PCI White Paper

June 1, 2011

# Systematic Solution not Systemic Problem

## Distinguishing Insurance Market Risk from Systemic Importance

Research by: Steptoe & Johnson LLP

Prepared for: Property Casualty Insurers Association of America

PCI Property Casualty Insurers Association of America
Shaping the Future of American Insurance

Steptoe & Johnson LLP
Attorneys at Law

PCI White Paper

# Systematic Solution not Systemic Problem

**Table of Contents**



PCI is comprised of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over $175 billion in annual premium and 37.4 percent of the nation's property casualty insurance. Member companies write 43.5 percent of the U.S. automobile insurance market, 30.6 percent of the homeowners market, 35.3 percent of the commercial property and liability market, and 41.8 percent of the private workers compensation market.

# I. Introduction

While there has been significant progress over the past two years in understanding and defining systemic risk, there has been much less discussion about distinguishing systemic risk from market risk. These two vulnerabilities are largely coterminous in some banking and securities markets – a collapse of a major bank lender could lead to investor panic and counterparty failures with broad economic impact. There are several financial sectors, however, where the failure of a dominant market-share company could cause temporary market disruption, but not necessarily create a broader ripple effect beyond the local marketplace. For example, the failure of a major auto insurer in a particular state (or even a group of auto insurers) could cause a temporary increase in insurance costs for consumers in that state until new capital rushes in, but would not affect other lines of insurance within that state, automobile insurance in other states, other insurers globally, or, indeed, other financial sectors.

This paper distinguishes between market risk and systemic risk for property and casualty insurance, including walking through the regulatory steps involved in an insurer failure, the impacts on the marketplace, the interconnections (or lack thereof) with the broader financial markets that insurers invest in or insure, and the systemic importance to the larger economy. The paper also examines the largest insurer failures to date as examples of how a very large auto, home, or business insurer can create market risk but not systemic impact.

Although the failure of a major P&C insurance company may have some market impact on the P&C insurance sector, it would not have a systemic impact on the financial sector or the wider economy because of a unique combination of industry attributes, including: (1) the nature of P&C products; (2) the competitive dynamics of the industry; (3) the limited types and scope of P&C company investment risks; and (4) the comprehensive regulatory and resolution systems governing P&C company activity.

**The unique qualities of the property and casualty sector include:**

- Because of the characteristics of P&C products, the loss of any particular carrier will have minimal impact on the availability of coverage for businesses and consumers. The mandatory nature of P&C insurance products such as auto, homeowners and business liability coverage means that there is a steady demand for the products and a high degree of substitutability. P&C insurance products also have no cash value and payouts are not made at the policyholder's discretion. There is therefore no danger of a "run on the bank" scenario, or contagion effect where failure spreads from one P&C carrier to another.

- The highly competitive nature of the P&C industry also makes it fundamentally different from commercial or investment banking. All lines of insurance are relatively unconcentrated in the United States, and barriers to entry for new insurance capital are very low. In fact, unlike other financial markets which suffer capital withdrawals after a major crisis, new insurance capital tends to rush in after major loss events (because future risks are deemed independent from past losses).

*continued*

- When a P&C insurer fails, there is an orderly resolution process to protect consumers and mitigate losses to both consumers and creditors. The slow resolution process for winding down a failed insurer results in minimal disruption to the capital markets. The P&C regulatory process also requires investment in high-quality and highly liquid assets that are not fully mark-to-market, allowing resolutions to occur over a long period of time and mitigating any potential effect on asset markets. While insurers are significant investors in some markets such as muni-bonds, these markets are highly liquid long-term investments that would not be affected by the failure of a major insurance company.
- Catastrophe losses in the insurance industry tend to be focused on geographic areas in which the catastrophe occurred, and thus the losses to affected insurance subsidiaries in those areas may not infect parent and affiliated companies. In particular, unlike banking, insurers are not subject to source-of-strength requirements, and insurance risks in most major areas are segregated in separate subsidiaries. For example, some major insurers underwriting homeowners insurance in Florida do so through a separate Florida subsidiary that provides only homeowners coverage and whose failure would not affect the larger holding company, other states, or other lines of insurance.
- Stringent regulatory requirements make it unlikely, if not impossible, for a P&C insurer to hold liabilities in exotic financial products that would place counter-parties at risk if the insurer were to fail.
    - A parent company or non-insurer affiliate of a P&C insurer might hold such instruments, but systemic risk is unlikely unless the parent or affiliate is engaged in large-scale, non-traditional financial transactions with systemically important counter-parties to such an extent that failure would destabilize both the insurance holding company and its counter-parties.
    - P&C insurers and their holding companies focus their operations on their core insurance business, and are not significant players in such potentially destabilizing investment vehicles. It is possible that there are some (globally) systemically important financial institutions with insurance subsidiaries, but the P&C activities do not add to the systemic risk. Moreover, the regulatory scheme in the U.S. strictly governs financial interaction between parent company and subsidiary.

Before engaging in a broader discussion of P&C insurance and market risks as compared to systemic risks, it is important to define these terms. Various regulatory bodies and organizations have set forth definitions of systemic risk, but they all revolve around the same set of concerns. The international Financial Stability Board[1] defines

1 The Financial Stability Board ("FSB") is an international body made up of representatives from the G-20 countries, the European Commission, and members of the former Financial Stability Forum. The FSB monitors and makes recommendations about the global financial system. It was established in 2009 as a successor to the Financial Stability Forum.

systemically important financial institutions as “financial institutions whose disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity.” In the U.S., the Dodd-Frank Wall Street Reform and Consumer Protection Act designates all bank holding companies with $50 billion or more in assets as systemically important. Under Dodd-Frank, a non-bank financial company is systemically important if “material financial distress at the [company], or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the [company], could pose a threat to the financial stability of the United States.”

Market risk, by contrast, is the risk associated with the normal or even abnormal ups and downs of a market economy. The risks of volatility, rapid growth or contraction of the economy, recession, stock market crashes, the failure of major financial institutions, the failure of major industries, high unemployment, inflation, deflation, price increases in a particular sector, increases or decreases in competition within a particular sector – all of these are market risks and only become systemic risks when they threaten the stability of the economy as a whole. Fortunately, the world economy has been threatened by systemic events only a handful of times, including during the Great Depression and during the recent Great Recession of 2008.

