

Risk Specialist

What effect does self-reporting have on D&O policies?
page 10

The FIFA World Cup reveals risk issues at major events
page 22

The US, China and Russia – an uneasy relationship?
page 24

Special report: alternative energy

manage the risk to harness new power generation opportunities





Lost in the D&O insurance maze?

Are you stuck in a maze of Directors' and Officers' Liability insurance legislation, compliance, taxation and local jurisdiction issues?

D&O exposures to stakeholders, regulators, environmental agencies or the general public have led to a growing trend in the frequency and severity of lawsuits. Insurers have responded with new policy forms and endorsements.

No two D&O policies are the same. Adequate cover will only come from designing a policy around your specific needs.

Jardine Lloyd Thompson has a team of D&O specialists who are experienced within the US, Asian, European and London markets. Using our expertise and knowledge we have developed a comprehensive health check process that we apply when designing D&O policies.

At Jardine Lloyd Thompson we don't have off-the-shelf policies, they are bespoke, tailored to your needs and encompass the widest form of protection available.

For a free no obligation health check on your existing D&O policy, please contact Michael Lea on +44 (0) 20 7558 3686 or Ian Nichol on +44 (0) 20 7528 4481





- 4 Upfront**
Waste-to-energy risk, white paper on product liability, power and water summit and golden rules for managing major claims.
- 7 Sector insight**
Expert insight on the outlook for the insurance market.
- 8 Cause for concern**
Complex claims require fair and careful handling to establish causation and confirm whether the loss is insurable.
- 10 Blowing your own whistle**
The pressure on directors to report suspicions about their organisations means it is time for a D&O policy health check.
- 13 Special report: alternative energy**
We take a close look at two of the most promising sources of today's energy generation: nuclear power plants and offshore wind farms.
- 22 Covering the main event**
For the organisers of major events like this summer's FIFA World Cup, it is vital to match the insurance policy to the specific risks.
- 24 Marriages of convenience**
The relationship between China, Russia and the US has hit a tricky patch, with the Chinese appearing to hold all the cards.
- 26 Thinking ahead**
With patent infringement risks becoming more widespread, there is an urgent need for a better response from insurers.

A new environment

We are living in uncertain times, where everything from geological activity to a crisis in national finances is creating disruption. In this kind of environment, we are reminded of the central role of insurance, providing business with the confidence to trade through these tricky times, offering financial protection against the worst case scenarios.

The role of insurance is simple, but when a claim occurs the process can prove highly complex. The first step is to look at the proximate cause, but as the article on page 8 shows, even this can be fiendishly complicated.

Once the cause is confirmed to be within policy parameters there can still be hurdles to cross. It is a wonder, therefore, that more companies don't put their policies through a health check more often. In this issue we examine the benefits of reviewing D&O policies on page 10. We have also published a white paper (see page 5) on stress testing for product liability for life sciences companies and have a number of other similar services. This kind of health check is vital if a business is to have confidence in its insurance programme.

It's an approach we've taken ourselves in developing our renewable energy offering, introduced on page 13. We now have more than 220 people focused on energy and construction, at the forefront of developing programmes for those in the nuclear and renewable sectors. Our breadth and depth of specialist knowledge means we are well positioned to find ground-breaking solutions in this fast-developing sector.

It may be a time of exceptional uncertainty, but it's also one of incredible possibilities, and we are very excited about helping our clients make the most of every opportunity coming their way.

Kind regards

Martin Hiller
CEO, Jardine Lloyd Thompson Limited



Risk Specialist is the client publication of Jardine Lloyd Thompson Limited, a specialist insurance broker providing market-leading industry knowledge and expertise to some of the world's largest companies.

T: +44 (0)20 7528 4000 F: +44 (0)20 7528 4500 www.jltgroup.com

The information in Risk Specialist is for general interest and guidance. Action should not be taken on the basis of any article without seeking specific advice.

Paper sourced from well-managed and sustainable forests.

Lloyd's Broker. Authorised and regulated by the Financial Services Authority and a member of the Jardine Lloyd Thompson Group. Registered office: 6 Crutched Friars, London, EC3N 2PH. Registered in England. No. 01536540. VAT No. 244 2321 96. © Jardine Lloyd Thompson Limited. May 2010.

Published by Grist

Publishing director Mark Wellings
Editor Sarah Coles
Consulting editor Lee Coppack
Art director Andrew Beswick
Sub-editor Jonathan Lalljee
Commercial director Andrew Rogerson
Telephone: +44 (0)20 7434 1447
Website: www.gristonline.com

Waste-to-energy: understand the risks

Impending deadlines for the EU Landfill Directive targets on biodegradable municipal waste are fuelling interest in waste-to-energy private finance initiatives (PFIs). Louise Mercer, a partner within Jardine Lloyd Thompson's PFI Team says there are five risk management issues to consider.

The first is planning, as the long procurement makes it difficult to accurately predict insurance costs. She says: "There are things that can be done to reduce the risk of changes in insurance costs over time, including amending the standard premium sharing agreement to reflect changes in the power insurance market not the general PFI market, and reviewing the project at an early stage to identify the factors that will affect the cost of insurance."

The second risk is posed by technology, especially where unproven technology is selected. Insurers typically respond to uncertainty about technology by imposing restrictions and higher premiums. "It is vital for developers to understand the risk and insurance implications of technology selection," Mercer says. "Good project management will ensure the quality of the equipment, as are openness and transparency between the manufacturers, engineers and insurer."

The third issue is project financing. The economic environment means lenders have sought excessive levels of coverage and deductibles, pushing up the cost of insurance after the pricing structure has been agreed with the employer. Mercer warns: "The need to meet



the lenders' requirements and at the same time keep their demands reasonable can be a delicate balance."

"The fourth challenge is assembling an economical and robust insurance programme," says Mercer. By supplying insurers with comprehensive, up-to-date information, the owner can remove unknown elements that could push up premiums.

The final issue is claims service. Mercer points out: "Claims in the construction industry can be more complicated than property insurance claims. The nature and cause of loss is likely to be complex, with multiple layers of contractual agreements and liability risk transfers. It takes an expert to understand and deal with these issues."

• For a full and comprehensive report on this issue, please contact Louise Mercer at Louise_Mercer@jltgroup.com



Elizabeth Stephens
discussed risk in power
and water projects

Arabian Power & Water Summit highlights

Jardine Lloyd Thompson attended the 2010 Arabian Power & Water Summit recently held in Abu Dhabi to discuss long-term planning and energy diversification to support the rapid economic development of the region.

Elizabeth Stephens, Head of Credit and Political Risk Analysis at JLT, addressed the delegates on the issues of political risk in power and water projects.

Following on from the summit Tony Rastall, Partner, JLT Construction, has produced a blog on the five main issues that stood out from the conference.

• Read the full blog at www.jltgroup.com/risk-and-insurance/blogs

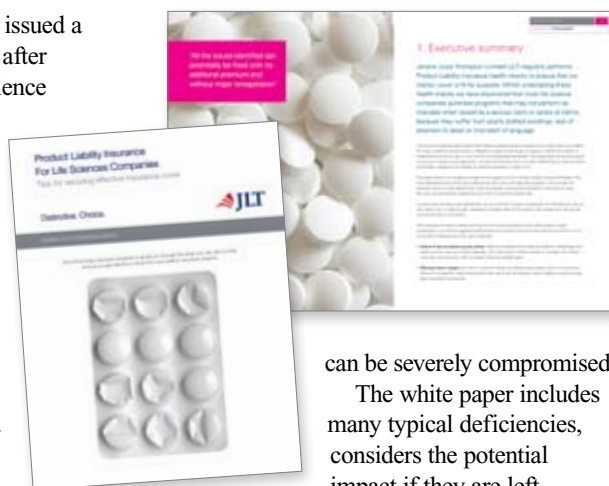
Insight on product liability insurance for life sciences

Jardine Lloyd Thompson has issued a product liability white paper, after discovering that many life science companies purchase programmes which may not perform as intended when tested by a serious claim or series of claims.

The discovery was made during regular product liability insurance health checks to ensure that cover is fit for purpose.

Problems were discovered in a number of areas, most notably poorly drafted wordings, lack of attention to detail or mismatch of language.

These deficiencies are usually discovered in a claim situation. At best this can mean a delay in a claim payment whilst the intent is agreed, perhaps arbitration if the claim becomes adversarial. In worst case scenarios the level of claim recovery



can be severely compromised.

The white paper includes many typical deficiencies, considers the potential impact if they are left

uncorrected, offers practical suggestions to overcome deficiencies and uses real life examples to illustrate the issues.

