



The Value of Ecosystem Resilience to Insurers

In the 21st century we can no longer deny that we live in a connected world. Three unrelated top-of-mind examples bear this out:

- Mark Zuckerberg²⁷, has just become a billionaire through the IPO of Facebook – which is a social and now also a business connector
- A middle class teenager dresses the same whether you are in the USA, Europe, Africa or Asia - courtesy of global branding
- There are floods in Thailand and hard drive prices across the world spikes as global supply chains are disrupted...

Yet the idea of insurance as a global connector is not obvious. On closer inspection the insurance industry is exactly that – a global connector – it cuts across regions, nations, individuals, businesses, and industries to pool the funds from many insured entities to pay for the losses that some may incur. The industry effectively spreads risk over time and entities. In its capacity as “global risk pool provider” the insurance industry at large is an important contributor to global socio-economic well-being.



Ian Kirk, Chief Executive Santam

And although the insurance industry is not perfect and remains with work to do, it exists for a reason — the fundamental need for people to protect themselves against “risk exposures”, either as individuals or businesses. One of the critical “risk exposures” of our time is climate change.

Globally insurers have observed an upward trend in weather-related insured losses due to the increase in frequency and intensity

of extreme weather events and the increasing economic cost associated with them. A cursory glance at the global reinsurance catastrophe reports confirms that 2011 was the year with the costliest natural and man-made disasters on record. Our experience on the ground in South Africa bears this out, where we have incurred significant weather related losses in each of the last five years.

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Furthermore, these weather-related losses have been growing faster than insurance penetration, while insurance density remains low especially in developing countries. This is placing pressure on the availability and affordability of insurance, slowing growth in the industry, and most significantly, shifting greater risk exposure onto governments and individuals.

This trend is not good news for insurance and policyholders, insurance intermediaries, risk advisors, communities and governments and therefore needs to be addressed. A response that consists solely of insurance and re-insurance remodeling and upwardly rating of risks is not adequate, as it will decrease availability and affordability, a trend which is not in service of sustainable development, when one views this from the need and potential of a developing country.

In 2009 we embarked on a study with partners from outside the insurance industry to better understand what this means from a practical perspective to the risk on the ground in a municipal district called Eden in South Africa.

Eden is a rural district, small population and includes the coastal Garden Route. We wanted to understand the specific socio-ecological risks, present and future; the measures of socio-ecological resilience and the drivers of these risks and levels of resilience in the landscape.

We produced 3 key findings with significant implications for the insurance industry:

Climate changes are driving risks higher
Changes to ecological buffering capacity is as important as climate change
Real risk on the ground is the end result of many factors in a dynamic complex system

Read more about these key findings:
www.santam.co.za,
www.climatewise.org.uk.

On a macro level, this project allowed us at Santam to better understand the system dynamics between risk and resilience in a socio-ecological landscape and the role of the insurance industry in shaping societal behaviour.

On a micro level, it will eventually impact certain decisions that we make in terms of underwriting and risk exposure. We remain with much work to do to manage the risk factors under our control, but collaboration is required. On our own as insurers we cannot do much, but collectively we need to make the difference to ensure the sustainability of our industry.

Ian Kirk, CEO Santam Group



Andrew Geyer, IING President

Message from IING President

During my appointment as President of the Insurance Institute of Northern Gauteng on June 14th 2012, our financial position was really under pressure and had we a collaboration agreement with the Insurance Institute of Gauteng to support us financially. My mission was simple, we needed financial independency.

On September 22nd 2011, after reviewing successes on events held during that time, we decided to end our collaboration agreement with the IIG. We improved our liquidity from a mere R3000 to **continues on page 3**

more than R37 000 at the end of 2011. What made this extraordinary was that we did it without generating a single cent from membership fees.

We are continuing to make progress and have decided to stay with our current strategy and key focus areas that will be reviewed during the next election of council in June 2013. Here is some feedback on the key focus areas we will be concentrating on:

Brand and Reputation

We are still in a recovery process and are repositioning the IING Brand through our communication channels, by improving our image and displaying professionalism. Our website and our newsletter are the two main communication channels.