As this paper will demonstrate, core P&C insurance activities can create market risks but do not generate systemic risk. It is always possible that a parent company or non-insurer affiliate of a P&C insurer will engage in non-insurance transactions that are large scale and risky enough to generate systemic impact, but P&C insurers and their holding companies generally limit their operations to their core insurance business, and are not significant players in such potentially destabilizing investment vehicles. It is only in the dark unseen corners, outside the core of P&C insurance operations, that a large insurance holding company could engage in activities that could create systemic risk. Therefore, when confronted with nonbank financial institutions, systemic risk regulators should focus on determining whether the institution is also engaged in these types of noninsurance activities. There is no need to expend limited regulatory resources scrutinizing core P&C insurance activities when those activities are already regulated by frontline insurance regulators. Instead, one of the goals of any modern regulatory regime must be to make sure that every corner of every large financial company is subjected to the light of enterprise risk management and regulatory oversight.

The remainder of this paper will focus on the hypothetical “PC Company,” a multistate P&C insurance company with dominant market share in multiple lines of business. The analysis begins with the assumption of the significant failure of PC Company and shows how the unique nature of P&C insurance products limits the potential for systemic impact on the financial markets. The next section discusses competition in the P&C market itself and the unique ways that the market responds to the failure of a major player like PC Company. A description of the relatively limited impact of PC Company’s failure and the liquidation of its investments on the financial markets follows. Finally, the paper describes the comprehensive regulatory and resolution systems that make it unlikely that PC Company’s failure would be either abrupt or disorderly in the first place.

*continued*

# II. The unique nature of P&C insurance products insulates the insurance market from the risk of contagion.

The failure of a large bank or securities firm often carries with it the threat of contagion. Contagion occurs when there is a psychological crisis of confidence in (1) the depositing or investing public and/or (2) the bank or securities firm's major counterparties in the financial markets. The failure of one bank or securities firm may have nothing to do with the safety and soundness of other firms, but a crisis of confidence can cause depositors and investors to suddenly withdraw their money (in the case of banks) or demand that their positions be liquidated (in the case of a securities firm). It may also cause counterparty lenders to demand collateral or cease lending altogether. Mass action of this type can lead to the failure of more firms, and the crisis of confidence can become self-fulfilling as more and more institutions are dragged into the contagion by depositor, investor and counterparty demands.

P&C insurance is fundamentally different from banking and securities in several key respects. First and foremost, P&C insurance products have no cash value and therefore cannot be cashed in. When word gets out that PC Company is impaired and in danger of failing, there is simply no immediate demand that policyholders can make on its assets. The most policyholders can do if they feel PC Company can no longer be trusted is cancel their policies and stop paying premiums. This of course has a negative impact on PC Company's cash flow, but it also limits the insurer's potential liability, and it has no impact on existing surplus.

Moreover, P&C insurance is also not subject to contagion risk because many lines of insurance are mandatory, either legally (automobile insurance) or practically (homeowners insurance or business liability insurance), making the overall demand for coverage relatively inelastic. Thus, P&C policyholders may terminate their policies with an impaired insurer like PC Company, but they will have to seek coverage elsewhere. Thus, the effect of a company failure is likely to benefit, rather than harm, other insurers.

Another important difference between P&C insurance and securities and banking is that the risks taken on by insurance companies are generally uncorrelated to the rest of the financial markets, whereas the risks taken on by banks and securities firms are inherently tied to the performance of the financial markets generally. The number of P&C claims for fires, hurricanes or car accidents does not vary according to the bond or equity markets. Rather, claims vary according to actual losses to policyholders which, in turn, form the basis for determining premiums.

# III. The failure of PC Company would not cause a severe disruption in the P&C insurance market.

The failure of a single major insurer or even a group of major insurers is unlikely to have a broad impact on the P&C insurance market as a whole because the market is not concentrated. Based on the most recent data from the National Association of Insurance Commissioners (NAIC), none of the major lines of P&C insurance is concentrated using a traditional Herfindahl-Hirschman Index ("HHI") analysis of 2009 market share by premium. Vigorous competition exists in P&C insurance, and, given the lack of concentration, there is every reason to believe that other insurers would be able – and willing – to absorb the business of the failed company.[2]

Furthermore, the failure of PC Company would not lead to reduced capacity or disruptions in the marketplace because new capital is attracted and new insurers are created when there is fresh demand for insurance coverage. The P&C insurance industry generally follows a "hard" and "soft" market cycle. Historically, when premium rates are stable or falling, the market is said to be soft. Premium rates usually drop as intense market competition to increase market share drives prices down. Ultimately, the market softens to the point where profits drop to near or below zero, and the capital needed to underwrite new business is depleted. At this point, when the market turns, underwriting standards become more stringent, the supply of insurance coverage is limited due to reduced available capital, and premiums usually rise. Eventually, higher premiums and the prospect of higher profits begin to draw more capital into the market, and the cycle repeats. Due to intense competition and low concentration in the P&C market, the failure of PC Company would do little more than accelerate the cycle, causing a slight reduction in the supply of available coverage but also attracting new capital into the market.

Commercial banks and investment banks may have similar levels of concentration as some lines of P&C insurance, but as discussed above, both of those industries are more susceptible to contagion risk and interconnectedness than the P&C industry. Imagine the impact on the financial markets and economy if the top three commercial banks were to merge – or fail. The contrast with the insurance sector could not be more stark.[3]

Moreover, because of the mandatory nature of most P&C insurance, the overall market for policies rarely if ever decreases dramatically. With commercial and investment banks, on the other hand, depositors and investors can always withdraw their money and hold it in cash or cash equivalents, meaning that a disruption in this market could quickly turn into a system impact.

*continued*

2 Property Casualty Insurers Association of America (PCI) has calculated, based on National Association of Insurance Commissioners (NAIC) data, the impact on market concentration in the P&C market if one or more of the largest P&C insurers failed. The worst case scenario, in terms of market concentration, would be for the entire book of business of the largest company to be assumed by the next largest insurer. PCI foundthat even if the sixth company, in terms of size, assumed all the business of the largest five companies, the HHI would be well below the 1800 measure that indicates a concentrated market.

- So, if the largest U.S. P&C writer failed and the second largest insurer picked up the entire book, the initial calculated HHI of 326 would go to 457.
- Further, if both the largest two writers failed and and the third largest insurer picked up the entire books of those two insurers, the HHI would be 642.
- If the largest three failed and the fourth picked up all the business of those three, the HHI would be 888.
- And, if the largest four failed and the fifth assumed all that business, the HHI would be 1178.
- Finally, even if all the business of the largest five insurers were hence written by the sixth insurer, the HHI would only be 1476.