• To download the white paper or enquire about arranging a health check for your product liability insurance cover please visit www.jltgroup.com/pl-whitepaper or contact James Bird on +44 (0)20 7558 3580

HEADS UP



SIX GOLDEN RULES FOR MANAGING MAJOR CLAIMS

One of the most common reasons companies do not recover what they are entitled to from their insurers is because they underestimate what is required when substantiating a claim. Below are six golden rules to help you prepare:

- 1 Plan** how you will deal with a loss before it happens.
- 2 Stress test** your policy and procedures.
- 3 Establish a claims protocol** to streamline the process and agree it with your insurers.
- 4 Appoint a senior, board-level sponsor** with access to operational teams and information.
- 5 Nominate someone to review** all of the information before it is submitted to the loss adjuster to ensure it does not prejudice your claim.
- 6 Do not be afraid** to call in external experts to supplement your in-house resources.

• For more information please contact Candy Holland on CandyHolland@echeloncl.com

Supply chain solution wins major award

An independent panel of risk management professionals awarded a 2010 Business Insurance Innovation Award to SCAIR™, a supply chain risk management software tool distributed by Jardine Lloyd Thompson.

The awards recognise leadership, inventiveness and ingenuity in products and services designed for professional risk managers.

SCAIR™ was recognised by the judges

for its ability to objectively allow risk and supply chain managers to fully understand vulnerable links in their supply chain. It responds appropriately and decisively to failures in the supply chains, helping corporations further enhance their business continuity management processes.

• For more information about SCAIR™ or supply chain management risk issues, please contact Tim Cracknell on +44 (0)20 7558 3941

“The very factors driving companies to seek Patent Infringement Liability cover also make it difficult to buy. Most of the insurers will not sell cover to US-domiciled companies or cover US risks, where the worst exposure lies.”

Luke Foord-Kelcey, Partner at Jardine Lloyd Thompson, explores some of the shortcomings of current solutions to patent infringement. See page 26.



Claim your ideal partner

Settling a major insurance claim can be complex, lengthy and time consuming. Preparing and presenting your claim to a team of experts from your insurer is a challenging process without the right people on your side.

Finding the ideal partner will alleviate the stress and help you deliver the results your business demands.

Echelon Claims Consultants is a team of loss adjusters who help corporations prepare and settle large, complex or disputed claims. They represent you, the policyholder and ensure your interests are paramount.

For more information and to find claims tips and guidance to help you prepare for or settle a claim visit our website.

www.echelonccl.com

Authorised and regulated by the Financial Services Authority. A member of the Jardine Lloyd Thompson Group. Echelon Claims Consultants Ltd. Registered office: 6 Crutched Friars, London EC3N 2PH • Registered in England No. 4319900 • VAT No. 244 2321 96



Sector insight

Expert insight on the outlook for the insurance market



Property and casualty

As one of the most benign catastrophe years, 2009 upset forecasts that the property/casualty market would stabilise. Improving combined ratios of insurers, new capacity and the ambitions of a number of key players to establish themselves as lead insurers were all factors driving competition and creating a positive effect on prices and coverage, says **Chris Tabbitt**, Head of the Property and Casualty practice in the Global Risk Solutions division of Jardine Lloyd Thompson.

By contrast, 2010 has not started well, with catastrophe losses exceeding US\$15 billion in the first quarter, mainly as a result of the earthquake in Chile and a number of storm and flood losses. Even so, we have seen limited impact on the general market, with insurers focusing rate increases on poorly performing risks and specific sector risks, such as mining and certain catastrophe territories. While some insurers are talking the market up, it is difficult to see this materialising in 2010 unless the loss trend continues as we move in to the hurricane season.

Topical tip for buyers: Invest time to develop key insurer relationships. If you have a corporate enterprise risk management (ERM) strategy, open it to insurers and work with them to understand how it can benefit (and shape) your insurance programme. Continue efforts to get quality and relevant risk data and get to market early.



Credit, political and security risk

The market for structured trade credit insurance remains hard, having taken catastrophe-level losses as a result of the financial crisis, says **Nick Robson**, Head of Credit, Political and Security Risk.

We believe this part of the credit market is very well proven and remains valuable for buyers, as opposed to the "plain vanilla" short-term whole turnover credit insurance market, which cancelled credit limits in an arbitrary manner as the crisis took hold and took a reasonably combative claims position in many circumstances.

The political risk market has benefitted from a slight movement of capacity from credit risk, and has eased a little, but political risk is generally thought to be rising, for a number of reasons including the fact that governments under budget pressure from the crisis are prone to making adverse decisions to avoid liabilities to foreign investors. So underwriters do remain cautious.

Topical tip for buyers: Think the issues through with your broker and treat underwriters as business partners. Remember Credit and Political Risk insurance stands behind contracts: it doesn't remedy flaws in them.



Energy and marine

There is an increasing divergence in pricing for energy risks over international onshore, international offshore and US Gulf of Mexico windstorm risks, says **Martin St Pierre**, Managing Director, Energy & Marine, Jardine Lloyd Thompson. Onshore is competitive and becoming more so.

Offshore has been competitive, but has been impacted by the Deepwater Horizon drilling rig disaster in the Gulf of Mexico on 21 April 2010. Offshore US Gulf of Mexico risks remain tough on named windstorm coverage. The overall timing of this loss couldn't have been worse for offshore 1 May renewals.

Marine markets are suffering from the downturn in shipping and shipbuilding. We have seen hull values collapse and more vessels being laid up. Owners' desire for quality security, however, meant base rates reduced less than otherwise anticipated, and the market remains competitive. Piracy is a concern for everyone involved in trading through the Gulf of Aden and Indian Ocean. We are assessing the implications of President Obama's Executive Order 13 April 2010 to block payments to certain individuals in Somalia.

Topical tip for buyers: Take advantage of market conditions but don't needlessly abandon established relationships. Provide insurers/reinsurers with the underwriting information they need to assess and price your risks. Investigate options for splitting composite programmes, due to the expected divergence of onshore and offshore market rating. Review your business interruption and consequential loss limits in light of higher energy prices and increasing demand.



Construction

The market is picking up, and banks are expected to significantly increase lending for projects in Europe, the US and Middle East power and energy, says **Paul Knowles**, Divisional Managing Director Construction division. There is plenty of capacity available except for the largest projects where the broker may need an innovative programme structure to stay competitive.

There is strong demand from insurers for professional indemnity risks for design and construction contracts, especially clean risks, as a result of good quality new security in the market. Independent construction professionals are also likely to find willing underwriters, although firms with exposure to property valuation issues will find it tougher.

The real estate market shows no concrete signs of hardening, albeit significant rate reductions are no longer prevalent. Carriers continue to push for rate increases, but market competition is ensuring that rate increases where achieved are very much case specific.

Topical tip for buyers: Check the quality of sub-contractors' insurance. In the recession, they may have used insurers who aren't as financially robust as those of the main contractor. Be able to show underwriters that you're managing that exposure. In real estate, plan a renewal strategy and explain to insurers how risks are managed across the portfolio to avoid higher premiums.

Cause for concern

Discovering the underlying cause behind a claim is not always easy. Complex claims require fair and careful handling to establish causation and confirm whether the loss is insurable. By **Helen Yates**



When Ian Fulton, a Claims Consultant at Echelon, was contacted about a recent claim involving a steam turbine, it quickly became apparent that establishing the cause of the damage was not going to be straightforward. “Squealing noises were heard when the machine was shut down for planned maintenance work,” he explains. “The insured decided to open up the machine, which revealed substantial damage.” An initial investigation revealed four possible causes. Isolating the one to blame was vital to getting the claim paid but required investigation from a number of professionals. This shows just how complex and delicate the process can be.

When an incident takes place that gives rise to a large or complex claim, a variety of experts may step in. First is the loss adjuster from the insurer. “The loss adjuster has a big role to play because their challenge is to seek the causation of the loss and determine whether or not it’s an insurable event,” explains Alan Fleming, former Risk Manager for ICI and Railtrack and former CEO of the Association of Risk and Insurance Managers.

During his time in the chemicals industry, Fleming was involved in a number of large and complex claims wherein the main issue was to establish whether the losses were a result of an accident or negligence. One loss involved a truck explosion in Peterborough.

The truck, which had been carrying explosives, caught fire when it was driven over some sleeping policemen. “In that case,” Fleming says, “the truck wasn’t packed solidly enough and therefore when there was friction, it caused a spark. It’s about going back and looking in detail at the processes and that’s exactly what the loss adjuster would do.”

