s much criticised laws on bribery and surely also require some guidance from the government and justice, considering it will put significant pressure on corporates doing business in the U.K.

Certainly, the U.K. Bribery Act applies to U.K. companies. But it also will have far-reaching implications outside of the U.K. Simply doing business in the U.K. or having a U.K. presence will create jurisdiction. The Bribery Act applies to companies with operations in the U.K., even if offences take place in a third country and are unrelated to the actual U.K. operations.

Offences may be prosecuted if they are committed by a British national or corporate, or by a person who is ordinarily a resident in the U.K. regardless of whether the act or omission, which forms part of the offence, took place outside the U.K. In addition, the corporate criminal offence will apply to commercial organisations that have a business presence in the U.K. (regardless of where the bribe is paid or whether the procedures are controlled from the U.K.). This extends the reach of the legislation well beyond the current regime.

What's it worth? Seven to 10 years of jail for individuals and unlimited fines for companies. Further consequences can be disqualifications, asset confiscations and company debarment from public contracts.

There are four offences — two general offences and two corporate offences. The general offences are paying and receiving bribes:

(1) Paying bribes. It will be an offence to offer or give a financial or other advantage with the intention of inducing that person to perform a relevant function or activity improperly, or to reward that person for doing so.

(2) Receiving bribes. It will be an offence to receive a financial or other advantage intending that a relevant function or activity should be performed improperly as a result.

Continued on page 6

The UK Bribery Act 2010

Continued from page 5

The corporate offences are:

(3) The bribery of foreign officials.

(4) And what seems to be the most important one, the failure of commercial organisation to prevent bribery. This offence will impose the biggest burden on companies to ensure their anti-corruption procedures are in place and function. While only companies and partnerships can commit this offence, within those organisations everyone can — with far-reaching consequences — get involved in bribery, even if senior management is not aware of any on-goings. Consensus of senior management or simply turning a blind eye to offences committed by or in the organisation can make senior officers personally liable.

Literally, a commercial organisation fails to prevent bribery if:

- A person associated with a relevant commercial organisation (which includes not only employees but agents and external third parties) bribes another person intending to obtain or retain a business advantage.
- Or the organisation cannot show that it had adequate procedures in place to prevent bribes from being paid.

Hence, the only defence in place is showing that the organisation had those adequate procedures to prevent bribery, and that means ensuring that those procedures are solid enough to stop any employee, agent, third-party administrator, or anyone else acting on behalf of the company, from committing bribery. The standard of proof is a civil one — on a balance of probabilities.

The obvious counter defence that companies' anti-corruption procedures were not effective is, in fact, the committed bribery, given that if it can be proved that the act was performed deliberately. The standard of proof is a criminal standard — beyond reasonable doubt.

The definitions of "relevant function or activity," "improper performance" and "adequate procedures" are fairly widely drafted. They will possibly detect certain types of normal business conduct and, therefore, require some further guidance and specification. With no doubt, there will be an initial round of litigation when offences start to be prosecuted. Surely the standards expected of a small private company will not be the same as those expected of a large multinational. Definition has to be acquired within context and by reference. However, in that respect, it is advised to translate literally this time and not via relation: the U.S. Foreign Corrupt Practices Act makes an exception for small facilitation or "grease" payments paid to officials to smooth relevant processes of official actions. The U.K. Bribery Act 2010 makes no such exception. All payments, no matter how small or routine, or expected by local customs, are illegal. ■

CPCU Society Annual Meeting and Seminars • Oct. 22–25, 2011 • Las Vegas, Nev.

The CPCU Society International Insurance Interest Group Presents

Oops! … I Have an Exposure in Mexico … and I Don't Know "Seguros"!

Sunday, Oct. 23 • 2:45–4:45 p.m.

This seminar is the first in a series the International Insurance Interest Group will present at CPCU Society Annual Meeting and Seminars. Each one will focus on a different country and its unique risks and exposures, which may affect people traveling for business or pleasure. This year's seminar focuses on Mexico and is designed for a broad range of attendees — from those with little or no foreign insurance or travel experience to those with extensive global experience but who would like an update on current insurance-related issues. Presenters will cover issues such as gaps in insurance protection for travelers with U.S. coverages, non-insurance risks created by local laws and ordinances, and global insurance concepts, including territoriality, repatriation, currency exchange risks and local customary coverages.