3 In contrast to the P&C insurance market, PCI found that for commercial banks, the HHI would exceed the 1800 concentration level after the failure of the top two banks, and grow much worse with additional failures.

# IV. The failure of PC Company and the liquidation of its assets would not create systemic disruption in the financial markets as a whole.

There are a number of reasons that the failure of PC Company and its liquidation will not threaten the functioning or long-term stability of the financial markets:

- First, state prudential regulation requires that the vast majority of PC Company's assets be invested in highly liquid instruments. State insurance laws also require regulators to intervene early – when PC Company becomes impaired – in order to craft solutions short of liquidation.
- Second, the nature of P&C liabilities, i.e. insurance claims, results in payments over an extended period of time and therefore impose no risk of a sudden call on all outstanding financial obligations.
- Third, even when outright liquidation is necessary, state receivership laws and the nature of P&C liabilities will allow insurance commissioners to slow the payment of PC Company's claims in order to maximize the value of its assets and minimize the need to sell them at "fire sale" prices, effectively avoiding disruption of the financial markets as a whole.
- Fourth, as described above, there is very little market concentration in the P&C insurance sector, so the need for PC Company to liquidate its assets would have minimal impact on the financial markets as a whole.
- Fifth, P&C insurance risks and therefore P&C failures are generally not correlated to the ups and downs of the financial markets. Instead, they tend to result from bad underwriting and insurance risk management, and are correlated to the hard and soft cycle of the P&C insurance markets.
- Sixth, even when a P&C insurer directly engages in financial activities other than bond or equity investments for its own account, such as derivatives hedging or securities lending, those activities are limited by state law and generally not large enough to create a systemic threat.

There is widespread understanding that P&C insurance companies play a large role in the financial markets as investors. For example, P&C insurance companies currently hold approximately 13% of all municipal bonds in the United States. What is less understood, however, is how the failure or impairment of a major insurer like PC Company affects, or does not affect, the financial markets. In the wake of the 2008 financial crisis, there has been much public focus on the size of financial institutions and the idea that size alone makes some companies "too big to fail." This may be true of banks and securities firms. As discussed above, the failure of one of the top commercial banks in the country might conceivably cause a crisis of confidence among depositors at other banks and "runs" on those banks as depositors began withdrawing their money. As the 2008 financial crisis demonstrated, the contagion can spread from depositors to the banks themselves as banks tighten short-term lending in reaction to consumer panic, which has a ripple effect on all segments of the economy. Thus, in banking and securities, there is some support for the idea that "big" by itself can be an indicator of systemic risk.

The size of a P&C insurer, however, is a particularly poor proxy for systemic risk. In fact, an insurance company often becomes safer as it grows in size and takes on more and more diverse risks. More importantly, even when large P&C insurers do fail, such failures tend to be relatively isolated events with minimal impact on the overall financial markets or the economy as a whole. This was true, for example, with Reliance and Lumbermens Mutual[4], two of the largest insurance failures on record.

As discussed more fully below, the strength of state-based prudential regulation generally does not mean that insurance companies never fail or become impaired. It does mean that the failure and liquidation of PC Company would not cause a major disruption in the financial markets. Even when outright liquidation is necessary, receivership laws in the state grant broad authority to the receiver to slow the claims process so that assets can be sold off in an orderly fashion.

The lack of market concentration in the P&C insurance market also mitigates the impact of a major failure on the financial markets generally. While it is true that P&C insurers hold a significant portion of municipal bonds and other highly liquid fixed-income instruments, no single insurer is a large enough player in these financial markets for its liquidation to cause significant disruption.

Another critical factor is that the insurance risk at the heart of the P&C insurance business is not correlated to the financial markets. Auto accidents, hurricanes, fires and earthquakes are not dependent on the rise and fall of the stock or bond markets. This is why major insurance failures tend to follow the hard and soft market cycles of the P&C insurance market and not major financial crises. The failure of Reliance Insurance, for example, may have been exacerbated or accelerated by the financial market downturn after the September 11, 2001, attacks, but it was not caused by that downturn. Instead, the Reliance failure was caused by mismanagement of insurance risks and under-pricing of policies (as are most insurance failures). For this reason, the liquidation of PC Company may create some downward pressure on certain asset classes, but it is unlikely to contribute to a downward pricing spiral that threatens the financial system as a whole. In fact, the type of low-risk, highly-liquid instruments held by P&C insurers are generally much sought after during a disruption in the financial markets, when there is usually a "flight to quality."

When it comes to a large P&C insurer's liabilities, such an insurer rarely poses a risk to the larger economy because few third parties rely on a single insurance company to such a degree that the insurer's failure would cause the third party immediate economic losses, other than the direct investors in the insurance company. This type of risk exists for the investors in any large commercial entity even those outside the realm of financial services, and such risks are not generally considered systemic. As discussed in more detail below, an insurer's policyholders are largely protected by existing state guaranty funds, and third-party liability claimants are similarly protected.

Thus, the overall impact of PC Company's rehabilitation or liquidation on the financial markets would be minimal.

*continued*

4 Formerly known as Kemper Insurance Companies.

# V. Comprehensive regulatory and resolution systems mitigate any potential for PC Company's failure to have a systemic impact.

The insurance regulatory process governing insolvencies is designed to minimize disruption from PC Company's failure to policyholders, the insurance industry, the public, and financial markets. That is accomplished in multiple ways. First, the system focuses on early detection of PC's financial problems so that regulators have time to respond appropriately and limit any systemic impact. Second, the system is designed for regulators to rehabilitate PC and continue normal operations if possible. Third, in the event of insolvency, regulators conduct a slow, orderly and lengthy wind-down process. And fourth, the system of state guaranty funds ensures that policyholders are protected and mitigates any systemic risk.

## A. Monitoring and Evaluating PC Company's Financial Health.

Through on-going regulatory processes in every state, insurance regulators remain informed about the financial health of the industry and become alerted immediately to any potential problems with individual insurers. Thus, when PC Company initially shows signs of distress, regulators know about it immediately, greatly reducing the risk of unforeseen effects on the markets or the economy as a whole when the company's financial distress escalates.