Impartial viewpoint

The second professional who might become involved is a technical expert, who can be brought in by the insurer where further investigation is needed to establish causation. The independence of such an expert is imperative, says Katherine Jeffers, Deputy Casualty Claims Manager at XL Insurance. “If your experts aren’t independent, they won’t be able to give you an impartial view of the circumstances and the cause of the event.”

These experts are tasked with finding the truth, but causation is frequently not an open-and-shut case. If the process is left entirely to

the insurer and its advisers, there is a risk of a decision that the policyholder may not consider equitable. However, if policyholders wait until this point to challenge the conclusions, they may have a fight on their hands.

In the example given in the introduction, if the loss adjuster had concluded there were four separate causes to the breakdown, there would have been four separate claims, making the deductibles highly significant. If they were dealt with in one big claim, with one deductible, on the other hand, it would make a sizeable difference. In some instances, therefore, there is a third professional who may get involved, this time on behalf of the policyholder – the claims consultant.

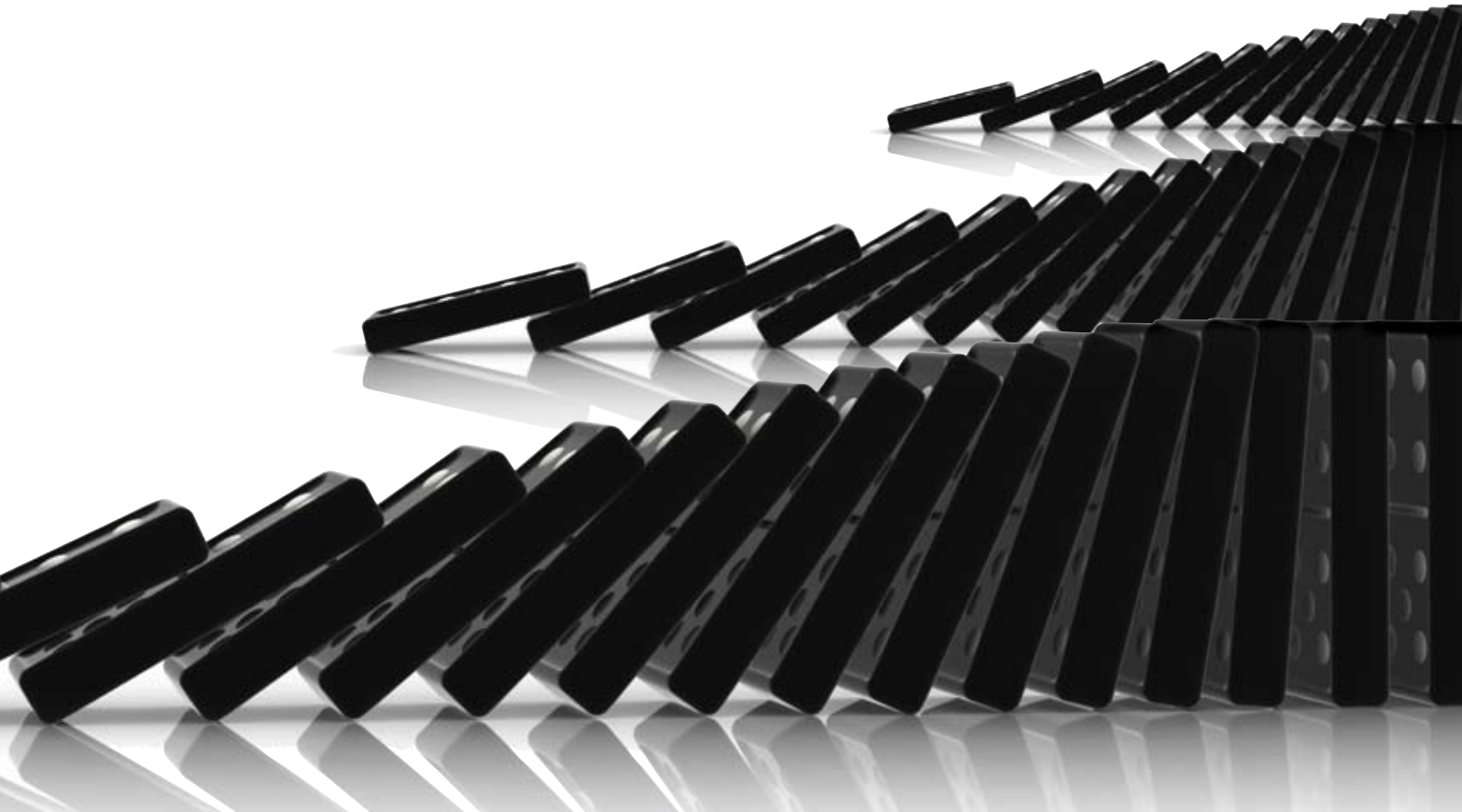
Consensus of opinion

Claims consultants work alongside the loss adjuster to look after the policyholder’s interests. In this instance, Fulton and his team drilled down into each possible cause,

flagging up issues and considerations, and making sure conclusions were valid, appropriate and based on the right information. He was also able to offer alternative views when he thought the loss adjuster and experts were unfairly interpreting facts in favour of insurers, and this helped to reach a consensus of opinion.

“If your experts are not independent they can’t give you an impartial view of the cause of the event.”

Katherine Jeffers, XL Insurance



Some claims consultants also have technical expertise, which carries additional weight when challenging other experts. Rob Sands, a Claims Consultant at Echelon, describes a situation where the client had notified a claim under an operations policy, which carried a significant deductible. “During the course of my review and research into the background of the claim, it became apparent that it should have been pursued under a contract works policy – and under that policy there was a significantly lower deductible – so that was applied to give a satisfactory outcome.”

Key considerations

Establishing cause is a complex business, which can go as far back as purchase. The investigation will need to see copies of any paperwork detailing the history of the faulty equipment. “Are there details of the specification of the product available, plans and contracts where appropriate and photographs?” Jeffers asks. “We would want to know if the manufacturer knew what the product would be used for. Once all the initial information has been collated and reviewed, we would look to see what further investigations we need to make.”

Those investigating would also want to know whether the equipment was properly tested and maintained, and whether there were any warning signs. Maintenance records

“An OEM will not readily shoot themselves in the foot if some level of blame is directed at them.”

Ian Fulton, Echelon

should detail testing and quality assurance processes, and event logs, to show actions taken from the point at which the problem was discovered. “An obvious party to go to is the OEM [original equipment manufacturer] because they know the machine and they probably maintained it and they’re well placed to do those investigations,” says Fulton.

“On the other hand, they’re not going to shoot themselves in the foot too readily if there is potentially some level of blame to be directed at them,” he adds.

Of course, it is not always possible to establish cause. Fleming’s time at Railtrack included three of the biggest UK rail disasters, including the collision of two passenger trains at Ladbroke Grove in October 1999. The crash and subsequent fire caused 31 deaths and left 400 injured. “Even now we’re not sure what happened,” he says. “Did the driver go through a red light? Was the red light obscured in the sunlight? Did the

red light not work properly? There were so many questions and an enormous amount of research, and at the end of the day you get a probable outcome.”

While questions surrounding liability were asked, the insurance market joined forces to ensure the passengers were dealt with quickly and correctly and compensated accordingly. “All the discussion

about liability and responsibility was going on behind the scenes and the insurance market united because there was a legal and binding agreement that they did so,” reveals Fleming. “That is a good example of how a situation can be sorted out over time, but the people directly affected are dealt with promptly.”

Establishing causation is far from straightforward. The right approach by the right experts is vital, not only for ensuring the claim is settled fairly, but also to benefit the future business. “Once cause is established, the policyholder will ask: ‘How can we prevent this from happening again?’ If we discover something the insured can rectify to prevent similar losses, we’ll work with them to minimise future risk,” says Jeffers. **RS**

i IanFulton@echeloncl.com

Helen Yates is managing editor of *StrategicRISK* and former editor of *Global Reinsurance*.

Blowing your own whistle

The workings of directors' and officers' insurance can be less than transparent. The increasing pressure on directors to bring to light any suspicions about their own organisation means now could be the perfect time to undertake a policy health check. By **Lee Coppack**

Directors' and officers' (D&O) insurance has never been straightforward. It has wordings and coverage that contain ambiguities, and can exclude essential areas of cover. With the increased pressure on directors to report any suspicions about fraud, corruption, anti-competitive behaviour or other regulatory breaches within their organisation, these weaknesses have come under the microscope. This could be the right time to carry out a health check on D&O cover.