Filed for CE credits.

Moderator: **Mickey Brown, CPCU, ARM,** Marsh USA Inc.

Presenters: **Jorge E. Cacho-Sousa, CPCU, ARM**, MexiPass International Insurance Services LLC;
Bryan T. Tedford, CPCU, ARM, ACE USA

International Insurance in a Global Marketplace — Unique Concepts to Understand and Appreciate

Tuesday, Oct. 25 • 8–10 a.m.

In order to be internationally successful, it is necessary to understand and appreciate the differences among people, systems and cultures worldwide. The concepts discussed in this seminar will assist in bringing us all closer to this understanding and appreciation. The presenters will introduce more than a dozen concepts that are unique to international business/insurance. Utilizing the risk management process, we will examine the nuances that arise from differences in political and legal systems, religious and cultural mores, economic issues (inflation and currency) and unique geographies.

Filed for CE credits.

Presenters: **Mickey Brown, CPCU, ARM,** Marsh USA Inc.;
George E. Corde Jr., CPCU, Chartis International

The Middle East — Change Blooms During Arab Spring

by Tarique Nageer

Tarique Nageer is a senior vice president, Marsh Property Specialized Risk Group in Marsh's North American Property Practice. Based in New York, he is responsible for the placement of stand-alone property terrorism, Global Supply Secure and Wind X-ST insurance and advising clients throughout the decision-making process.

A wave of demonstrations, protests and acts of civil disobedience has swept through the Middle East and North Africa since December 2010. Dubbed "Arab Spring," these events have unfolded at a rapid pace; we have seen unrest in Algeria, Egypt, Libya, Jordan, Pakistan, Bahrain, Yemen, Syria, Tunisia, Oman and Saudi Arabia.

Considered the catalyst of Arab Spring, the Tunisian Revolution started in December 2010 with demonstrations caused in part by rising consumer prices, high unemployment, government corruption, and a lack of freedom of speech and political freedom. A four-week-long series of dramatic protests lead to the ousting of President Zine El Abidine Ben Ali in mid-January after 23 years in power.

The Egyptian revolution in early 2011 was arguably the most publicized. It began in late January as a series of protests and demonstrations; thousands gathered in Cairo's Tahrir Square demanding change. On Feb. 11, 2011, Egyptian President Mubarak resigned after nearly three weeks of massive protests, ending his 30-year reign.

Calls for the ousting of Libyan leader Muammar al-Gaddafi — and his staunch refusal to step down — initiated a civil war in Libya. Gaddafi, who rose to power in a 1969 military coup, continues to fight rebels and has vowed to die a "martyr." The United Nations imposed sanctions against the embattled regime, soldiers continue to defect from the Libyan army, and NATO forces are escalating assaults, leading some to speculate Gaddafi is likely to be removed from power in the near future. As of this writing, his political demise appears to have occurred.

In Yemen, conflict began early in the year with protests against government corruption, unemployment and a government proposal to modify Yemen's constitution. A deal mediated by the Gulf Cooperation Council (GCC) called for President Ali Abdullah Saleh to step down, variations of which he initially agreed to sign before backing out. As a result, protests gathered strength and violence broke out in many cities across the country. The situation continues to evolve and remains extremely volatile.

Since mid-January 2011, Syrians have staged ongoing acts of civil disobedience, including hunger strikes and protests. The government has responded with violence, killing hundreds of protestors and injuring scores more. Despite the army's engagement, protests continue.

The social, political and economic ramifications of these events will be felt for some time to come. The situation is fast-evolving and affects many countries in the Middle East and North Africa. Businesses need to prepare for both the short-term likelihoods and the longer-term possibilities. Companies with operations in the Middle East may face losses from threats such as business interruption, theft of and damage to property, disruption to contracts for both purchase and supply, late payments that potentially impair cash flow, and the need to evacuate and/or relocate employees. There are a number of property and property-related insurance implications

Continued on page 8

The Middle East — Change Blooms During Arab Spring

Continued from page 7

that companies with exposures in the Middle East and North Africa need to consider.