As a regulated entity, PC Company is under strict financial reporting requirements and its financial status is under constant observation – even before any signs of financial difficulty. PC Company is required to submit quarterly and annual financial statements to state regulators in all states where it does business, as well as to the NAIC, which electronically stores the information for the states on its Financial Data Repository (FDR). PC Company's reports are run through the NAIC's Insurance Regulatory Information System (IRIS), which statistically processes the company's financial data to reveal a series of financial ratios. IRIS results can trigger special financial analyst regulatory teams to look deeper into PC Company's financial situation or it can trigger immediate regulatory attention. For instance, the system would notify regulators if PC Company's asset value dropped suddenly or if the company were taking on too much liability in proportion to its assets.

The FDR and IRIS allow state regulators to conduct thorough, on-going, financial analysis of PC Company. Every quarter, state regulators conduct a financial analysis of PC Company and other insurers operating within their state. The analysis includes review of financial statements and company data, as well as an evaluation of PC Company's financial and non-financial affiliates and subsidiaries, and the financial condition, management and affiliate relationships of insurer holding companies.

Generally speaking, state insurance regulators adopt a conservative approach to financial analysis. Regulators evaluate PC Company's financial health according to conservative statutory accounting principles (SAP). SAP seeks to ensure that PC Company and other insurance carriers can meet their outstanding obligations at all times. Consequently, under SAP, assets are valued conservatively and non-liquid assets are not included in valuation of PC Company's surplus.

The Financial Analysis Working Group (FAWG) within the NAIC is a multi-state group that deals with big-picture risks within the industry. FAWG helps with the early identification process; they help spot companies like PC Company that exhibit financially troubled characteristics. Then they work with home-state regulators on strategies for assisting the troubled companies. FAWG also identifies and addresses trends that may impact the financial health of the entire industry. For instance, the group may focus on particular segments of the market or particular exposures that could impact the solvency of the industry or a portion of the industry.

## B. Regulatory Response to PC Company Pre-Insolvency.

Once PC Company is identified as being in a hazardous financial condition, regulators can act quickly and with flexibility to address the company's problems. Under state law, the insurance commissioner may take a number of actions to prevent an insurance company's failure or minimize the impact of failure,[5] including taking direct control of the financial activities of a troubled domiciled insurer through administrative supervision. The NAIC's Administrative Supervision Model Act (adopted in some form in all U.S. jurisdictions) allows the insurance commissioner to place PC Company under administrative supervision if it appears to the commissioner that "[PC Company's] condition renders the continuance of its business hazardous to the public or to its insureds." Administrative supervision continues until PC Company meets the commissioner's conditions for improving financial stability. During the period of supervision, the commissioner may prohibit PC Company from disposing of or conveying assets, lending funds, withdrawing from bank accounts, investing funds, transferring property, incurring any additional liabilities, merging or consolidating with another company, approving new policies, renewing policies, entering into reinsurance contracts, terminating or lapsing any policy (except for non-payment of premiums), releasing or refunding any reserves, making material changes to management, or increasing salaries or benefits to officers or directors.

In addition to the oversight authority vested in state regulators, PC Company is also subject to a uniform risk based capital (RBC) regime. RBC has two components. First, it provides a standardized RBC formula that produces a hypothetical minimum capital for each company.[6] That minimum capital is then compared to the company's actual capital to determine the RBC level. Second, the NAIC's RBC model law (adopted in some form in all U.S. jurisdictions) requires the insurance commissioner in each state to intervene in an impaired company well before the level where liquidation is necessary.

*continued*

5 State regulators are empowered to take any or all of the following actions:
- reduce the total amount of present and potential liability for policy benefits by reinsurance;
- reduce, suspend or limit the volume of business being taken in;
- reduce general insurance and commission expenses;
- increase PC Company's capital and surplus; suspend or limit dividend payments by PC Company to stockholders or policyholders;
- file reports concerning the market value of PC Company's assets;
- limit or discontinue investment practices by PC Company;
- document adequacy of premium rates vis-à-vis risks insured; and
- file interim financial reports on PC Company.

6 The RBC formula takes into account: (1) the risk of default and the fluctuation in fair market value of the insurer's assets; (2) the underwriting risks taken on by the company, including the risk of errors in setting premiums and reserves; and (3) other business risks, including litigation risk and the risk of guaranty fund assessment for the failure of other companies. Because of the relatively short-term nature of most P&C risk and the need for liquidity to pay incoming claims, the RBC formulas push companies to continually monitor all types of risk and generally create a bias in favor of highly liquid assets.

As a result of RBC and state-based prudential regulation generally, PC Company is required to be far better capitalized than similarly situated banks or securities firms. PC Company's operations are therefore generally less profitable than a bank or securities firm in good times, but PC Company will also have more liquidity and be less prone to outright failure in bad times. As discussed in more detail below, even when PC Company does fail, its assets are liquid enough that the receiver's efforts to monetize the assets and pay claims are not disruptive to the financial thanksmarkets.

The RBC rules also require early and active engagement by state insurance regulators when PC Company gets into trouble. The RBC formula produces a minimum capital amount or "authorized control level." Regulatory actions can be taken based on the amount of capital an insurer holds in relation to its authorized control level.[7] At each step of the process, state insurance regulators work with the company to achieve the best result for policyholders and the public at large.[8]

There are many steps and potential remedies for an impaired company that fall short of outright liquidation. For example, many impaired companies first go into voluntary or regulator-ordered "runoff." In runoff, a company stops writing new insurance policies but continues to pay claims and collect premiums on existing (and sometimes renewal) policies. Any liquidation of assets or unwinding of other financial positions takes place over time as claims exceed cash flow.

The distinctly slow moving nature of P&C insurance liabilities allows PC Company's impairment and attempts at rehabilitation or runoff to be slow and orderly in a way that the rehabilitation of a bank or securities firm can rarely be. For purposes of analysis, PC Company's liabilities are assumed to include auto, homeowners, commercial general liability and workers' compensation policies. All of the claims on these policies will develop over time and while they develop, the impaired insurer will continue to generate cash flow through insurance premiums and investment income. The regulators' job is to manage this cash flow and PC Company's assets against the developing claims over time to achieve the best results for policyholders, the insurance marketplace and the general public. The rehabilitator of a bank or securities firm, by contrast, faces immediate demands for cash from all depositors and investors and almost no positive cash flow.

