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News Release

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Guy Carpenter Analyzes Key Legal Developments in Continental Europe

Provides Overview of Legislative Changes, Judicial Rulings of Greatest Impact to Casualty Insurance Industry

New York, September 14, 2010
Guy Carpenter & Company, LLC, the leading global risk and reinsurance specialist and a part of the Marsh & McLennan Companies (NYSE: MMC), today released its report on recent developments and trends in the Continental European legal environment impacting the casualty insurance industry.

The report, *Recent Legislative and Judicial Developments in Continental Europe Affecting the Casualty Insurance Industry*, covers March to September 2010 and is available at www.gccapitalideas.com. It was developed in conjunction with law firm Heuking Kühn Lüer Wojtek and its network of leading insurance law practitioners in their respective jurisdictions across Continental Europe.

EUROPEAN UNION (EU)

- The European Commission published a summary of responses submitted during the public consultation period of the Rome II Study on Compensation of Cross-Border Victims in the EU. The consultation was to obtain the views of interested parties on the effects of the application of foreign law to cross-border road traffic accident claims across the EU.
- A consolidation of the five Motor Insurance Directives adopted from 1972 to 2005 sets out a framework for dealing with cross-border accidents in Europe. While broader in scope than the Rome II Study, the Sixth Motor Insurance Directive has the same goal of protecting third-party victims of road traffic accidents. The Directive calls for fair compensation to victims who have suffered serious injuries and exemptions from the obligation to be insured against civil liability.

AUSTRIA

- The Austrian Supreme Court defined “non-statutory duties to inform” on the insurer’s part, which derives from the principle of utmost good faith in insurance law. Insurers must expressly inform any insured party who is in qualified arrears with a premium payment. Insurers must inform policyholders that they will only regain insurance cover when the premium in arrears is paid. If the insurer does not inform, even though it was aware that the insured party misunderstood whether insurance cover existed, an omission to inform may be held against it.

FRANCE

- According to French Insurance Code, “legal actions arising from an insurance contract shall be barred two years as from the event that gave rise thereto.” Nearly half of the French Supreme Court’s decisions in insurance matters relate to this two-year limit. Decisions rendered in 2009 and 2010 confirmed the applicable rules.

- In March it became possible to challenge the application of provisions of a Parliamentary act and refer these provisions to the Constitutional Council for ruling on their conformity with the Constitution. This *Question Prioritaire de Constitutionalité* (QPC) may be raised by anyone subject to trial before a French court. The QPC balances the rights between two parties in proceedings to ensure that a statutory provision does not infringe on rights and freedoms guaranteed by the Constitution. As such, the QPC may be well utilized in litigation.

GERMANY

- The Federal High Court of Justice handed down a judgment regarding causality between the use of a medication and bodily injury suffered by the patient, confirming the Court's prior jurisdiction regarding various forms of the burden of proof.
- In similar cases, the burden of proof is the decisive factor for a judgment. The High Court did not rule on the question of whether and under which conditions the principle of prima facie evidence is applicable in a case where a patient, after taking medication associated with a specific risk, suffers bodily injury related to that specific risk. However, the Court upheld that the principle of reversal of burden of proof regarding medical malpractice cases cannot be transferred to product liability claims based on the violation of duty to warn of specific risks.

ITALY

- The scope of liability and amount of compensation for medical malpractice has continuously risen in the past decade. Consequently, many insurance entities once active in this field have begun to lose interest in this business. However, recent rulings by the Supreme Court regarding burden of proof, lack of informed consent and recoverable damages should create more balance in the allocation of medical malpractice risk, particularly in cases where an unfortunate outcome of a legitimate medical act is not under the control of the medical profession.

THE NETHERLANDS

- Pain and suffering as a result of the loss of life or heavy injury of a relative due to the unlawful action of a third party is not compensable in the Netherlands. In March 2010, a draft bill aiming to introduce this type of compensation was defeated in the Dutch parliament.

NORWAY

- Draft legislation has been developed for the Insurance Activities Act to address topics not currently subject to regulation and certain material amendments to the legislation governing non-life insurance. The intent is to secure important consumer interests and improve competition between non-life insurance companies. Implementation of the draft legislation will require limited resources from authorities and the private sector, including non-life insurance companies. It is anticipated that the amendments will be approved by the Norwegian parliament.

SPAIN

- The Supreme Court ruled on the initial and final dates for the calculation of the special default interest, which is the punitive interest that insurers must pay if they delay the settlement of claims without justified cause.

SWEDEN

- Despite the high cost and seriousness of fraudulent motor insurance claims, the Svea Court of Appeal recently ruled in favor of the claimant, finding that the statistical improbability of a car theft was not sufficient to rebut a claim under a motor policy.

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SWITZERLAND

- Despite criticism, a Solvent Scheme of Arrangement can be an appropriate instrument for a rapid and comprehensive liquidation of a Swiss primary insurance portfolio or line of insurance business. However, the founding of a captive in the UK solely for that purpose might not be appropriate, as such a captive would run the risk of not being regarded as an insurance company. The Swiss supervisory authority will likely make this distinction in its determination of whether a captive is an admissible assignee for the transferred portfolio.
- For Swiss primary insurers, where portfolio transfers are concerned, it remains doubtful if the supervisory authority will agree that the interests of the insured are sufficiently safeguarded when confronted with a Solvent Scheme scenario. Even if the supervisory authority accepted such a portfolio transfer, it would hold additional discretionary power regarding the volume and content of the approval and might impose conditions before granting approval.

QUOTES

David Lewin, Managing Director, International Casualty Specialty, Guy Carpenter & Company

"Recent legislative and judicial developments reveal a level of conservatism among judges and legislators that is sounding a note of caution over the pace at which legal liability should expand in Continental Europe. Nonetheless, the underlying long-term pressure to extend liability to a more standardized level across Europe remains, and we are likely to see new legal challenges to increase both compensation levels and the scope of legal liability in due course."

TAGS/KEYWORDS

Guy Carpenter, Heuking Kühn Lüer Wojtek, Lewin, insurance, reinsurance, casualty, motor insurance, medical malpractice, French Insurance Code, Solvent Scheme, Spanish Insurance Contract Act.

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About Guy Carpenter

Guy Carpenter & Company, LLC is the world's leading risk and reinsurance specialist and a part of the Marsh & McLennan Companies. With over 50 offices worldwide, Guy Carpenter creates and executes reinsurance solutions and delivers capital market solutions* for clients across the globe. The firm's full breadth of services includes line of business expertise in Agriculture; Aviation; Casualty Clash; Construction and Engineering; Excess and Umbrella; Life, Accident and Health; Marine; Medical Professional Liability; Political Risk and Trade Credit; Professional Liability; Property; Retrocessional Reinsurance; Surety; Terrorism and Workers Compensation. GCFac® is Guy Carpenter's dedicated global facultative reinsurance unit that provides placement strategies, timely market access and centralized management of facultative reinsurance solutions. In addition, Guy Carpenter's analytics unit utilizes industry-leading quantitative skills and modeling tools that optimize the reinsurance decision-making process and help make the firm's clients more successful. Guy Carpenter's website address is www.guycarp.com.

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