Insurance Implications

Property Damage

Companies with locations in affected areas may experience damage to their physical property. These organizations should begin to gather as much information as possible to prepare for the claims process. Take steps to mitigate losses as far as is safe and practicable. It is important to capture the damage for record purposes (i.e., photographs, video, etc.) and maintain separate accounting codes to identify all costs associated with the damage. Once the situation stabilizes, adjusting teams will be deployed on the ground to deal with losses on behalf of insurers.

Terrorism and Political Violence

We can expect a greater emphasis from insurers on monitoring and restricting their aggregate exposure to war and warlike events. This will directly influence the available terrorism and political violence capacity offered by insurers, which in turn may put upward pressure on pricing. Going forward, due diligence by insurers for countries where there have been political violence events will be amplified. Detailed business continuity plans (BCP) will be a necessity, and terms and conditions can be expected to tighten with rates likely to increase for areas with higher perceived risk.

Additionally, insurers may limit the number of days a quote will be valid; in some areas, the window may shrink to 24 hours. This is a direct result of the fast-moving nature of the Arab Spring events.

Most organizations have some sort of terrorism insurance, whether as a stand-alone policy or embedded in their property programs. This coverage, however, may not be sufficient for companies with interests in developing or unstable regions. Terrorism coverage is often incorrectly perceived to cover all violent human acts resulting in property and business interruption loss. A loss must meet the terrorism definition under the policy in order for coverage to apply. Certain types of events are typically excluded from stand-alone terrorism contracts, including:

- Strikes, riots and civil commotion.
- War and civil war.
- Insurrection, revolution, rebellion and coup d'état.

Exposures faced by companies in developing countries vary geographically and are not limited to "terrorism" as defined under most terrorism policies. For insurance purposes, such events may actually be considered "war," "civil war," or another political violence peril. Companies with interests in the region should consider purchasing political violence insurance, either on a stand-alone basis, or as part of a current terrorism program with a separate sublimit for political violence perils.

The stand-alone terrorism and political risk markets can offer broad political violence coverage to companies with locations in developing countries, including most Middle Eastern and North African countries. (Note: As is typical of insurance programs, restrictions may apply in certain countries until the current situation reaches its conclusion.)

Political violence policies are designed to respond to a broader class of perils in developing countries than only terrorism and commonly provide the following coverage:

- Sabotage.
- Malicious damage.
- Riots, strikes or civil commotion.
- Revolution.
- Rebellion.
- Insurrection.
- War and civil war.

Combined political violence and terrorism programs are structured to coordinate with a company's existing property policies, including any coverage under a property program for such perils as strikes, riots and civil commotion or in-country pool terrorism schemes.

Supply Chain

The events in the Middle East may cause some companies to experience a disruption in their supply chains. Organizations often have an inventory of thousands of suppliers, and there may be hidden dependencies and vulnerabilities not previously identified or evaluated. While each supply chain is unique, there are a number of general measures all businesses should consider. These include:

- Prioritize key suppliers and evaluate the inherent risks.
- Seek assurance from key suppliers over their own contingency plans.
- Try to reduce reliance on single suppliers where possible.
- Review and, if necessary, refresh internal contingency plans (i.e., identify alternative suppliers, increase stock levels or establish contractual relationships).

Immediate concerns for businesses with key suppliers in affected Middle East and North African countries:

- Seasonal and perishable goods need to assess the potential interruption to transportation arrangements.
- Discuss contingency planning with air cargo handlers to understand what arrangements they have in place.
- Review all affected supplier contractual agreements relating to the delivery of goods and services.