The onus is increasingly on businesses to report their own misdeeds to legal and regulatory bodies, including the Serious Fraud Office (SFO), Serious Organised Crime Agency (SOCA), Office of Fair Trading (OFT) and Financial Services Authority (FSA). Failure to do so may carry a penalty,

although self-policing is also likely to attract an incentive in the form of possible immunity or leniency.

Lack of guidance

The difficulty is that D&O policies may not cover legal costs and penalties when companies blow the whistle. Because self-reporting is a growing phenomenon, it is not yet clear how D&O underwriters would react to any proceedings that result against directors and senior management. They may regard such self-reporting as an admission of liability or believe they have not been informed promptly enough of the likelihood of a claim.

Doug Robare, UK D&O Insurance Manager for Zurich, argues that it is difficult to advise since there are few clear guidelines. "It's a question of whether to report or not to report, and then you get into the debate on



materiality and whether it's likely to give rise to a claim." He indicates, however, that underwriters should look at the context, for instance if the company involved were in shipping, natural resources or a heavily regulated sector such as financial services.

There are some grey areas. Mike Lea, Head of Management and Transactional Liability for Jardine Lloyd Thompson, cites the example that directors and officers often each want their own legal advisers once there is an investigation into possible regulatory



Cooperation can cut fines

Facts and figures

It is not as easy to track actions against directors and officers in Europe as it is in the United States, so statistics are sparse. The consultancy Advisen used securities suits as a proxy for shareholder actions and examined actions large enough to attract public attention.

Since 2005, 32 large securities suits have been filed in European courts against European companies and their directors and officers. Of these, 18, or 56 per cent, were filed in the first half of 2009 alone, up 157 per cent from the total for the whole of 2008.

Of the 32 cases, 29 were specifically collective action suits. For cases settled since 2005, the average settlement per case has been £117 million (US\$155 million). Many of these suits are shareholder suits, which would be likely to be covered by D&O insurance if coverage were purchased, but lawsuits from other parties can also invoke coverage under D&O policies.

Office of Fair Trading (OFT)

- "If you are part of a cartel and want to end your involvement, your business may benefit from the OFT's leniency programme and you may benefit from a no-action letter." *OFT Resource Base: Cartels.*
- "Virgin Atlantic is not expected to pay any penalty as it qualifies in principle for full immunity under OFT's leniency policy." *OFT, August 2007.*
- "Eighty-six out of the 103 firms received reductions in their penalties because they admitted their involvement in cover pricing prior to today's

decision." *OFT, September 2009.*

- "The two other recruitment agencies involved have been granted immunity from fines in return for exposing the cartel." *OFT, September 2009.*

Financial Services Authority (FSA)

The FSA does not have specific self-reporting regulations but says it expects firms to act in an open and transparent manner. "If they find a major hash, we expect them to notify us," said a spokesman for the authority. "It is a matter of judgement for the firm." The definition of 'major' will depend on the size of the firm or it could involve an issue which is not apparently material but points to weaknesses in systems of control. The FSA can reduce by up to 30 per cent fines against firms that are cooperative.

- "Standard Life Assurance Limited cooperated fully with the FSA and agreed to settle at an early stage of the FSA's investigation, therefore qualifying for a 30 per cent reduction in penalty." *FSA notice, 20 January 2010.*
- "UBS agreed to settle at an early stage of the FSA's investigation, meaning it qualified for a 20 per cent discount." *FSA notice, 5 November 2009.*
- "Nomura cooperated fully with the FSA and because it agreed to settle at an early stage of the FSA's investigation, it qualified for a Stage 1 discount under the FSA's settlement discount scheme." *FSA notice, 24 November 2009.*

breaches. "They can easily run to between £500,000 and £1 million, especially if different directors want separate representation. For the D&O policy to pay those expenses normally needs the trigger of a requirement to attend an investigation issued by the regulator, which won't happen in the case of self-reporting," says Lea.

"Under current wordings, underwriters may also regard volunteering concerns to the authorities as an admission of liability, which could prejudice the policy entirely. Taking



“One does not want insureds to wait for a requirement to attend from the regulator in order to benefit from cover.”

Ros Jones, Elborne Mitchell

»»» part in industry-wide investigations can be particularly problematic. For some issues, such as money laundering, the law forbids disclosure of suspicions and actions to any third parties. The company would not be allowed to notify insurers of the grounds for a possible claim.”

Lea suggests that discussion with D&O underwriters could resolve issues before they come to a head. Ros Jones, a Partner in the City law firm Elborne Mitchell, comments, “Much depends on the policy wording, but overall I think it would be rather an unattractive argument for insurers to say that an insured who has reported concerns to his regulator should be deprived of his D&O cover merely by virtue of having made that report.

“These are issues which should be tackled head-on in the policy wording, particularly in the current climate. One does not want to invite the law of unintended consequences upon the D&O market, whereby insureds wait for a requirement to attend from the regulator in order to benefit from cover,” says Jones.

Risk of tipping off

Certain types of business and services are required to file reports of suspicious activity with SOCA, to combat money laundering, and there are restrictions on who can be informed, to avoid the offence of tipping off. When it comes to prompt notification to underwriters, Jones says, “There is a genuine issue in the case of money laundering obligations where the insured may well be prohibited by law from disclosure to underwriters and therefore will not be able to comply with the policy notification provisions.”

Christian Wells, a Partner at solicitors Lovells suggests, however, that if a company makes a report under anti-money laundering legislation and thinks that the basic facts (stripped of any suggestion of money laundering) might also lead to action against directors, a notification of those basic facts alone to insurers is unlikely to be considered tipping off.

Zurich’s Robare offers practical advice, saying that if an issue looks serious,



companies should not conduct their internal investigation entirely in-house, since it will not attract privilege if proceedings follow. Instead, they should use external advisers who are covered by privilege.

The overall liability environment for European directors and officers has seen rapid change, with new legislation that increases their exposure. For example, the 8th European Directive on Company Law, also known as the European Sarbanes-Oxley or E-SOX, has now been implemented in member countries and strengthens internal control and risk-management reporting requirements. Other factors include changes in laws that will facilitate class actions by disgruntled shareholders and, at least in the UK, the possibility of third-party funding of legal action. For many companies, the business environment has also changed.

D&O health check

Insurers have responded to these changes by introducing new policy forms, each of which features different terms, concepts and enhancements. A health check of a company’s current D&O policy – its wordings, limits and retentions – presents the opportunity to review the adequacy and suitability of the terms and conditions to the current business environment, and allows the time to discuss improvements with underwriters ahead of renewal. Clarification of how D&O policies are likely to respond to self-reporting issues could form a valuable part of this review.

“D&O is a complex product, with a wide variation in the breadth of cover from different providers,” warns Lea. “There are many areas of ambiguity and each may be important in different measures for certain companies and industries. A comprehensive health check would identify all deficiencies and areas of concern within the policy.”

A large proportion of European D&O policies are renewed on 1 January and, in 2010, financial institutions and companies in financial distress were still seeing increases in the price of their D&O cover, according to Robare. For other sectors, the market is reasonably competitive, with additional capacity at excess levels.

“It is the perfect time to get the policy as broad as possible,” advises Lea. “Insurers have an incentive to differentiate themselves by adapting their coverage to changing circumstances.” **RS**

- Mike Lea recently took part in a short video highlighting the potential pitfalls in D&O cover when a company self-reports. To watch the video clip please visit: www.jltgroup.com/directors-officers-liability-insurance/health-check

i Michael_Lea@jltgroup.com

Lee Coppack writes widely on risk and insurance and is the consulting editor of *Risk Specialist*.



SPECIAL REPORT ALTERNATIVE ENERGY

As governments face ever-tougher targets on renewable energy and carbon emissions, we take a look at the new power generation opportunities



Reacting to the new opportu

Nuclear energy is increasingly seen as the solution to the growing power shortfall, attracting support on a global scale. While it offers huge revenue potential, contractors and operators need to ensure that they have considered the risks. By **Grzegorz Smosarski**

There is a big push towards nuclear energy around the world. There is a growing power shortfall and governments across the globe have shown their support for nuclear power as a carbon-free measure to fill the gap. At the same time, the age of the technology that is currently in service means a wave of decommissioning and replacement of power plants is imminent. These two factors present considerable opportunities for contractors and operators – if they can overcome the challenges.

There were 436 nuclear reactors operating throughout the world at the beginning of

2010, with a total capacity of some 370 gigawatts (GW), according to the International Atomic Energy Authority (IAEA). Depending on which forecasts you believe, capacity could rise to anywhere between 600 and 1,300 GW by 2030.