7 For example:
- A company that maintains capital at 200% of that amount operates freely without insurance commissioner intervention.
- Even above 200%, however, the insurer is subject to trend tests under RBC. A negative trend result and RBC of 200-300% trigger company action requirements.
- If PC Company's RBC number falls to 150-200% of the authorized control level, the company enters the "Company Action Level" and must submit a financial plan to the insurance commissioner that sets forth the reasons for its financial difficulties and proposals for correcting the problems.
- If PC Company fails to provide a satisfactory plan or its financial condition further deteriorates to the 100-150% RBC range, it enters the "Regulatory Action Level." At this stage the state insurance commissioner is required to perform examinations or analyses deemed necessary and order the company to undertake corrective action.
- If PC Company's RBC number falls between 70-100% it is at "Authorized Control Level." At this point, the insurance commissioner is authorized by law to take control of the company even if the company remains technically solvent.
- Finally, if PC Company's RBC falls below 70% the company has reached the "Mandatory Control Level," and the insurance commissioner is required by law to take control of the company. Most insurers that fall into this RBC level will also be considered insolvent (that is, their liabilities exceed assets).

8 The NAIC FAWG process also provides a back-stop for state regulators to make sure they are taking all appropriate remedial steps from the outset. FAWG is charged with addressing insolvency problems of "nationally significant insurers" like PC Company and is well positioned to coordinate multi-state efforts when a nationally significant insurer like PC Company is in financial distress. A "nationally significant" P&C insurer is one that operates in 17 or more states and has gross written premiums in excess of $30 million.

## C. Regulatory Response to PC Company's Insolvency.

When a troubled company such as PC Company is determined by a regulator to be insolvent, the regulator may put the company in receivership. The receivership process is designed to be slow. It is designed to be orderly. More importantly, the nature of P&C liabilities allows the process to be slow and orderly even when the regulatory system does not operate as intended. The goal is to minimize disruption to policyholders and other stakeholders (including counter-parties) and to make sure their interests are properly accounted for. The nature of this process dictates that nothing happens suddenly when PC Company fails (and as noted above, the failure itself would not be a surprise). For example, under the NAIC's Insurer Receivership Model Act (adopted in some form in all U.S. jurisdictions), claimants against PC Company have one and a half years to file a claim with the liquidator after the liquidation order is entered. And, under the model, four years from the date of a receivership order, the receiver must make a report to the receivership court of the insurer's assets, probable total liabilities, the need for any assessments, and a recommendation as to whether any assessments should be made. The system is designed to operate in years, not in days or even months.

The insurance commissioner of the state where PC Company is domiciled may institute receivership proceedings (also known as "delinquency proceedings") against the company. A court designated by the state becomes the receivership court. Receivership court proceedings operate as a stay of any prior proceedings, including arbitrations, against the assets, property or licenses of PC Company (except regulatory actions by commissioners of non-domiciliary states). Once receivership proceedings begin, the receiver is required to file quarterly financial statements with the receivership court detailing changes in the assets and liabilities of PC Company, including any funds received or disbursed by the receiver.

Receivership proceedings for major companies like PC Company are extremely long and complicated, and involve many steps. The receivership process is often a step-up process: regulators begin by trying to save the company and if that doesn't work, they move toward liquidation. The first step is often conservation. Under a conservation order, the commissioner is appointed conservator, takes possession of PC Company's assets, and administers them under the supervision of the receivership court. The conservator conducts an evaluation of the business to determine whether it is best to try to resolve PC Company's financial troubles and restore the company to private management and normal operations. To reform and restore the company, the conservator may take a number of actions, including: canceling policies, transferring policies, and canceling or transferring contracts and surety undertakings.

During the conservation stage, the conservator communicates with any guaranty funds (discussed in further detail below) that may be affected in the event of PC Company's future liquidation. The conservator develops contingency plans for regulatory action in case liquidation becomes necessary. Again, the system has been set up to plan for and manage further decline of PC Company's financial status.

If the home state commissioner believes that PC Company can and should be rehabilitated, he is appointed rehabilitator and prepares and files a rehabilitation plan with the receivership court. The court may approve, disapprove, or modify and approve the plan. Once a plan is approved, the commissioner takes full control of implementation.[9]

*continued*

9 The plan may include:

- payment of distributions;
- assumption or reinsurance of liabilities;
- transfer of assets and records to another insurer or another entity; and
- contracting with a guaranty association to perform administration of claims.

If the rehabilitator comes to believe that further attempts to rehabilitate would “substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile,” the rehabilitation plan may be terminated. The rehabilitator then moves for an order from the receivership court to liquidate PC Company. At any point during the receivership process, the directors of PC Company or the court itself may also enter a motion to order liquidation. If, on the other hand, the grounds for rehabilitation cease to exist and rehabilitation has been accomplished, the court must order that the insurer be restored title, possession and control of the company.

We have assumed here that PC Company cannot be rehabilitated and the company fails. PC Company’s liquidation proceedings would begin with a request for declaration of insolvency by the court. An insolvency declaration and commencement of liquidation proceedings does not immediately impact PC Company’s policyholders or stakeholders. The receivership law provides for continuation for a specific time period of all policies, contracts, surety bonds, and surety undertakings in effect at the time of the liquidation order.

During the liquidation proceedings, regulators have full authority to wind-down PC Company in the manner they deem most appropriate. The goal of the insurance regulator is to protect the company’s policyholders, the public, and the industry to the maximum extent possible. Regulators can (and do) extend the liquidation process over several years to ensure that all of the company’s assets are collected and distributed fairly, and to ensure that there are not any abrupt disruptions in the marketplace. The liquidator has discretionary power and flexibility to fulfill these goals.[10]

The conservation, rehabilitation and liquidation process is thorough and lengthy, often taking several years. The regulatory response to PC Company’s insolvency begins long before the company is actually declared insolvent. There are several layers to the regulatory response pre-and post-insolvency, and each layer has several components and potential courses of action within it. Furthermore, these activities span several states where PC Company does business (including policyholders, regulators, guaranty funds, laws, etc., in each of those states). That type of wind-down process requires careful coordination and many years of negotiating between various stakeholders to reach a fair and value-maximizing resolution.

## D. Guaranty Association Protection for PC Company Insolvency.

State guaranty funds provide a “safety net” to protect policyholders and the public in the event of PC Company’s failure. State guaranty associations exist to protect policyholders and claimants from losses due to insurer insolvencies.

An admitted insurance company, such as PC Company, is required to be a member of the guaranty association in each state in which it is licensed. With the primary exception of New York’s pre-insolvency assessment system,[11] state guaranty associations are funded by post–event assessments on member insurance companies. A guaranty association’s obligation to pay covered claims is triggered when an insurer enters liquidation proceedings.