Perhaps most importantly, businesses should be involved in their supply chain. Understand the chain itself, its vulnerabilities, individual suppliers and potential impacts from a disruption. Do not assume that everything will simply be okay, but be proactive in monitoring and managing each link in the chain. ■

My Life … and What My Enrollment in an Insurance Course Did for My Career in Russia

by Natasha Legkonogikh Sipkova, as told to Cinda Hartman, CPCU, CLU

Natasha Legkonogikh Sipkova

Editor's note: The CPCU Society Northeastern Pennsylvania Chapter, through the initiative of **Cinda Hartman**, **CPCU, CLU**, sponsors a Russian student every year. Hartman recently received this note from **Natasha Legkonogikh Sipkova**, one of the success stories. To emphasize the obstacles that Sipkova has overcome, Hartman notes, "She does not mention how very dire her situation really was. Her father was murdered by Chechneyan rebels (a breakaway province fighting Russia), and that is what prompted her mother to get her to safety." Sipkova is truly grateful, saying, "Thanks for your kindness to me! I'll always remember our meeting and hope that it was not last one. And of course, if you or your friends or relatives would like to visit our city, I am always in touch and at your service." Here is Sipkova's story:

My story is about how a girl who aimed to get a higher education in a big city, and as the fates decree, instead went to St. Petersburg forever!

When I finished school at age 17, there was unrest in my hometown, Mineral Waters. All Caucasian cities suffered from tense situations, and in some moments, it seemed to me that we were on the verge of engaging in a civil war with Chechnya. As we had no other choice, my mother and I decided that I would go to a big city for studying. Naturally, the choice fell on Moscow — the capital of our great country, a city of great opportunities and great people. I entered a training course, and in a few months, I was in Moscow as a Moscow State University candidate. However, I couldn't become a student that year, and I thought about how best to prepare and try to make it into the university the next time. At that time, my brother, who lives in St. Petersburg, decided it would be better if we all lived in one city. He chose my university — one different from Moscow — and I later learned that it was one of the best in the city of St. Petersburg. Along with our mother, we chose the faculty and the profession — I would be an expert in insurance.

From that moment, I have begun the most wonderful time of my life. In one of the most beautiful cities in Russia, with a rich history, I had been studying economics as the student of the oldest university of St. Petersburg. I liked everything there: the culture, the landscapes, the city! A student's life seemed exciting and very busy. I have always taken my choice of a future profession very seriously. University knowledge alone was not enough for me; I got the opportunity to take the course, "Underwriting Fundamentals." It could have been much too difficult for me, were it not without the help of my teacher, I. Fomin, and his colleagues from the U.S. And thanks to Cinda Hartmann, CPCU, CLU, of Hartman & Lally Insurers Inc. Ms. Hartmann helped me, especially in communications and sponsorship. I failed to realize my own talent as an "expert" in insurance, but I often use the knowledge gained from these courses at work.

Two months ago, I got a job in the development department of a big holding company dedicated to the development of agriculture in our country. Fortunately, my education proved useful to me in developing projects at the level of business plans. Since insurance is an essential part of building any business, especially in a high-risk environment, the knowledge was valuable. Our authorities have created a number of conditions that help farmers in developing their farms. Unfortunately, the current plight of the village is quite difficult to change, and it requires a very large, long-term investment return that depends on many factors difficult to control: the weather, the tax environment and the spread of epidemic. It is important to properly assess the risks, and there is a need for some form of insurance to protect the company against these losses due to the loss of property or livestock. If it were not for my passion for underwriting, gaining the diploma on this subject and the courses I took, I could not act as a professional consultant on these matters.

I'm an economist, but hope in the coming years to build a career as an underwriter. At this point, it would be too difficult for me in terms of my current profession. Immediately after the university job, a job in an insurance company as an underwriter is impossible. Moreover, in our country, to begin a career in insurance "from scratch," starting from a trainee position, the wages are very low. I already had experience working as an accountant, and I was engaged in the financial analysis of the organization. Hopefully, this experience will be very helpful to me in more serious work in the future. After several years, with this experience in organizational finance, I can continue my passion for underwriting and may consider employment in the field of insurance as a true profession.

Renault — The Créateurs d'Automobiles' Are Driving the Change in Jurisdiction

by Birgit Vosper, CPCU

In October 2006, Antonio B., an employee of Renault, 39 years old and overworked, threw himself off the fifth floor of the technology center in Guyancourt. Ever since that, his family was trying to pass the responsibility onto the auto manufacturer, saying that the stress level and increasing pressure and workload of the employee had been ignored. The case was heard in May 2011 at the Court of Appeal of Versailles, and the manufacturer was held liable under application of the "faute inexcusable" rules, recognizing the presence of a moral harassment.