Looking back at the progress we made by comparing the “before and after”, we made huge leaps. To add to the aforesaid, we have also started to communicate via Twitter and Facebook. We might not have so many comments and likes yet, but we are there!

Looking at the website statistics, we had 620 hits the previous month and 12899 hits all together since our website upgrade. It may not sound like much, but for a recovering institute with little interaction with its members, that is great news. This proves that we are on the right track, communicate and attract interest.

Our newsletter (Communicator) displays a professional look and feel. We currently make use of a professional media company to assist with design, layout and finding articles related to our industry. The theme for 2012 is living green and we offer free articles and publicity for those companies who want to share what they are doing to make Mother Earth greener.

Financials

As already reported we have improved our Financial position. All of our income was generated through Sponsorships from various companies for the different events held during the past year. We will be generating income from members for the new financial year (July 2012 to June 2013). We hope to generate membership fees that will be enough to support our fixed costs, including a fair salary to our secretary.

We are also in process to apply for TAX Exemption, as we are a Non-Profitable Organization. To do this, we need to hand in audited financial statements. The last audited financial statements were done in 2008. We now have to process three years of financial statements that will generate auditing costs of nearly R36 000. This unfortunate discovery, but a very important one, will absorb all of our current finances. We are positive that we will survive this setback and will grow from strength to strength in the years to come.

Training

We did not have any training sessions the past year due to the RE Exams, but this will be a focus point for the next year. We will access qualified specialists in the insurance field and also rely on well-known guest speakers when available. We have two qualified trainers on the council, James Young and Wynand Louw, who can provide training on their specialist fields.

Charity

We have considered a few organizations, but one that really came to mind was to protect our Rhinos. This year so far, 303 Rhinos have been poached. The implementation of some of these organizations already made a difference to protect these animals and helped to arrest some of these criminals.

We had some good suggestions regarding which organization to support and will announce shortly the Charity of choice.

Social and Sport

We have a few events coming up and planned for the rest of 2012. For more information please contact our website, www.iing.co.za.

Andrew Geyer, President IING
president@iing.co.za

Small businesses may pay high price for ignoring CPA *Liability claims are likely to escalate, says leading insurer*



Shehnaz Somers, head of commercial underwriting at Santam

Smaller companies may be caught unaware by the weight of the Consumer Protection Act (CPA) as many have not taken this important piece of legislation seriously enough and ensured that their processes are aligned with the requirements of the Act.

“The full impact of the CPA is still to be felt by the insurance industry as South African consumers get used to the protection they receive under the Act,” says Shehnaz Somers, head of commercial underwriting at Santam, South Africa’s largest short-term insurer.

“We have found that large companies, particularly those with their own legal departments or legal advisors, started to gain an

understanding of the impact of the Act on their business very early on. However, this has not necessarily been the case in smaller operations.”

Somers believes the number of liability claims is likely to escalate as consumers start to understand their rights and their access to the various consumer commissions improve. Ahead of this event all businesses owners are encouraged to protect themselves from an insurance perspective to mitigate potential risks.

The face of the supply chain has changed. Historically, defective products have only been the responsibility of the manufacturer. However, since 01 April 2011, the retailer and everyone else in the supply chain can be held liable for failed goods. Thus, all businesses should be covered for products liability, even if they are not involved in the manufacturing of the product they are selling.

“Now that merchants are also to be held liable for faulty goods, there can be grim financial repercussions for those who are not adequately covered by products liability insurance,” cautions Somers.

Intermediaries should ensure that their clients are insured for the highest limits of indemnity they can afford as the size of liability losses is very unpredictable.

Businesses must also be prepared to recall any goods that are unsafe or pose a potential risk to the public, in the event they may be asked to do so by the National Consumer Commission.

Insurance for product recall is available from specialist liability insurers, but will usually only be granted to clients who have a comprehensive recall programme in place to ensure that the recall can take place as efficiently and cost effectively as possible.