Gordon Springett, a Partner at Jardine Lloyd Thompson, says: “Major industrial countries such as the UK and China have already embraced the need for substantial investment in new nuclear power stations and the US is considering it.”

This investment clearly holds tremendous revenue potential, but the associated risks must be borne in mind.



nities

Left: Byron Nuclear Power Station, Illinois.
Below: operators and contractors must negotiate adequate cover.



Insuring the construction and operation of nuclear plants is a highly specialised area. Before the arrival of nuclear fuel, the site is considered a conventional construction site, covered by a standard construction all-risks policy. Once fuel starts arriving, there are continuing conventional risks, but nuclear cover must also kick in, and continue well into the decommissioning process. To cover these various risks, a single insurance programme is put together, designed to dovetail conventional and nuclear policies.

Shifting responsibility

How contractors and owners divide the risks is a matter for negotiation, explains Ian Maciulis, a Consultant at Siaci Saint Honoré (S2H), France's leading nuclear insurance broker and partner organisation to Jardine Lloyd Thompson. In the past it was the custom for the owner to set up the total programme, covering risks for themselves and the contractor. Increasingly, though,

operators want to take out the minimum coverage necessary (nuclear risks, fire, lightning, explosion, aircraft) for the 'hot zone', and leave other risks to contractors. Difficulties can arise if an operator takes minimum coverage via the pools, leaving contractors to seek pool coverage for remaining risks later; pools may not want to provide this additional cover because of concerns over accumulation of risks.

Contractors also have to be aware of nuclear exposure in associated work. It is commonly thought that the Paris Convention for the Protection of Industrial Property makes the operator responsible for all nuclear risks, but the convention allows owners to pass liability for nuclear claims to contractors as long as this is clearly stated and the limits of liability and duration are spelled out.

Other risks, such as defects liability and contractual property-related risks on site, are governed by common law and fall outside the Paris Convention. Equally, any site that does

not have an 'operator' or is not classified as a 'nuclear installation' falls outside the scope of the convention. It is vital, therefore, to ensure cover for these risks.

Costly accidents

Nuclear cover generally insures liability, property risks and possibly business interruption. The major concern with property cover in the nuclear arena is the cost of cleaning up and making safe in the event of a nuclear accident. After the accident at Three Mile Island in 1979, that cost was put at some US\$1.06 billion but this figure would be greater now, 30 years later. The new safe containment cover that is due to be placed over the damaged reactor at Chernobyl in 2011 is expected to cost US\$1.2 billion. Nuclear accidents may be costly but they are rare. The Three Mile Island accident, which killed no one and caused no damage outside the site, is probably the only one that is relevant; Chernobyl took place under a >>>



Regulation

Insurance of nuclear risks was pioneered in the United States, under the Price Anderson Act of 1957. Under its revised terms, this currently requires operators to have a liability policy of US\$375 million for any power reactor over 100 megawatts. If damages exceed that, all reactors taking part in the secondary protection layer face a retrospective premium that could be as much as US\$117.49 million per reactor. Since there are more than 100 reactors in the scheme, it could afford compensation in excess of US\$12 billion.

International regime

Taking its inspiration from the United States, an international regime for governing insurance of nuclear plants has grown up around the Paris Convention, which was launched by the Organisation of Economic Cooperation and Development and came into force in 1968, and the International Atomic Energy Agency's Vienna Convention, which came into force in 1977. The Paris Convention was reinforced by the Brussels Convention in 1963.

This regime imposes strict liability, namely operators must pay compensation for damage,

irrespective of whether they were at fault. "The purpose of this approach," explains Gordon Springett, a Partner at Jardine Lloyd Thompson, "is to simplify the way losses are paid and by whom, allowing nuclear liability insurance capacity to be mobilised in an orderly fashion."

There is no need to spend time arguing in court. This joint system allows few exclusions; armed conflict, civil war and insurrection. It limits an operator's liability to SDR 300 million (€360 million), and usually to ten years; it also limits jurisdiction to the country in which the nuclear accident happened.

Increased liability

One major new risk set to affect operators is that in 2004, signatories of the Paris (and Brussels) Convention adopted plans to increase operators' liability to €700 million. The state that hosts the nuclear installation would guarantee a further €500 million, and there would be a further collective state contribution of €300 million, bringing total cover to €1,500 million. It is therefore essential for contractors and owners to make sure they are adequately protected.

»»» management system that no longer exists.

A further risk in building a nuclear power plant can be delays and cost overruns. Operators can buy cover for delay in start-up, although this will only cover delays from damage under the construction all-risks policy, not those caused by other circumstances. "One fear is that a small technical incident could occur and trigger a government inquiry that halts work for a long period of time," warns Stuart Fatt, a Partner with Jardine Lloyd Thompson.

The value of proven design

The risk of delay is sometimes linked to the use of cutting-edge technology in relation to the plant build. The last nuclear power station to be constructed in England, Sizewell B, was built to time and cost because it used a tried and tested



Spent fuel pools, like insurance pools, shield the operators from potential harm

The insurance pools

Insurers are wary of the potential accumulation of nuclear risks because, while remote, they are potentially catastrophic; even some of the 'conventional' equipment, such as unproven 1,000 megawatt turbines, can lead to concerns. To cope, insurers have pooled their capacities since the early nuclear programmes of the 1960s, and now there is a worldwide system of national pools, to which various insurers contribute as much capacity as they see fit.

In the UK, the national pool, Nuclear Risk Insurers, draws much of its capacity from Lloyd's underwriters. The US pool, American Nuclear Insurers, draws capacity from domestic insurers and through facultative reinsurance via international pools. The French pool, Assuratom, includes local insurers and reinsurers, and benefits from the backing of the state-owned reinsurer Caisse Centrale de Reassurance.

Mutual reinsurance

There is a nuclear pool in every nation that insures its reactors. To prevent the potential accumulation of nuclear losses, the pools reinsure each other. The total capacity of the pools might be in the order of €2 billion to €3 billion, estimates Ian Maciulis a Consultant to Paris-based broker Siaci Saint Honoré. The

annual premium income of the pools is of the order of €350 million.

In addition to the pools, there are a few mutuals of nuclear operators, who put their resources together to face up to risks. In Europe, there is the European Mutual Assurance for the Nuclear Industry, which was set up in 1978, as well as the European Liability Insurance for the Nuclear Industry, established in 2002.

Close cooperation

The close cooperation among the pools can make it more difficult to find competition. Philippe Massot, the Insurance Director of the French Atomic Energy Commission, notes that every five or six years, an insurer tries to enter the market but that these attempts rarely succeed. He says brokers can be effective, and that: "The broker who places a significant volume of business with each pool is also in a stronger position to obtain good terms than an individual client."

In the United States, the mutual is the Nuclear Electric Insurance Ltd (NEIL), and its overseas offshoot ONEIL. This faces a different issue, in that membership is only available for US nuclear power generation utilities, so its reach is limited.

design. In contrast, the construction of the European pressurised water reactor (EPR), the number three reactor at Olkiluoto in Finland, is about three and a half years behind schedule and 50 per cent over budget. Most of the problems have arisen because it is a new design. A second EPR being built at Flamanville in France (also reactor number three) is more or less on schedule but 20 per

cent over budget. Meanwhile, Korea Electric Power Corporation was able to offer four nuclear power generating plants to the United Arab Emirates for US\$20 billion, outbidding the French consortium that had been seen as the front-runner, because it had already built 20 of the same plants.

With more reactors being built on existing sites, there is the potential for accumulation of

risk, notes Fatt. The capacity of €2 billion to €3 billion per incident may no longer be enough. But that is as much an opportunity for the nuclear pools as a challenge.

The expansion of the nuclear business therefore clearly presents operators and contractors with some significant challenges, which need to be carefully addressed with the right risk-management and insurance solutions. Devising the answers to these headaches will not be a simple task but, with the industry set to quadruple in size in the next 20 years, there will be ample rewards for getting it right. **RS**

“One fear is that a small technical incident could occur and trigger a government inquiry that halts work for a long period of time.”

Stuart Fatt, Jardine Lloyd Thompson

i Bernadette_Hackett@jltgroup.com

Grzegorz Smosarski writes on risk, and contributes to the *World Insurance Report*.



Harness the winds of ch

Offshore wind is the most economically viable form of renewable energy generation. Governments are investing in it to meet energy and carbon emission targets, but the risks need to be considered. By **Gail Gajgor**

After two years in the doldrums the global economy is turning a corner, and sectors that have been tightening their belts for so long can finally see the light at the end of the tunnel. The wind power industry is among them, and it seems well placed to benefit from major government investment across the world.

