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October 7, 2008

# What AIG's $85 Billion Bailout Means for Your D&O Insurance Policy: A Q&A with AIG Executive Liability


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The Federal Reserve Board's $85 billion bailout saved American International Group, Inc. (AIG) from the brink of bankruptcy, but many companies that purchase insurance from AIG (or more properly, one of the AIG Commercial Insurance companies ) still have questions about what impact this bailout may have on their D&O insurance coverage.

To get answers to the questions we have heard most from policyholders, we "sat down" with four senior executives from AIG Commercial Insurance's claims and underwriting departments.

**Michael W. Smith**, President, AIG Executive Liability[SM]

**Anthony Tatulli**, President, Financial Lines, AIG Domestic Claims, Inc.

**Heather Fox**, Senior Vice President and Chief Underwriting Officer, AIG Executive Liability

**Anthony M. Santoro, Jr.**, Senior Vice President and Chief Operating Officer, Financial Lines, AIG Domestic Claims, Inc.

**The following is a summary of the answers that they shared with us:**

### Q: Anthony, as President of Financial Lines, AIG Domestic Claims, Inc., what assurances can you give policyholders that they are still protected by their policies and that you are still paying claims?

**Anthony Tatulli:** The assurance is that nothing has changed at the commercial insurance company level – there are laws and regulations in place to protect policyholders. The AIG Commercial Insurance subsidiaries have $70 billion in assets and $26.7 billion in surplus. That has not changed. We are still paying claims at the same general rate as we were before. In September, Financial Lines Claims made over $150 million in claim payments.

**Heather Fox:** Many insurance departments have come out with messages to their policyholders on this point – for example, the Pennsylvania Insurance Commissioner stated we are financially sound and that our insured's policies are safe. It's one thing for us to say it but even more convincing when you hear it from independent parties such as insurance departments.

### Q: You mentioned that you have $70 billion in assets and $26.7 billion in surplus – what do these numbers represent and why should they give policyholders comfort in your continued financial stability?

**Mike Smith:** Our Commercial Insurance Group's invested assets are approximately $70 billion. When you deduct liabilities, which includes the reserves we have estimated on all current claims, the excess or policyholder surplus is $26.7 billion. The $26.7 billion is the reason the insurance departments in various states are publicly stating that AIG Commercial Insurance has substantial assets available to pay claims that we know about today and those in the future. Furthermore, the capital position of AIG Commercial Insurance is protected by those state insurance regulators, ensuring policyholders' interests are paramount.


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Both Mr. Bentz and Ms. Graving regularly publish articles on D&O insurance and management liability insurance; they are also frequent commentators on these issues. They can be contacted at:

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**Tony Santoro:** If you are a policyholder with a current claim, a reserve is already in place. If you are a policyholder with a new claim, the surplus is there to fund whatever reserve we need to put up for that claim going forward.

**Anthony Tatulli:** That's the significance of the $70 billion in assets and $26.7 billion in surplus. AIG Commercial Insurance is very strong and a very viable organization, in fact stronger than most of our competitors.

**Q: Can you give us a better understanding of how the surplus is invested – in particular, we'd like to know if any of the surplus is invested in the same "sub-prime" investments or "credit swaps" that caused the liquidity issues with your parent company.**

**Anthony Tatulli:** The surplus is very conservatively invested to maintain the liquidity we need to operate. John Doyle, President and Chief Executive Officer of AIG Commercial Insurance and Robert Schimek, Executive Vice President and Chief Financial Officer of AIG Property Casualty Group, recently gave a presentation detailing how the surplus is invested. I'd recommend that anyone interested in a more detailed description of how the surplus is invested review their presentation at *http://www.talkpoint.com/viewer/starthere.asp?Pres=123385*

**Q: It's been reported that the Federal Reserve Board now owns 79.9 percent of AIG – how does this impact the way you are doing business? Do you still have authority to negotiate, settle and/or pay claims? Do you have the same control over your capacity and what risks you insure? Do you need approval from any governmental person or entity to act?**

**Anthony Tatulli:** While our ownership structure may have changed, our operations have not. It's business as usual – with regard to authority, nothing has changed.

**Mike Smith:** Nor has our capacity and appetite for risk changed. We are still underwriting and binding business and, as Anthony mentioned, we are paying claims like we did before.

**Q: Whenever there is crisis at a company, it can be a challenge to retain your most talented people. What are you doing to ensure that you will keep talented people in the claims and underwriting departments going forward? Do you anticipate any reorganization, lay-offs, departures, etc., at this time?**

**Heather Fox:** Just as we have been spending a lot of time talking with our clients, we continue to have conversations with our people to ensure that we retain our talent. We recognize that, at an insurance company, a major asset is the talented people that work here and we are spending a lot of time with our people to make sure they are fully informed.

**Q: The financial viability of any insurance company depends upon its ability to continue to generate new business and maintain its current customers. Heather, as Chief Underwriting Officer at AIG Executive Liability, could you please comment on how your insureds reacted to the news about AIG over the past few weeks (*e.g.*, have many clients cancelled or non-renewed) and what you plan to do to keep your current clients and attract new clients going forward?**

**Heather Fox:** We have been really gratified by the loyalty of our clients. We have been in this business for four decades and the relationships that we have developed during that time have given us the opportunity to have conversations with our clients and answer their questions. By and large, our clients have remained with us.

As we move forward, we are relying on our very talented workforce. We have always been leaders in this space and we will continue to innovate. As we move forward with these types of conversations and our message gets out, I am confident we will have the ability to maintain that leadership position.

