THE LMX SPIRAL

The LMX Spiral was a market phenomenon that developed within the London reinsurance market during the 1980s. It was built upon standard excess of loss (XL) reinsurances contracts and was caused by reinsurers reinsuring the same risks amongst themselves. An unprecedented series of catastrophes between 1987 and 1990 caused its collapse. The LMX Spiral had many undesirable features that distorted the XL market including: opacity, the concentration of losses upon the few, turning short tail losses into long tail ones and unpredictability. The case law does not condemn the LMX Spiral but instead focuses on the duties of underwriters. However, even a reasonable underwriter could do little to protect against potentially disastrous losses when underwriting risks within the LMX Spiral. This raises the question whether engaging in LMX Spiral business should be considered to be reasonable risk taking for an underwriter in the eyes of the law.

The presentation was followed by a discussion on, *inter alia*, the following topics:

- Arbitrage was seen as acceptable in some of the cases. However, some attendees commented that it was in reality part of the problem.
- Spirals are regular occurrences within XL markets (there were, for instance, small spirals caused by asbestoses claims or, more recently, the 9/11 claims).
- There is little case law on the issue of careless underwriting. This is partly due to the fact that underwriters owe no (or limited) duties to each other.
- In the current more stringent regulatory environment, a breach of a relevant statute or regulation may in itself establish negligence.

Caroline Bell

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