The Act deals in great detail with unfair, unreasonable and unjust terms used in contracts and agreements, as well as the need to ensure such contracts are issued in easy to understand language. Suppliers will not be able to ‘hide behind the small print’ and where contractual terms have previously enabled them, and their insurers, to deny liability claims, this may no longer be the case.

The Future of Business.

Ultimately, the increasing amounts paid by insurers to third parties injured by the products and processes of businesses will translate into increased premiums to sustain this very important source of insurance. In turn, such businesses will apply these costs to the goods they are supplying, which means that ultimately the consumer bears the brunt of these costs by having to pay more for the product. **continues on page 6**

“As our judiciary and legislation is becoming ever more consumer driven, any ambiguities or unfair terms used by businesses in the sale or distribution of their products will no doubt be ruled in favour of the consumer. All documentation should be drawn up with a view to fairness to and understanding of the consumer,” says Somers.

It is up to businesses and insurers alike to ensure that the correct risk management and quality control measures are applied in order to reduce the risk to consumers and ensure that only high quality and safe products are released to the

South African market.

Businesses who do not demonstrate this obligation in the processes employed in the manufacture or supply of their products, may find themselves unable to obtain public liability insurance at all, or at exorbitant prices.

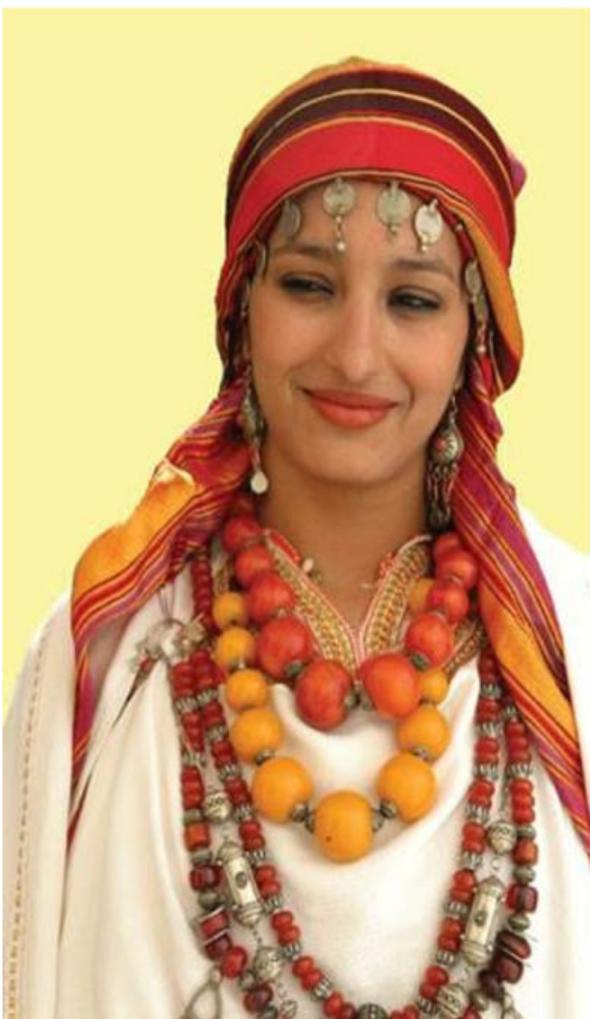
“We all have a role to play to ensure that our consumers are treated with the respect and care they deserve,” concludes Somers.

Become an IING member

Register online at www.iing.co.za.

2012 Membership Fees (per annum)

- Insurance Companies: R5000
- Corporate Brokers: R4000
- Corporate Suppliers: R4000
- Independent Brokers: R1000 (10 and Less Staff)
- Additional staff: R100 pp
- Individuals: R100



Moroccan Ladies Brunch

The IING cordially invites you to a ladies brunch with a Moroccan spice.

Date: 31 August 2012
 Time: 11:00 for 11:30
 Venue: Moroccan House
 435 Atterbury Rd
 Pretoria 0081

Please note that space is limited.

Confirm and send proof of payment on or before 15 August 2012 to secure your place.