"La faute inexcusable," translated "inexcusable fault," is a notion mostly (if not quasi-exclusively) used in the field of labour law to qualify the seriousness of a fault of the employer vis-à-vis employees.

Traditionally, employers' liability is not an insured risk as such in France, since workers' compensation insurance is state-supplied as part of the Social Security (Sécurité Sociale) package financed by employers' payroll contributions.

The employee receives damages independent of the question of liability according to the Livre IV du Code de la Sécurité Sociale, which are specific performance (wage continuation and reimbursement of medical bills) or alternatively a lump-sum payment according to fixed rates (called Barème) in case restoration of the previous status quo of the employee isn't possible.

Further indemnification could only be gained in case of the presence of a "faute inexcusable de l'employeur." A "faute inexcusable de l'employeur" exists if the employer knew or should have known any hazards for the employee and didn't do anything in terms of prevention. If that can be established, then fault is assumed and the employer can only claim act of God or personal negligence of the employee to exculpate.

The indemnification contains:

- Art. L.452-2 des Code de la Sécurité Sociale: Damages of 100 percent of the salary.
- Art. L.452-3 des Code de la Sécurité Sociale: Compensation for pain and suffering (pretium doloris), aesthetic damages, the loss of pleasure and amenities in life, loss of career opportunities.

Even this further indemnification was paid via the national Sécurité Sociale, but could be reclaimed from the employer.

However, injured employees are now entitled to sue their employer for an additional indemnity under the doctrine of faute inexcusable in certain circumstances. Case law has started to considerably broaden the scope over recent years and faute inexcusable claims are increasingly common. For cases involving death or serious injury, they have become virtually systematic.

In a decision dated June 18, 2010, the French Constitutional Court (Conseil Constitutionnel) initially opened up the opportunity to claim indemnification in addition to those named in Art. L.452-2 and Art. L.452-3. Those additional compensations are payable by the employer and not by the national Sécurité Sociale. They include:

- Claim for further training.
- Loss of opportunity to start a family.
- Rebuilding costs for flat/house and car.
- Various extra costs.

A French General Third Party Liability policy excludes death/injury by employees; however, traditionally French insurers have always re-included coverage for faute inexcusable de l'employeur (usually with sub-limits and/or annual aggregated limits) and often also for a much less common exception called "faute intentionnelle."

It is important therefore, in Global Comprehensive General Liability Programmes written outside France but covering any French entities, to make sure that the coverage under the local French policy includes the relevant extension.

Where the policy contains a definition of "faute inexcusable de l'employeur," it needs to be amended to include the latest case law.

Please note that in Monaco, workers' compensation insurance is obligatory and not supplied by the state. ■

CPCU Society Europe Chapter and International Insurance Interest Group Hold Joint Meeting

by Donald M. George, CPCU, MBA, ARM, AU

Donald M. George, CPCU, MBA, ARM, AU, is the U.S. casualty underwriting manager for Royal & SunAlliance Insurance Agency (RSA) in New York and a member of RSA's Technical Academy for liability. George has worked at RSA since 2002 and in insurance since 1986.

On May 13–15, the CPCU Society Europe Chapter held its spring meeting in the lovely city of Prague, Czech Republic. It was kind enough to invite the CPCU Society International Insurance Interest Group (3iG), as many of the respective members are in both, or have an interest in international insurance issues.

The event, put together by **Dan Hess, CPCU,** president of Abraxas Insurance AG of Zurich, and incoming Europe Chapter president, was full of both educational and networking events. The weekend started off with a networking event at a typical Czech Beer Hall with genuine Czech food, beverage, and décor. The group was the last to leave, as the windows were lit, and we thought it was still day. In either event, the fine conversation on topical insurance issues would have kept us there.

Next was the chapter meeting, chaired by current Europe Chapter President **Bryan T. Tedford, CPCU, ARM,** of ACE in New York. Some future event dates were decided. The fall Europe Chapter meeting will be held in London on Sept. 23–25, 2011. **Birgit Vosper, CPCU,** of Chartis International in London, is coordinating the event and promises some excellent keynote speakers to up your CPD. Additionally, we will celebrate the 10th anniversary of the Europe Chapter charter. This meeting will be held in London on May 10–12, 2013.