10 The liquidator has the power to hold hearings, subpoena witnesses, require production of books and records, audit books and records, collect all debts due to PC Company (including bringing suit against debtors or tortfeasors on behalf of PC Company), conduct sales of PC Company’s property (including the sale of the entire company), transfer policy obligations to another insurer, lease or transfer any property of PC Company, invest PC Company’s assets that are not currently needed, among other powers. Regulators engage in several (if not all) of these activities during liquidation, which can take years to complete.

11 Workers’ compensation guaranty funds in New Jersey and Pennsylvania operate on pre-insolvency assessments, as well.

The NAIC Post-Assessment Property and Liability Insurance Guaranty Association Model Act (adopted in some form in all U.S. jurisdictions) was established to create a guaranty association in each state and to “provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and . . . to minimize financial loss to claimants or policyholders because of the insolvency of an insurer.” Guaranty associations are required to pay all covered claims existing prior to an order for liquidation or covered claims arising within thirty days of the liquidation order. Payment of claims is generally limited to $300,000 per claimant and in no case is the guaranty association required to pay more than the obligation of the insolvent insurer. The guaranty associations can step in as soon as a liquidation order is issued and begin administering and paying claims. The associations may borrow funds necessary to meet their obligations under the law, or they may contract with other parties in order to fulfill their obligations.

Guaranty associations and the individual insurance companies that make up their membership have an interest in preventing insurer insolvencies because member insurance companies are assessed according to the covered claims that the guaranty funds have to pay. Therefore, the board of directors of the association may recommend improvements to solvency regulations, and at the conclusion of liquidation proceedings in which an association is required to pay covered claims, the board of directors of the association may file a report on the causes of insolvency with the commissioner.

## E. The Insurance Insolvency System Minimizes the Impact of P&C Failures on Policyholders.

The extensive and multi-layered regulatory process discussed above minimizes the impact of PC Company’s failure on policyholders and, in that way, mitigates or eliminates systemic risk. When PC Company fails, guaranty associations and liquidation proceedings ensure policyholders’ claims are covered to the maximum extent possible. Although the law caps the recovery available for claimants in liquidation proceedings, the process ensures that the maximum amount of assets are recovered and available to satisfy claims and that those claims are dealt with in a fair and orderly manner. Furthermore, due to the low concentration and high substitutability of the property and casualty insurance industry, policyholders who do not have outstanding claims at the time of liquidation can find replacement coverage easily.

### 1. Payment to Policyholders with Outstanding Claims.

As discussed above, when PC Company becomes insolvent and enters liquidation proceedings, the obligation of state guaranty funds to pay covered claims is triggered. A “covered claim” is an unpaid claim, “which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy” when the insurer becomes insolvent. Other assets recovered by the liquidator during the liquidation proceedings are also available to pay

*continued*

policyholder claims. For instance, proceeds from lawsuits against Reliance executives and accountants were used to satisfy policyholder claims. Under the NAIC Receivership Model Act (adopted in some form in all U.S. jurisdictions), distributions from insolvent insurers are prioritized according to “classes” of claims, with policyholder claims at or near the top of the list.

**2. Replacement Coverage for Policyholders.**

P&C insurance often involves coverage that is either mandated by the government, like auto liability, or required as a practical matter, like homeowners, where most lenders will not write a mortgage unless a policy is in place. In the event of an insolvency, policyholders cannot go without coverage for any length of time. Following PC Company’s failure, policyholders holding such policies are given a 30-day grace period to obtain replacement coverage. Their PC Company policies remain in effect up to thirty days after entry of the liquidation order, until the date the policy expires, or until the insured replaces the coverage with another insurer, whichever occurs first. Thus, PC Company’s customers are not left with a gap in coverage while they look for a new insurance company.

Because of the large number of P&C insurers operating in each state, and the substitutability of products among insurers, it is not difficult for PC Company’s policyholders to find replacement coverage quickly. There is currently no lack of capacity in the property and casualty insurance market such that other insurers could not pick up PC Company’s business. This is evidenced by the recent experience of AIG. While AIG’s net written premiums declined 22% at the end of 2008, AIG’s customers did not simply become uninsured; they found coverage with AIG’s competitors who welcomed and competed over the new business, even during a pronounced economic downturn. This phenomenon is true even with less common or more specialized lines of property and casualty insurance.

Because of the competitive insurance marketplace, PC Company policyholders will generally be able to find substitute coverage. Additionally, state regulators have the power to restrict unwarranted price increases by insurance companies so competitors will not be allowed to gouge PC Company policyholders. Consequently, policyholders who do not have outstanding claims at the time of PC Company’s failure are not adversely impacted in any significant way by the insolvency. Policyholders who do have claims may suffer losses to the extent their claims exceed the statutory limit, but these losses suffered by disparate policyholders are insufficient to create systemic risk.

# VI. Conclusion

As regulators move forward with more targeted regulation for systemically important financial institutions, it is integral that the concept of market risk be appropriately distinguished from systemic risk. One such prominent distinction can be drawn in the property casualty insurance sector. Home, auto and business insurers do not pose a systemic risk, and potential failures of such companies would have only minimal, short-term effects on the marketplace.

An organization poses systemic risk if its failure poses a threat to the financial stability of the United States. Such organizations are engaged in activities that are interconnected, cyclical and non-transparent. Market risk, by contrast, is the risk associated with the normal or even abnormal ups and downs of a market economy.

While the failure of a major P&C insurance company may have some market impact on the P&C insurance sector, it would not have a systemic impact on the financial markets or the wider economy because of a unique combination of industry attributes, including: (1) the nature of P&C products that insulate the insurance market from the risk of contagion; (2) the highly competitive dynamics of the industry; (3) the limited types and scope of P&C company investment risks; and (4) the comprehensive regulatory and resolution systems governing P&C company activities that protects consumers.

It is only in the dark unseen corners, outside the core of P&C insurance operations, that a large insurance holding company could engage in activities that could create systemic risk. Therefore, when confronted with nonbank financial institutions, systemic risk regulators should focus on determining whether the institution is also engaged in these types of noninsurance activities. In conclusion, there is no need to expend limited regulatory resources at the federal level scrutinizing core P&C insurance activities when those activities are already regulated by frontline state insurance regulators.

*continued*

## Real World Example 1: Lehman Brothers illustrates the systemic impact of an investment bank failure.

The recent financial crisis provides a number of examples of systemically important institutions that survived thanks to government assistance or intervention. It also provides at least one example of a systemically important institution that was allowed to fail: Lehman Brothers.

Lehman Brothers filed for bankruptcy on September 15, 2008. At that time, it was the fourth largest U.S. investment bank, and, with $639 billion in assets, over $600 billion in bank debt, and over $150 billion in bond debt, its bankruptcy was one of the largest in history.