**Q: For the last couple of years, the D&O insurance market has been softening in terms of premium. How do you expect that the crisis at AIG, along with the uptick in the number of class action filings, will impact D&O insurance rates going forward?**

**Heather Fox:** A couple of weeks ago, we were spending a lot of time talking about how there were two distinct D&O markets – one for financial institutions and one for all other types of businesses. We were seeing rate increases for financial institutions before and we are still seeing rate increases for financial institutions now.

For other types of businesses we were seeing some mild rate decreases a couple of weeks ago followed by a lot of inconsistency in the marketplace due to the unrest and turmoil. Now that things have stabilized, I think we will get back to the place where we need to be – that includes looking at things like the fact that securities class actions are on the rise, the effect of the credit crisis and the increased severity of claims. On a net basis, I don't think what happened at the parent company, AIG, Inc., will influence pricing overall.

**Q: AIG companies have traditionally been selective about writing excess of other insurers. If roles were reversed, would you be willing to write excess over a carrier in a situation similar to AIG's? Along those same lines, what would you say to another carrier that might be reluctant to write over your policy at this time?**

**Heather Fox:** First, in the last few years we have started to write excess over a lot more carriers than we have in the past, as long as we were comfortable with pricing and terms. As far as what we would do if the roles were reversed, we would stick to our underwriting fundamentals. We look at ratings when we decide but we also look at claims handling and claims reputation. We write excess over carriers with the same ratings as we have right now every day.

One of the reasons we like to write primary is because it allows us to handle claims and we have the intellectual capacity to manage complex litigation. If we are going to write excess over a carrier, we want to ensure that the carrier is capable of handling claims effectively.

**Anthony Tatulli:** If you look at the financial strength of AIG Commercial Insurance and the strength of our claims organization – none of that has changed. There is no reason why a carrier's opinion about whether they want to write excess over us should have changed.

**Q: Those of us who have been in the business for a while remember failures at insurance companies such as Reliance and Kemper – how is the AIG situation different?**

**Heather Fox:** Reliance and Kemper were both undercapitalized at the insurance company level. AIG Commercial Insurance's substantial capital position has not diminished as a result of our parent company's financial situation and is protected by state insurance regulators.

**Anthony Tatulli:** Frankly, the numbers speak for themselves. With our assets and policyholder surplus, we are not in a comparable situation to Reliance or Kemper, who were undercapitalized. In fact, if you look at our financial strength compared to many of our competitors, our financial strength is very impressive.

**Q: Several of our clients have asked what would happen to their coverage if AIG Commercial Insurance were sold or forced into bankruptcy. How would you respond to their concerns?**

**Anthony Tatulli:** The short answer is that AIG Commercial Insurance has a healthy surplus of $26.7 billion which makes bankruptcy an extremely unlikely scenario. Also, the surplus gets replenished as we continue to write premiums and produce an underwriting profit.

**Heather Fox:** With respect to the question of what would happen if we were sold, our CEO has been crystal clear that we are a core asset of AIG and there is no plan to sell us. We plan to be here and our CEO has stated several times to us and to the public that Commercial Insurance, including AIG Executive Liability, is not for sale.

We at Holland & Knight would like to thank Mike, Heather, Tony and Anthony for taking the time to answer our questions. We will continue to monitor the D&O insurance marketplace and will provide additional market updates as appropriate. In the meantime, please feel free to contact us if you have questions.

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[1] AIG Commercial Insurance companies include: AIG Casualty Company, American Home Assurance Company, American International South Insurance Company, Commerce and Industry Insurance Company, Granite State Insurance Company, Illinois National Insurance Co., National Union Fire Insurance Company of Pittsburgh, Pa., New Hampshire Insurance Company, The Insurance Company of the State of Pennsylvania, AIG Excess Liability Insurance Company Ltd., American International Specialty Lines Insurance Company, Landmark Insurance Company, Lexington Insurance Company, AIG Commercial Insurance Company of Canada, National Union Fire Insurance Company of Vermont and AIG Excess Liability Insurance International Limited.

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## Holland & Knight Ranked a Top Law Firm for Director Liability Issues by *Directors & Boards* Magazine

For the second year in a row, Holland & Knight has been ranked one of the nation's top law firms for dealing with director liability issues, according to a survey released by *Directors & Boards* magazine. The results of the second annual Top Corporate Governance Law Firms survey were based on the responses of over 400 directors and board members to a reader questionnaire.

"Holland & Knight is proud that corporate directors and other senior management throughout the country identified our firm as one of the very best in protecting their personal assets," said Steven Sonberg, Managing Partner of Holland & Knight. "The ranking acknowledges the firm's breadth and depth of experience in evaluating, negotiating and enforcing directors and officers liability insurance policies, along with our reputation for providing superior client service."

*Directors & Boards* publishing director David Shaw said, "We did not provide a list of firms from which to choose, but rather asked survey respondents to fill in up to three law firms in each category. This "unaided" response is more powerful, in our opinion.  Additionally, we masked out responses from non¬directors or company executives to ensure that only board members and senior management opinions were included out of the total respondents to the survey."

**About Holland & Knight's D&O and Management Liability Insurance Team:** The team, led by partner Thomas H. Bentz, Jr., assists clients in evaluating, negotiating and enforcing their D&O and other management liability insurance policies. Located throughout the country, our clients range from *Fortune 500* companies, to smaller corporations, to boards of directors seeking independent advice with their D&O insurance programs.

***"The ranking acknowledges the firm's breadth and depth of experience in evaluating, negotiating and enforcing directors and officers liability insurance policies, along with our reputation for providing superior client service."***

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