Driven by a mandatory obligation to source 20 per cent of its energy needs from renewable sources by 2020, the EU is the leading powerhouse for the offshore wind sector. More than 100,000 megawatts (MW) of projects are at various stages of planning and could provide enough electricity to meet 10 per cent of demand by 2020. By 2030, total European offshore wind operating

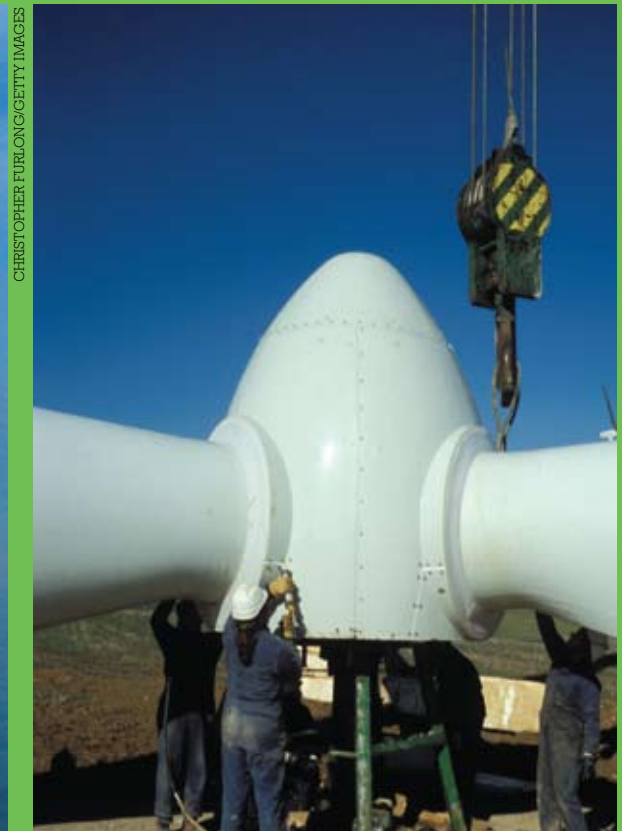
capacity could be as much as 150,000 MW, up from little over 2,000 MW across 38 offshore wind farms in nine European countries so far. The industry's turnover, €1.5 billion in 2009, is expected to grow exponentially over the next two decades. Elsewhere in the world, the US, Canada, Taiwan, and China are turning to offshore power, and China alone has the potential for up to 750,000 MW.

But while the global opportunity is vast, costs for offshore wind farms have risen in recent years and are now around twice that of their more mature onshore counterparts. Some current offshore plants under construction, or planned, come in at more than €4 million per MW, according to trade journal *Windpower Monthly*.

The risks associated with the fledgling offshore industry are also much greater and financing projects in today's constrained credit market is proving difficult and costly. The lack of precedent for the offshore wind industry is curtailing the banks' appetite for the sector, according to the European Wind Energy Association (EWEA).

Need for risk management

Comprehensive insurance and risk management strategies to guard against the many risks associated with offshore wind top the must-have requirements of most potential financiers. Turbines currently account for around 60 per cent of offshore wind project costs, according to the EWEA, while substructures account for 25 per cent,



CHRISTOPHER FURLONG/CETTY IMAGES

Main image: the Burbo Bank offshore wind farm comprises 25 wind turbines, each potentially costing several million to replace. Inset: the rotor of a turbine.

installation 15 per cent, and grid connection 10 per cent.

Should things go wrong, the potential financial losses are high. "It can cost around £60 million for the loss of a substation and £6 million for the loss of a turbine," says John Stuckey, Partner at Jardine Lloyd Thompson. So with the offshore wind farms already under construction each consisting of anything from six to 140 turbines, getting the right policy in place is critical – particularly for loss limits.

"The biggest factor to consider when placing insurance is the scope of the policy wording," says Roger Backhouse, Partner at

Jardine Lloyd Thompson. Standard offshore wording for insurance policies does not fit the bill, agrees Fraser McLachlan of underwriters GCube, who warns that companies often just insert the word "wind" into their standard policies. "They are not as bespoke as you would probably want," he says, adding that it is vital to have an insurer with experience in the sector. "The last thing you want to do is get yourself into a debate with an insurer who does not understand wind energy."

Clearly, indentifying the risks that need to be covered is paramount. "The offshore wind farm industry is rapidly evolving, with significant upward step-changes in the

generation capacity of offshore wind farms and the size/capacity of individual turbines that generate the electricity," explains Stuart Whitehouse, Director of Elantis Risk Engineering. "Wind farms are being located further offshore, requiring the installation of offshore substations and complex subsea power distribution networks. The dynamic changes to the offshore wind power industry are challenging existing engineering solutions," he says.

Lack of experience

There are some similarities between traditional offshore oil and gas exposures and those for offshore wind. "But unlike the mature offshore oil and gas industry, which has 50 years of operational experience, with many advances in engineering design standards and risk-mitigation lessons being learned, the offshore wind farm industry is very young in comparison," says Whitehouse. He points out that the first UK offshore wind farm began generating electricity less than seven years ago.

“ Loss of a turbine can cost £6 million. The offshore wind farms already under construction comprise anything from six to 140 turbines, so getting the right policy in place is critical. ”

John Stuckey, Jardine Lloyd Thompson



»»» The completion of an insurance-focused risk engineering survey of offshore wind farm project assets at a pre-construction phase, conducted on behalf of wind farm operators, is wise, Whitehouse says. This would “translate a complex offshore wind farm project scope of work into a simple and transparent underwriting report, which can help insurance risk managers decide on the most cost-effective coverage and limits of insurance to procure,” he explains. “It also provides insurance underwriters with a clear understanding of the risks they will be underwriting and hopefully more confidence in the management of the risk through a project’s construction and operational phases.”

Risk survey reports also help identify potential areas for offshore wind farm operators to mitigate property damage, business interruption and liability risks, Whitehouse says. In turn, this can help offshore wind companies avoid paying punitive prices for their risk policies in the first place and save on long-term running costs.

Business interruption

According to GCube’s McLachlan the major losses incurred in offshore wind to date relate to the high-voltage cables that carry the electricity to shore. This is an exposure with which the traditional offshore oil and gas sector has long been familiar, typically in the construction phase, and one the wind industry has had to get to grips with.

Going forward, business interruption risks could be key. “What I see as a bigger risk in offshore wind is loss of income or delay in income due to business interruption,” says Jardine Lloyd Thompson’s Backhouse. “Delay in start-up will quite possibly be the biggest issue for some companies, and larger turbines potentially mean greater business interruption delays. Series losses are going to be the eye-catcher.” Underwriters can be reluctant to provide extensive series loss cover, especially in relation to new technology. As a



Vessels that can service offshore turbines are at a premium, and lack of availability should be covered.

CHRISTOPHER FURLONG/GETTY IMAGES

consequence project owners could have less risk to face, as they can pass much of the risk to the contractors, says Jardine Lloyd Thompson Partner, Stuckey.

The exposures are not just related to turbines, adds Backhouse. “A lack of specialist vessels for the installation of turbines will be a key issue.” In the operation phase, too, availability of specialist vessels will be a serious exposure. “Maintenance is a huge job for offshore wind and underwriters do focus on these things,” he says. At present, there are just a handful of suitable vessels for offshore wind turbine installation and the industry acknowledges the need for more. Some offshore wind owners, such as Dong Energy, are investing in their own vessels, but other companies will find themselves competing for a limited supply for the next few years at least, so a missed timetable for vessel use could cost.

Another issue, says Backhouse, is damage to vessels. “There will be two insurable interests at this point,” he says, referring to the owner of the vessel and the wind farm contractor or owner. “It is one of the biggest risks.” McLachlan adds: “You can insure against lost time, delays and vessel costs for when you have booked a vessel but have to cancel, for example.”

Whether you are focusing on risk to vessels, cables or any other piece of

equipment or specialist staff, Stuckey warns: “Get a contingency plan in place, make sure you have spares and be creative on your business interruption model.” And while specialist insurers are continually working with the sector to improve and develop new policies to meet the needs of the industry, he adds: “Make sure your insurance product suits you, as every wind farm is different.”

Claims success

Jonathan Haysom, Claims Specialist at Jardine Lloyd Thompson, points out that the more information an insurer has about exposures from the outset, the more chance of success for settling any claim. Often, confidentiality restrictions imposed by other interested parties can prevent insurers from having access to potentially critical information and possibly hamper the process of providing suitable cover or proceeding effectively with a claim efficiently. “The insured has a part to play in having such restrictions lifted for the benefit of information flowing to insurers,” he says. “At the outset, all parties should discuss the need for having sight of and releasing such information, with a view to establishing the protocol for defining what is confidential and then how requests will be handled.”