R125 per person

Guest speaker:

**Esté Geldenhuys
 from Radio Pulpit**

Insurance Institute of Northern Gauteng
 Bank: Standard Bank
 Branch: Brooklyn
 Code: 011-245
 Account : 012981486

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Broker liable to pay insured's average

We really cannot go on like this!

In a case late last year, the Fais Ombud facilitated a broker accepting liability to an insured to pay the insured's average where the insured was under-insured. This matter can be used as an example of this modern system in action.

An insured suffered an insured loss, submitted a claim to the insurer whereupon the insurer established that the insured was under-insured and applied average. There is nothing out of the ordinary about this. When average is applied, the insured becomes his own insurer for a portion of the loss, in this case R100.000. The insured then complained to the Fais Ombud, who decided that the broker should be liable for the average cost of the insured because the broker did not explain to the insured that if he was under-insured, he could be liable for a portion of the loss. The broker accepted liability and made an offer to settle the claim, which was accepted.

A broker has thus become liable to pay a substantial portion of the insured's claim shortfall due to the application of average. As I have often pointed out, increasingly the broker is regarded as the difference in cover (DIC) insurer of the insured. When the insurer is not liable, the broker becomes liable. There is nothing unusual about this insurance claim, or under-insurance or average being



FAIS offices

applied. This probably happens millions of times a year around the world, including in South Africa. It has been happening for centuries. Average in indemnity insurance is well-know having been included as a term in most short-term policies for hundreds of years (...).

The question concerns the legal liability of the broker, therefore the point of departure is a discussion of the liability of the broker in law, which is now examined (...) The main function of a broker is to facilitate the contract of insurance with an insurer. The first enquiry is, whether the broker is liable in contract to the insured. The Fais Ombud did not examine this issue. If the broker is liable in terms of his contract with the insured (if such a contract indeed exists), then it is because the broker agreed to

the obligation. That is, in this case that the broker specifically agreed to discuss the operation of the average clause with the insured and having done so assess if the insured is under-insured and if so, explain the consequences to the insured of being under insured (...) Since when the contract of insurance is entered into, it is not known which policy or which term in the contract may in future become a matter in dispute, the broker would have to agree to explain the operation of all policies and all terms in all insurance contracts (...) It can be accepted that the broker and insured did not enter into any such contractual agreement and the broker thus did not breach any agreement which he entered into with the insured (...)

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The Fais Ombud paid no attention to the contract between the broker and the insured. In imposing this new obligation on the broker, there is not the slightest hint that it derived from what the broker and insured had actually agreed to and that the liability stems from the breach of the broker’s agreed obligation. The liability of the broker is imposed, externally, on the broker, it is not from the only historical ground of liability, contract. The contract is now irrelevant (...)

Another way to get the broker to be liable is to import delict into contract, that is to do away with contract, and replace it with delict. The law of delict (torts in UK and USA) as we know has become big business (...) If delict gets imported into contract, then presumably an adjudicating officer can simply declare the broker has a duty to educate insured about average and, since the broker did not, he thus breached this newly found duty and he is liable (...) In any event in the matter under consideration, the Fais Ombud did not rely on any delictual duties, therefore that need also not be considered any further.

If the broker’s liability is not based on any known basis in law, how did the Fais Ombud come to the conclusion that the broker was liable to pay the insured’s average costs? It comes from very terse and general references to the General Code of Conduct for Authorised Financial Services providers and Representatives a code that was promulgated by virtue of s15 of the Fais Act. In relying on the code,

no serious attempt was made to interpret and apply the code to the facts. All that there is are some terse references to the Code (...)

Holding the broker liable to pay the average is an example of this technique. The Fais Ombud cited three sections of the Code, s7(1)(c)(vii), s7(1)(a) and 8(1)(a)-(e). Firstly it should be noted that there is nothing in the Act which suggests that a breach of the Code leads to civil liability to the insured (...) In any event it is clear that the broker did not breach the code. S7(1)(c)(vii) states the following:

“7 (1) ... a provider must (c) at the

earliest reasonable opportunity, provide full and appropriate information of the following (vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided”

It should be noted that the Fais Ombud did not attempt to show that the provision applies to the broker, is applicable to the transaction involved and that in fact the broker breached the provision or how the breach leads to civil liability.