Mickey Brown, CPCU, ARM, chairman of the 3iG, delighted the attendees with the schedule of seminars and networking events that 3iG is promoting. These include webinars and the in-person panels to be presented at the CPCU Society Annual Meeting and Seminars in Las Vegas. There, on Sunday, Oct. 23, from 2:45 to 4:45 p.m., the

Continued on page 12

Attendees at the Prague meeting. Front row: Ralph Ronnenberg, CPCU; Anthony L. Cabot, CPCU, ARM; Anthony E. Feinberg, CPCU, ARe, RPLU; Stacey Hinterlong; John R. DiForte, CPCU; Thomas Seid; Dan Hess, CPCU. Back row: Gregg A. Piltch, CPCU; Donald M. George, CPCU, MBA, ARM, AU; Warren L. Farrar, CPCU, CLU, ChFC; Bryan T. Tedford, CPCU, ARM; Birgit Vosper, CPCU; Doug Adams; Pierre Fonteyne, CPCU. Not pictured: Mickey Brown, CPCU, ARM; Michael A. Leinenbach, CPCU, ARM.

CPCU Society Europe Chapter and International Insurance Interest Group Hold Joint Meeting

Continued from page 11

3iG will present, "Oops! ... I Have an Exposure in Mexico ... and I Don't Know 'Seguros'!" and on Tuesday, Oct. 25, from 8 to 10 a.m., 3iG will present, "International Insurance in a Global Marketplace — Unique Concepts to Understand and Appreciate." In addition, 3iG member C. Michael Dower, CPCU, will present a webinar, "Worldwide Liability and Its Effect on the Local and Global Marketplace," on Tuesday, Sept. 13, from 3 to 4 p.m., *at your computer!* Also, 3iG will sponsor the now infamous cocktail party and co-sponsor the Monday night dinner.

The Prague meeting also included some wonderful educational events. John R. DiForte, CPCU, gave an ethics presentation on "The Power of Sorry." Thomas Seidl, CPCU, presented a business discussion on "Insurance in the New Market Normal," discussing the impact of Europe's Solvency II, and new international accounting standards affecting brokers, agents and insurers, as well as how you can use these to invigorate and expand your business. Anthony L. Cabot, CPCU, ARM, offered a discussion on challenges and opportunities for doing business in the Middle East based on his business experiences in Dubai. The presentation included practical tips as Tony is starting up in a country foreign to where he is based, and recounted some aspects that are not usually contemplated. Lastly, Stacey Hinterlong gave a presentation on "Social Media for Business Communication," and ideas were discussed for utilizing Facebook and LinkedIn to market the 3iG and Europe Chapter, including all the resources they have available for members.

A special treat was the presence of CPCU Society President and Chairman Warren L. Farrar, CPCU, CLU, ChFC, who gave a "state of the Society" update. Such candor, transparency and access were well appreciated.

Further networking was done at the ultra-chic restaurant, Kampa Park, in the castle district of Prague. Again debating the international insurance issues of the day, the attendees closed out the restaurant. With the rain outside and fine dining and international insurance knowledge inside, it was no wonder they stayed late to solve the global insurance issues! ■

In the Wake of the Japan Quake — Insurance and Risk Management Issues

by Mickey Brown, CPCU, ARM

Mickey Brown, CPCU, ARM, is a senior vice president at Marsh USA Inc. in Atlanta, Ga. He has more than 20 years' experience in international finance, mergers and acquisitions, risk management and commercial insurance brokerage. Brown is a graduate of Loyola College in Baltimore, Md.

When the epic Sendai earthquake struck Japan, followed by a tragic tsunami, causing critical nuclear plant damage and radiation leaks, there should certainly have been some insurance coverage, right? The answer is, "maybe yes," and "possibly no," despite the triple disaster occurrences. In any case, whether personal claims (such as homeowners or renters coverage) or commercial claims (such as property or business interruption coverage), they should have been filed immediately to put all insurance companies on notice of loss.