The collapse of Lehman Brothers serves as the quintessential example of how the failure of a financial institution can have a systemic impact across the financial sector and the economy as a whole. There are two ways that the failure of one financial institution can spread to the broader financial system: (1) through the direct impact of the failure on the institution's "counterparties," and (2) through the psychological contagion effect that creates "runs" on otherwise healthy financial institutions. The Lehman Brothers failure exhibited both types of systemic impact.

Financial firms (such as Lehman Brothers before it failed) depend on each other as sources of credit, liquidity, and risk-sharing, and to buy and sell securities. Through these transactions, they become "counterparties" to each other, with the failure of one counterparty potentially imposing losses on the other. Lehman Brothers' failure and the associated impact it had on other firms created a widespread breakdown in counterparty trust that greatly reduced these transactions, thereby straining the basic functioning of the financial system.

Lehman Brothers' failure also led to runs on otherwise healthy financial institutions that had no connection to Lehman. Although Lehman's failure did not cause the financial meltdown, it greatly exacerbated the crisis, contributing to the erosion of nearly $10 trillion in market capitalization from global equity markets in October 2008 and generating ripple effects throughout the global economy. The fallout from Lehman's bankruptcy filing was felt immediately: the Dow fell over 500 points; AIG lurched toward bankruptcy (only avoided through federal government intervention); Bank of America was encouraged to buy Merrill Lynch; and Goldman Sachs and Morgan Stanley were permitted to convert from investment banks to bank holding companies. Moreover, even before the formal bankruptcy filing, concerns about disruption of the credit default swap ("CDS") market led to an extraordinary special trading session on Sunday, September 14, 2008. The concern was due to Lehman's role as a major counterparty and reference entity in the CDS market. The special trading session and other steps were deemed necessary to avoid the market's collapse.

The impact of Lehman's bankruptcy on the mutual fund markets is illustrative of the reach of the failure. When Lehman Brothers failed, the Reserve Fund, a money market fund holding a substantial quantity of Lehman Brothers' commercial paper, "broke the buck" – the value of its assets fell below par. This prompted widespread withdrawal requests by Reserve Fund investors – requests that could not be met. When the Reserve Fund was unable to meet withdrawal requests, other investors in money market funds—many of which did not even hold any Lehman Brothers debt—issued withdrawal requests, setting off a run throughout the entire money market industry, ultimately leading to federal government intervention to shore up the market.[12]

*continued*

12 For further information on the Lehman bankruptcy, see Roe, Mark J., *The Derivatives Market's Payment Priorities as Financial Crisis Accelerator*, 63 STAN. L. REV. 539 (Mar. 2011), available at:
http://www.stanfordlawreview.org/content/article/derivatives-markets-payment-priorities-financial-crisis-accelerator;
and

Crapo, David N., *Lehman Brothers Dismantles in Bankruptcy*, PRATT'S JOURNAL OF BANKRUPTCY LAW ( Nov/Dec 2008), available at:
http://www.gibbonslaw.com/news_publications/articles.php?action=article_related&publication_id=2267

## Real World Example 2: AIG illustrates the systemic impact of a derivatives trading operation's failure.

Another casualty of the financial crisis, American International Group (AIG), has understandably brought a great deal of scrutiny to the P&C insurance industry as a potential source of systemic risk. AIG is after all known to the public primarily, yet inaccurately, as a P&C insurance company, and its controversial bailout by the U.S. government was the largest intervention in a single financial institution during the 2008 crisis. The story of AIG's Financial Products unit ("AIG FP"), an unregulated subsidiary of the AIG holding company, has been told and retold. In discussing the collapse of AIG FP, one state insurance commissioner described AIG as a group of large insurance companies with a derivatives trading unit "bolted on" to the holding company. This description actually understates the significance of AIG FP compared to the rest of AIG. With no capital of its own AIG FP was able to trade on the AAA credit rating of the AIG holding company (which was built on the ratings and assets of its underlying insurance subsidiaries) and create literally trillions of dollars in derivatives exposure.

Clearly, AIG FP's activities created systemic risk as that term is understood today. It was both too big and too interconnected with other major financial institutions to be allowed to fail. Its failure had the potential to destabilize numerous other interconnected financial institutions that in turn could have weakened or destabilized other firms.[13] AIG's P&C insurance companies, however, did not create systemic risk. In fact, throughout the financial crisis, AIG's P&C insurers have remained competitive and fully able to meet their obligations to policyholders.

13 The Troubled Asset Relief Program Inspector General, the bipartisan Financial Crisis Inquiry Commission and the Senate June Oversight Report – The AIG Rescue, Its Impact on Markets, and the Government's Exit Strategy ; Congressional Oversight Panel; June 10, 2010, all found that the systemic risk at AIG and the reason for the bailout was the risk to AIG FP's counterparties, not any risk created by AIG's insurance operating companies.

## Real World Example 3: Lumbermens Mutual[14] illustrates how early intervention and the slow-motion runoff of a major P&C insurer eliminates any potential for systemic impact.

The runoff of Lumbermens Mutual Group (f.k.a. the Kemper Insurance Companies) provides an excellent example of orderly rehabilitative efforts often undertaken with impaired P&C insurance companies.

As Lumbermens Mutual Group's ("Lumbermens") financial condition began to deteriorate in 2002, its personal lines property and casualty business was sold to Unitrin, Inc., which continued to operate the business under the Kemper name, which was licensed to, and later purchased outright by, Unitrin. This unit has become the largest P&C unit of Unitrin.

Since 2003, Lumbermens' remaining units have been in runoff under the administrative supervision of the Illinois Department of Insurance pursuant to a series of corrective orders that have permitted, among other things, certain accounting allowances in the preparation of the company's statutory financial statements. At inception, it was the largest insurance runoff in U.S. history. The details of the runoff plan – approved by the Illinois Insurance Department – are not publicly available because of its confidential nature. The goal of Lumbermens and the Department from the outset was to keep the company solvent through the runoff plan for as long as possible. When the company began the runoff, it ceased writing new business but continued to pay outstanding claims.

Lumbermens has managed to remain solvent and pay claims for over seven years. Regulators have been supervising the runoff and they continue to monitor Lumbermens' financial status. Under the runoff agreement, the department has the discretion to place the company in formal insolvency proceedings (which could entail conservatorship, receivership or liquidation). In fact, in March 2010 press reports and industry experts speculated that Lumbermens' surplus had declined so far that regulators would probably step in and pursue liquidation. However, Lumbermens' surplus subsequently stabilized and those regulatory steps proved unnecessary and the runoff continued.