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Save the date

The IING would like to remind you to save the date for the Year End Function of 2012.

26 October 2012

18:30 for 19:00

Union Caterers
Utopia Place
840 Cura Avenue
Equestria
Pretoria

Guest Speaker : **Simon Gear**
on Living Green



If this provision is applicable to the broker, then all that it requires, as is clear from the above quote, is that the broker provide information. All the information about the cover is contained in the policy document and there is no suggestion that this was not provided to the insured (...) The other section referred to by the Fais Ombud was s7(1)(a) which reads: “7. (1) ... a provider must (a) provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision.”

(...) All the broker can do is what the provision requires, “provide a reasonable and appropriate general explanation ... that would be reasonably expected to enable the client to make an informed decision.” The decision is to purchase insurance or not. A multi-week explanation is not a “reasonable and appropriate general explanation”, nor needed to decide whether to purchase insurance or not. A detailed explanation of the operation of all terms including the average clause, a normal, usual term in short-term policies is not required in terms of this provision (...)

8(1)(a)-(c) deals with furnishing of advice. It is not clear that this section is relevant to a short-term broker and it clearly does not deal with the question of average. The preamble to the section reads, ‘A provider other than a direct



marketer must prior to providing a client with advice.’ It is not clear that the broker was or wanted to provide the insured with any information with respect to average. 8(1)(a) requires the information be sought about the client’s financial position. This is not relevant to the placing of short-term cover. Insured’s do not disclose their financial position to the broker. 8(1)(b) requires an analysis be conducted for purposes of the advice based on the information obtained. Since the broker does not obtain the information about the client’s financial position, this provision is

inapplicable. 8(1)(c) required that the financial product be identified. 8(1)(c) deals with selecting the appropriate product again this is not relevant to the short-term broker. 8(1)(c) deals with matching the client’s risk profile and financial needs. Clearly these provisions have investment type of products in mind and do not apply to the question of average. It is my in view inconceivable that a broker can be held liable to pay the insured’s cost of average. It seems to me the entire regulatory system and these quasi-judicial institutions need to be rethought. We really cannot go on like this!

Getting to know...

Meet James Boucher and James Young, both involved with the IING:

Q: How did you get involved with the Insurance Institute of Northern Gauteng?

JB: I was on the committee in 2006 and decided to join the IING committee again.

JY: I was co-opted as a member in 1996 serving on the committee named “Training” at that time.

Q: What is your vision for the Institute?

JB: I would like to see IING growing into a very reputable organisation within the insurance industry, which adds value to all its members and brings more structure to the industry in the region.

JY: To create a platform from which we can help to educate the members in the insurance industry. Secondly to create an environment where members in the industry can meet socially.

Q: What do you enjoy the most at your workplace?

JB: We are in a very niche market and I enjoy the challenges that come with our field, as well as working people.

JY: To be of service to our clients



James Boucher, Business Manager Factory & Industrial



James Young, De Novo Insurance Brokers

and to look after their insurance needs.

Q: One thing you cannot live without?

JB: Music.

JY: My family.

Q: How do you unwind?

JB: I enjoy being outdoors and spending time with friends and family.

JY: I play golf during the year and in winter I go hunting. To be in the bush gives me great pleasure.

Q: What is your favorite travel destination?

JB: Anywhere in the bushveld.

JY: Eastern Cape – more specific George.

Q: Do you volunteer or get involved in social work?

JB: Yes, I do, when I have the opportunity.

JY: Yes. I have been involved in seminars for many years.

Q: If you had the power to change one thing in South Africa, what would that be?

JB: People's attitudes towards each other.

JY: Poverty. The day we are all equal, as far as wealth concerns, I am convinced that the crime rate in South Africa will reduce by a big margin.