The earthquake was located 130 kilometers (80 miles) east of Sendai and 373 kilometers (230 miles) northeast of Tokyo, at a depth of 32 kilometers (20 miles). Per the U.S. Geological Survey and the Japanese Meteorological Agency, the earthquake's magnitude was measured at 9.0, making it one of the most powerful worldwide natural disasters, and the largest in Japan, since modern recordings began in the 1800s.

Thousands of buildings were destroyed in northern Japan, despite the country's very strict building codes. Risk modeling estimates forecast that economic losses may range to ¥32.3 trillion (~ $400 billion). Approximately 10 percent of the losses are likely to be covered by insurance, including business interruption and contingent business interruption losses. The insured loss estimates are nevertheless significant and could total as much as ¥3.2 trillion (~ $40 billion). Note: Motor (automobile) and watercraft insurance policies typically do not contain earthquake exclusions.

The majority of Japan residences and indigenous businesses do not purchase earthquake insurance, so if earthquake is the cause of loss, many will be without insurance coverage. However, some policy contracts separate flood losses (caused by the tsunami) as a unique peril, and therefore flood risks could be insured, assuming of course that flood perils are also not excluded from the policy. As the proximate cause of loss is a confusing matter, the insurance companies are closely reviewing how tsunamis are addressed in their policy contracts. Ultimately, many claims will end up in a court of law for resolution. As insurance is considered a contract of adhesion, with the policy wordings unilaterally written by the insurance company, the courts will interpret ambiguities in favor of policyholders, since they had no input into the contract.

While individuals and organizations with direct damages may or may not have insurance coverage, many worldwide companies that rely on Japanese manufacturers have experienced a disruption in their supply chains, resulting from the triple disasters. For example, supply chain disruptions can be created by a lack of parts, infrastructure, or transportation problems. To protect against supply chain risks, companies should develop alternate suppliers and purchase contingent business interruption insurance coverage, as proper business continuity planning may be the difference in surviving a key supplier (or customer) interruption.

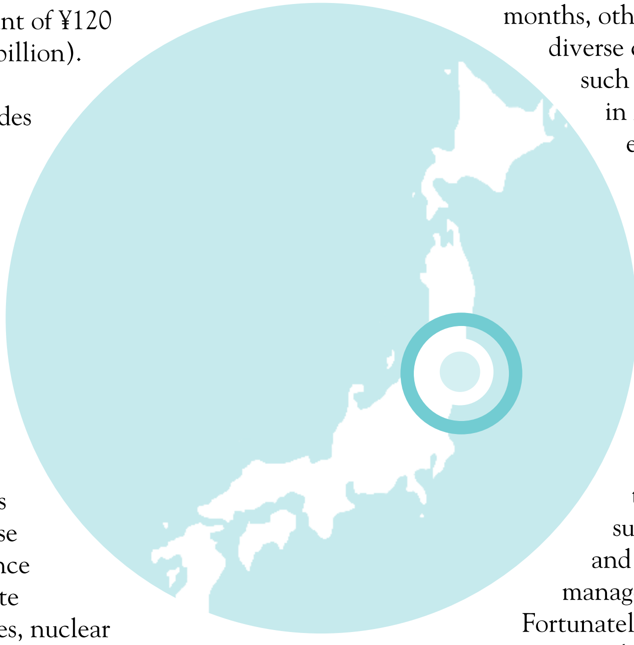
With respect to nuclear or radiation risks, there is a standard exclusion for such perils in personal and commercial insurance policies, so one must claim for damages against the nuclear institution itself (or its insurance company). Japanese law imposes strict liability on nuclear operators, as does U.S. law, and has established a nuclear liability program to provide recovery from nuclear accidents.

All nuclear operators must have financial protection provided by nuclear liability insurance from the Japanese Atomic Energy Insurance Pool (JAEIP) in the

Continued on page 14

In the Wake of the Japan Quake — Insurance and Risk Management Issues

Continued from page 13



minimum amount of ¥120 billion (~ $1.5 billion). However, this insurance excludes the perils of earthquake and tsunami, so related nuclear liabilities will revert to the Japanese government. While Japanese nuclear facilities can also purchase property insurance to recover on-site property damages, nuclear property insurance available from the JAEIP also excludes the perils of earthquake and tsunami. Since both property and liability policies issued by JAEIP specifically exclude earthquake and tsunami perils, the Japanese government will assume financial responsibility.