The Lumbermens runoff process has been a success. Between 2003 and 2010, Lumbermens' liabilities declined from $5 billion to less than $1 billion. The process has been deliberate and orderly, and focused on paying as many claims as possible. Regulators have closely supervised the entire process and will continue to do so until the runoff is complete.

*continued*

14 Lumbermens Mutual Group, News Release, June 29, 2010 – Lumbermens Mutual Casualty Company and its affiliates ceased the use of the name "Kemper Insurance Companies" and continued the runoff of their operations under the trade name "Lumbermens Mutual Group." Historically, Kemper had been the marketing and trade name for Lumbermens and its affiliates. In connection with the change, Lumbermens Mutual Group sold its rights in the Kemper name to Unitrin, Inc.

## Real World Example 4: Reliance, the largest P&C failure to date, has no systemic impact.

The failure of Reliance Insurance Company in 2001 demonstrates how the protracted nature of the insolvency process for a P&C insurer mitigates the potential for any systemic impact.

When it entered liquidation, Reliance owed $10 billion in claims and was insolvent by $1.1 billion. At the time, Reliance was the largest P&C insurance company to ever have failed in the United States. Reliance was one of the country's oldest property and casualty insurers and was licensed to do business in all 50 states and the District of Columbia. Reliance's failure never threatened the stability of the financial markets or the broader economy.

Despite claims by some in the industry that regulators should have caught wind of Reliance's financial distress earlier than they did, the Reliance case follows the textbook progression of regulators' attempts to rehabilitate a failing company and eventual liquidation of the company. The Pennsylvania Insurance Commissioner petitioned for an Order of Rehabilitation of Reliance Insurance Company in May 2001 after discovering that the company was operating with a negative surplus. Claims were paid during the rehabilitation period and the commissioner was initially hopeful that the company could be restored. Following the financial market downturn in the aftermath of the September 11th terrorist attacks, however, the commissioner determined that Reliance's financial situation was unlikely to improve and decided to pursue liquidation.

Reliance Insurance Company entered into liquidation proceedings in October 2001 and the Pennsylvania insurance commissioner was appointed liquidator. The liquidation order immediately triggered state guaranty associations' obligation to pay policyholder claims in every state. Pennsylvania continued operating Reliance's claims department and claims were paid through the various state guaranty associations before the end of 2001. Policyholders and third-party claimants were given two years under the liquidation order to submit proof of claims to the commissioner.

The Reliance liquidation demonstrates the length and thoroughness of the regulatory response to an insurer's failure. More than two years after the liquidation order was entered, the liquidator received the court's permission to make "early access" payouts from Reliance's assets; another round of pay-outs was approved a year after that. These pay-outs followed years of careful assessments of the insurance company's financial position. It wasn't until November 2005 – four full years after the liquidation order was entered – that a final liquidation plan was submitted and approved by the receivership court. And the liquidation of Reliance remains on-going. On March 18, 2011, a judge approved a settlement agreement between the liquidator and General Security National Insurance Company, one of Reliance's reinsurers.

During the last ten years, the liquidator has taken advantage of every tool available to collect the company's assets and make claimants whole. For instance, the liquidator brought suit against Reliance officers and directors for preferential payments, fraudulent transactions, breach of fiduciary duty and professional negligence while they were running the company. The liquidator also brought suit against the company's accounting firm for misrepresenting the company's financial health prior to receivership, and pursued and reached several settlement agreements with reinsurers. Finally, the liquidator coordinated payments from many state guaranty associations and handled disputes between the associations over obligations to pay covered claims.

The Reliance liquidation has been a complicated process, involving several settlement agreements and court cases. But it exemplifies how the regulatory response to a major insurer's failure is a long and careful process. It also shows that the regulatory mechanisms in place can and do operate to avoid negative systemic impact and minimize harm to policyholders and other claimants.

# Contributors

**Steptoe & Johnson LLP** is an international law firm widely recognized for vigorous representation of clients before legislatures and governmental agencies, successful advocacy in complex litigation and arbitration, and creative and practical advice in guiding business transactions. The firm's insurance and financial services-related work is internationally recognized and encompasses insurance and reinsurance claims-related work, tax advice and advocacy, regulatory compliance and enforcement work in both the U.S. and the EU, and public policy advice and advocacy in both the U.S. and the EU. The firm has more than 500 lawyers and other professionals in offices in Beijing, Brussels, Century City, Chicago, London, Los Angeles, New York, Phoenix and Washington. For more information, visit www.steptoe.com.

**Matthew Gaul**, Partner in the New York office of Steptoe & Johnson LLP, where he represents insurance companies and other financial institutions in government investigations and enforcement actions, regulatory and compliance matters, and insurance and securities litigation. Mr. Gaul is formerly a Deputy Superintendent at the New York State Insurance Department. He also served as Special Counsel to the Department, and advised the Superintendent on the fallout from the 2008 financial crisis and the impact of federal financial services regulatory reform on state-based insurance regulation.

**Scott Sinder**, Partner and Chair of the Steptoe & Johnson law firm's Government Affairs and Public Policy practice group. Mr. Sinder also serves as the outside General Counsel for the Council of Insurance Agents & Brokers and for the CRE Finance Council. Mr. Sinder actively represents trade associations and companies on a wide range of issues in state and federal trial and appellate courts, in state legislatures and Congress, and before regulatory agencies. Current projects include legislative and regulatory work on a wide range of issues affecting insurance agents and brokers including post-enactment regulatory work related to the implementation of the recently enacted Patient Protection & Affordable Care Act of 2010 and the Dodd-Frank Wall Street Reform & Consumer Protection Act.

**John Fielding**, Of Counsel and member of the Steptoe & Johnson law firm's Government Affairs & Public Policy practice group. Mr. Fielding's primary focus is on insurance and financial services legislative and regulatory matters, and trade association representation. He represents financial services companies, insurers, insurance brokers, and industry trade associations on matters before Congress, and before industry regulators at both the state and federal levels.

**Kate Jensen**, Associate in the Washington office of Steptoe & Johnson LLP, where she is a member of the Government Affairs & Public Policy practice. Prior to joining the Government Affairs practice, Ms. Jensen worked for House Speaker Nancy Pelosi and at the Criminal Defense Clinic at the Athens-Clarke County Public Defender's office in Georgia.