In the meantime, appointing someone to a central coordinating role to liaise with insurers and cover the requests is “key to satisfying the needs and desires of both insured and insurer,” Haysom says. Such an appointment should “reduce the workload and impact on the insured significantly and make the process more rapid.”

The industry relies on relatively new technology, situated in hazardous and remote places, facing endless changing variables. Getting to grips with the risk will be challenging but essential. Owners and developers must tailor their insurance protection to the risks they face in the construction and operation of wind farms. However, the rewards available for those who are in a position to profit from this market, which is worth €1.5 billion in Europe alone – and doubling every year – make it a challenge worth rising to. **RS**

i James.Green@jltgroup.com

“Delay in start-up will quite possibly be the biggest issue for some companies, and larger turbines mean greater business interruption delays.”

Roger Backhouse, Jardine Lloyd Thompson

Gail Gajgor was Senior Editor of *Windpower Monthly*, and writes for *Inside Energy*.



262077

Offshore Wind Energy Insurance Challenging the Status Quo



Like many of our clients, JLT has been frustrated about the limited options surrounding the provision of offshore wind energy insurance. Recent research we have carried out suggests businesses are demanding something more than has traditionally been available. This includes:

- coverage where previous exclusions applied
- a wording that is bespoke – not an insurer's off the shelf product
- a price that is competitive
- deductibles that are more financially manageable, and a product that enables smooth financial close.

Equipped with this knowledge we are actively engaged in a process with insurers to 'Challenge the Status Quo'.

We are ripping up the existing wording and starting again from scratch, turning what used to be an off-the-shelf product into a solution that is uniquely tailored for the common challenges you are facing.

We would welcome the opportunity to share our research with you, to discuss these key issues in more detail and to check whether you also share these frustrations or, indeed, have any other challenges you would like to see addressed.

For more information on how we are "challenging the status quo" please visit www.jltgroup.com/renewable-energy-insurance or contact James Green on +44 (0)20 7558 3900 or email james_green@jltgroup.com

Covering the main event



For fans at the FIFA World Cup this June, the result is the only thing that matters. For the organisers, and indeed anyone holding a large event, managing risk and getting the right cover is vital. By **Nathan Skinner**

On Friday 11 June 2010, the world's eyes turn to South Africa, where the first-ever FIFA World Cup held on African soil kicks off in Johannesburg. Such a global spotlight, expectation and investment leaves organisers of the World Cup facing a plethora of risks to assess and cover. With this tournament, the 2011 Rugby World Cup in New Zealand and the 2012 London Olympics and Paralympics on the horizon, major event risk is a hot topic. And it's something that every organisation planning any kind of large event needs to consider carefully.

Each event will face risks specific to its location, and major events can be targets for headline-chasing terrorists. In London the threat from Islamist extremism will be a factor; in South Africa it is localised criminality, violent muggings and robberies that concern organisers. In New Zealand the organisers must prepare for the threat of tsunamis and earthquakes.

It is not just catastrophes that need to be considered. Everyday risks bring the prospect of disruption, embarrassment and financial loss to events of every size, including concerts, festivals, trade shows and conferences. Risks include cancellation, postponement, power blackouts – power cuts in 2008 virtually paralysed South Africa – transport disruption and lack of accommodation, to name but a few.

Categorising the risks

Jonathan Cole, a Partner at Jardine Lloyd Thompson, categorises the risks by identifying those at the venue, which have a direct impact on the event, as well as the external risks, which have a knock-on effect. "Risks at the event venue could be things like a fire, power-supply failure, flooding or terrorism," he says. "Next up would be the external risks to the venue. For instance, a bomb goes off at the airport, stopping people getting into the country." External risks also include other transport issues, weather,

political problems, civil commotion, boycotts, national mourning, violence and crime.

Generally speaking, South Africa is a politically stable country but there are still internal security risks that could arise. Peter Plunkett, Account Director at consultancy Control Risks, believes any political uprising during the World Cup is likely to be "related to a small and individual effort to destabilise the event." South Africa bears the risk of a dissident group using the World Cup to send a message to the world, he says. But these risks are remote and exist in any hosting country because the threat is directly linked to the occasion and the global attention it draws.

Cover options

What kinds of insurance options exist then for events with such a complex risk outlook? While the insurance market has some standard exclusions, products can cover a multitude of threats. Understanding the risks associated with an event and how to buy back key insurance policy extensions is critical.



The Moses Mabhida Stadium, Durban. Risks at venues include fire, flooding or power cuts

be very damaging for RWCL”, says Brophy. The insurance contract was built with this in mind and RWCL entered into a partnership with New Zealand Rugby Union 2011, the local organising entity jointly owned by the New Zealand Rugby Union and the New Zealand government, to manage the everyday risks associated with the event. Risk management is also about ensuring excellent event delivery, he stresses. “We have four people based and working with the organising company in New Zealand to ensure the tournament is delivered to as high a standard as possible.”

Economies of scale

Brophy explains: “We’ve been open and realistic about mitigation of loss. So we’ve got extra detail in the policy around our commitment to postpone and rearrange. We feel we can reschedule matches within the timeframe of the tournament.”

The two organisations have different exposures but the joint insurance contract was able to accommodate this: “The contract consists of two parts,” explains Brophy. “Part A is Rugby World Cup’s commercial risks, which are lost revenue from the broadcasters and sponsors, and Part B covers New Zealand Rugby Union’s gate revenue risk. It’s all part of the same policy and we’ve purchased cover together to get economies of scale.” The contract covers in excess of £250 million and all manner of disruption, including earthquakes, adverse weather, flu epidemics and terrorism. “We tend to take out a policy that achieves as wide a coverage as possible,” says Brophy.

With careful consideration, insurance plays a key role in the smooth running of events of any size. In South Africa with the peace of mind it brings, the only thing left to worry about is the result. **RS**

i Duncan_Fraser@jltgroup.com

Nathan Skinner is Associate Editor of *StrategicRISK* magazine.

It is important to note that some financial risks are non-insurable and need to be managed. No cover can guarantee the financial success of a venture, for example, neither can legal disputes be insured against.

There are five areas, however, that are excluded in standard market wordings but can be bought back into the cover with the help of a broker. These are terrorism, war, civil commotion, national mourning and communicable disease. The price of buying these into the cover varies subject to the event and its location. Cole gives an example: “Terrorism cover for a conference at the NEC in Birmingham is more or less thrown in for free, whereas if you have an event in a dangerous location, or even in New York, it carries a price.”

Available capacity

There is currently a good amount of capacity available. “For major events like the London Olympics or the Rugby World Cup, there’s

probably US\$1 billion available, potentially more,” says Cole. For smaller events, like music concerts, it’s closer to US\$500 million. Prices are good for buyers. A basic rate for a low-risk event is 0.5 per cent of the sum insured; for a high-risk event, covering every form of terrorism and communicable disease, buyers are looking at 4 to 5 per cent. “It’s a huge margin,” Cole continues. “Each event is priced on its own merit.”

Most policies are fixed by organisers as soon as their event gets any level of exposure. Robert Brophy, Finance Director of Rugby World Cup Limited (RWCL), bought insurance for the 2011 Rugby World Cup in New Zealand 18 months ago. Placing the cancellation, abandonment or postponement insurance was a priority, he says, and their broker created suitable cover and sold it to the underwriters.

RWCL’s commercial agreements generally require it to refund sponsors if the tournament does not proceed. “A full cancellation would

“Terrorism cover for a conference at the NEC in Birmingham is thrown in for free: in a dangerous place, it carries a price.”

Jonathan Cole, Jardine Lloyd Thompson

Marriages of convenience

Just three decades after diplomatic relations between the United States and China were restored, relations between the two superpowers have hit another tricky phase. With Russia focusing on its alliances with both, the relationship has become uneasy. By **Robert Mitchell**

Although the United States and China have become more closely aligned around a number of policies, considerable differences of opinion remain. A longstanding bone of contention is the Chinese currency, which the Americans believe is undervalued and contributes to economic imbalances. From the Chinese perspective, recent US arms sales to Taiwan have made the relationship more fractious, as have the failure of the UN Climate Change Summit in Copenhagen, the recent row over Google and censorship and rising tensions over trade and protectionism.

China's domestic priority

Despite talk of a new G2 relationship between the two countries, China appears to be reluctant to assume the role of international statesman. "China's foremost concern is its domestic stability and security," says Alexander Neill, Head of the Asia Security Programme at the Royal United Services

Institute for Defence and Security Studies in London. "China has no intention of being a G2 power and is firmly opposed to unipolar or bipolar power sharing in the world."