Unfortunately, some of Japan's food supply, including fish, milk and spinach, has been subject to higher than acceptable levels of radiation from the Fukushima nuclear plant. While the true extent of radiation exposure impact is unknown, there could potentially be long-term effects to consumer purchasing habits and food safety regulations. Organizations distributing food products inside of Japan and importing from Japan should carefully assess their food safety risk management and products' recall procedures. Specifically, the U.S. Food and Drug Administration (FDA) issued alerts on radiation in food, banning dairy and produce from Fukushima and other prefectures. The European Union and other countries are also restricting imports and closely monitoring Japanese food products for contamination.

The insurance industry is closely re-assessing its global loss exposure in the wake of the Japan earthquake. In recent months, other geographically diverse catastrophes, such as the floods in Australia, the earthquakes in New Zealand, and the tornadoes in the southeast U.S., have had a cumulative market effect. Moving forward, all industries need to assess their supply chains and related risk management programs. Fortunately, the overall insurance marketplace remains over-capitalized, and basic premium rates are flat to decreasing. However, earthquake rates are increasing by 25 percent-plus in Japan, 100 percent in New Zealand and 10 percent in other parts of the world. Insurance companies will more closely review underwriting data, such as building construction and locations relative to catastrophe risk zones, while emphasizing supply chain evaluations to minimize impact of contingent business interruption exposures. In closing, one will achieve the best insurance program results when demonstrating proactive risk and supply chain management initiatives to the insurance marketplace. ■

CPCU Society Annual Meeting and Seminars

Oct. 22–25, 2011
Las Vegas, Nev.

Agent & Broker/ International Insurance/ Leadership & Managerial Excellence/Reinsurance Interest Groups Dinner

Monday, Oct. 24
6:30–9 p.m.

Four interest groups — Agent & Broker, International Insurance, Leadership & Managerial Excellence, and Reinsurance — will hold a joint dinner. **Michael Shackleford, ASA,** a gaming consultant, will offer a crash course in gaming, entitled "The Wizard of Odds," at the combined interest group dinner. Attendees will get a refresher on the meaning of long-term probabilities and learn how professional gamblers think about risk when probabilities are known. They will also receive practical advice on gauging risk and responding appropriately, and how to improve their odds in a casino.

Tickets are required.

International Insurance Interest Group

Volume 25 • Number 2 • September 2011

International Perspectives

CPCU Society
720 Providence Road
Malvern, PA 19355
www.cpcusociety.org

Address Service Requested

10 Reasons Why You Should Attend the CPCU Society Annual Meeting and Seminars

1. Celebrate with the CPCU Class of 2011.
2. Spend four great days with the best and brightest in the business.
3. Hear exclusive insights from senior-level executives on today's hottest topics.
4. Sharpen your knowledge through the industry's finest array of educational programs.
5. Be inspired by compelling speakers to achieve your goals.
6. Learn new technical skills that you can put to use immediately.
7. Strengthen your leadership skills.
8. Find out how to take control of your career.
9. Network with your CPCU Society peers at special events.
10. Be energized to achieve your personal best!

The International Insurance Interest Group newsletter is published by the CPCU Society International Insurance Interest Group.

International Insurance Interest Group
http://international.cpcusociety.org

Chairman
Mickey Brown, CPCU, ARM
Marsh USA Inc.
Email: mickey.brown@marsh.com

Co-Editor
Bleu F. Bettencourt, CPCU
Aon Risk Services Inc.
Email: bleu.bettencourt@aon.fr

Co-Editor
Donald M. George, CPCU, MBA, ARM, AU
Royal & SunAlliance Insurance Agency
Email: don.george@us.rsagroup.com

CPCU Society
720 Providence Road
Malvern, PA 19355
(800) 932-CPCU (2728)
www.cpcusociety.org

Director of Program Content and Interest Groups
John Kelly, CPCU

Managing Editor
Mary Friedberg

Design
Leslie Higgins

Production Manager
Joan A. Satchell, PPPC