China's reluctance to be coaxed into bilateral decision making was clearly visible at the Copenhagen summit, when Premier Wen Jiabao sent a middle-ranking diplomat to meet President Obama. "This was China reminding the US not to put pressure on them at an international forum," says Elizabeth Stephens, Head of Credit and Political Risk Analysis at Jardine Lloyd Thompson. "China wants to be seen to reach a decision from a position of strength, not through external pressure."

China's firm stance in international affairs serves as a reminder to foreign investors of the difficulties associated with this fast-growing market. As Google has discovered, an authoritarian government can place barriers in the way of the most innovative companies. Faced with censorship, Google announced its withdrawal from China, despite the huge market potential of 400 million internet users.

Government bureaucracy can also prove to be a stumbling block. "There is considerable overlap between regional and central government power," explains Stephens. "A company could sign a contract with a regional head but then that person may lose their job and the central government abrogates or renegotiates the contract."

Russian weakness exploited

Meanwhile, as proponents of the state capitalist model and one half of the Brazil, Russia, India, China (BRIC) economies, China and Russia should have a more straightforward relationship. Resource-hungry China represents a huge market for Russia's energy reserves, while the two countries share a desire to minimise US influence in Central Asia. "Russia and China see the US as a competitor," says Steve Tsang, Fellow at St Antony's College, Oxford University. "They share a common interest in that they don't want a unipolar superpower, but neither wants to see the US go down the drain."

But despite these common objectives, longstanding rivalries and a frequently xenophobic mistrust continue to cloud relations between Russia and China. "It's a marriage of convenience," says Neill.

It is also an unequal marriage. Russia's desire to deny the United States a foothold in its energy industry is leading to deals that strongly favour Chinese interests. In February

“Russia and China share a common interest in that they don't want a unipolar superpower, but neither wants to see the US go down the drain.”

Steve Tsang, St Antony's College, Oxford University



Left to right:
Washington, Beijing
and Moscow

2009 the China Development Bank agreed to lend the Russian state-owned energy companies Rosneft and Transneft US\$25 billion in exchange for supplying China with 300,000 barrels of oil a day from 2011 to 2030. Taking into account the interest payments on the loan, this is equivalent to a supply of oil at less than US\$20 a barrel. "The Chinese have been very astute at taking

advantage of Russia's reluctance to work effectively with the US," says Stephens.

China has also made strategic gains in the former Soviet republics of Central Asia and capitalised on the weak financial position of Russia by extending loans and making acquisitions in resource-rich countries such as Turkmenistan. Last December the opening of a gas pipeline connecting eastern Turkmenistan

and the western province of Xinjiang was the latest example of Beijing's rising, and Moscow's waning, influence in the region.

The unwillingness of China to extend the reach of the Shanghai Cooperation Organisation is another sign of the country's dominant power in the relationship. "Russia wants to enhance various strategic relationships and agreements between China, Russia and the 'Stans', but China has been very reluctant to do that," says Stephens.

World Risk Review™

The World Risk Review™ provides short- to medium-term assessments of the level of risk associated with a range of political and economic perils that may impact upon business.

The risk review rates nine perils in 197 countries and territories, captured under the broad categories of political violence, the trading environment and the investment environment.

The model is designed to enable companies to

identify the perils that may affect their business and deliver an understanding of the relative level of risk associated with each peril, using a rating scale of 1 (low) to 10 (high).

The model incorporates independently verifiable data from 53 international sources, drawn from Europe, North America, Australia, Asia and the Middle East.

The diversity and breadth of the data sources is intended to reduce, to the

greatest extent possible, cultural bias, political influence and personal interpretation.

This approach contributes significantly to the robustness and integrity of the model and recognises that most country risk ratings available to business have traditionally been heavily influenced by Western bias reflecting the historical dominance of Western foreign investors and trading businesses.

Challenging conditions

For multinational investors in Russia and Central Asia, the shifting geopolitical landscape presents challenging conditions. The renegotiation of energy contracts and the war with Georgia has made many investors wary and this, coupled with a lack of diversification in the Russian economy, has seen direct foreign investment stagnate.

Russia and China are different markets but an overriding principle applies when investing in either country. "You need a robust approach to risk mitigation," says Stephens. "Knowledge, planning and foresight are key to the success of any overseas investment, but are particularly important with Russia and China." **RS**

i Elizabeth.Stephens@jltgroup.com

Robert Mitchell is a former editor at the Economist Intelligence Unit and contributes to the *Financial Times*.

Thinking ahead



Patent need for a better solution

Patent infringement risks are becoming more widespread, encouraging companies to explore their insurance options. The trouble, says **Luke Foord-Kelcey**, is that the existing solutions are prohibitively expensive or provide only limited cover.

In many industry sectors, intellectual property (IP) can form a large part of a business's assets. While cover for copyright and trademark infringement liability is increasingly available, clients are focusing on the shady world of patent disputes, driven by three striking trends.

The first is the prevalence of 'patent trolls', particularly in North America. These buy up patents at a low value with no intention of using the technology, and aggressively enforce those patents against alleged infringers.

For example, a troll may own a patent for a certain shape of numeric keypad and accuse every large handset and calculator manufacturer of infringing its patent by using a similar keypad on its products. The initial demand may be an outrageous figure, in the hope of triggering a quick settlement, even where the case has little merit. Another business model in the US is for a lawyer to approach a patent holder and offer to target alleged infringers on a no-win/no-fee basis.

A second factor is the perception that large companies use their patent portfolios against one another to gain leverage in unrelated commercial disputes. For example, TV manufacturing giant A is in a global dispute with TV giant B, over licensing terms for a certain technology. For leverage in the negotiations, Giant A presents claims in courts around the world alleging that Giant B is infringing various of its unrelated patents. The estimated legal costs alone could serve to

make Giant B more amenable to negotiation.

The third issue is caused by the rapid globalisation of industry. There is no worldwide patent office, so a patent holder must register a patent in each country where he seeks to exploit it. When a patent office examines the patent it cannot trawl through all pending or granted patents, so being granted a patent in a territory is no guarantee that you will not infringe an earlier patent.

Patent Infringement Liability insurance products offer cover for damages, defence expenses, or both but the factors driving companies to seek cover also make it difficult

patent case.

However, there are simpler options. For example, venture capital or private equity concerns are often interested in first-party Patent Invalidity or lower-limit patent infringement liability policies, typically for a specific technology or a small number of patents. This is available with much lower retentions, with limits up to US\$15–20 million, although the work required to underwrite a patent can be costly for the insurer and off-putting for the purchaser. Some insurers have even tried to charge for due diligence.

However, on the lower-limit policies, we are

“ Insurers are concerned that disputes between industry peers might be part of a negotiating tactic rather than a real case. ”

to buy. Most of the insurers will not sell cover to US-domiciled companies or cover US risks, where the worst exposure lies.

Insurers who do offer cover require a high self-insured retention, up to US\$20–50 million for a large portfolio of patents. Above this, the capacity is still expensive because it is a difficult risk to underwrite. There is not much public information because disputes are typically settled behind closed doors.

Moreover, insurers are concerned that disputes between industry peers may be part of a negotiating tactic rather than a legitimate

partnering with select insurers to standardise wording and lessen due diligence in return for a higher volume of risks giving the insurer a more diversified exposure. On the larger, multinational portfolio risks, we will shortly be launching a new risk-finance based product, including cover for the US. **RS**

i Luke_Foord-Kelcey@jltgroup.com

Luke Foord-Kelcey is a Partner at Jardine Lloyd Thompson. A qualified solicitor, he advised on some of the world's largest IP risk transfer arrangements.



JARDINE LLOYD THOMPSON LIMITED

Directory of Services and Contacts

Accident & Health

Tony Ratliff
Tel +44 (0)20 7558 3585
Email Tony_Ratliff@jltgroup.com

Actuarial & Analytical Service

Anco Accordi
Tel +44 (0)20 7528 4056
Email Anco_Accordi@jltgroup.com

Business Continuity and Supply Chain Risk

Tim Cracknell
Tel +44 (0)20 7558 3941
Email Tim_Cracknell@jltgroup.com

Casualty

David O'Ryan
Tel +44 (0)20 7558 3435
Email David_O'Ryan@jltgroup.com

Claims

Richard Gurney
Tel +44 (0)20 7558 3880
Email Richard_Gurney@jltgroup.com

Communications, Technology & Media

Peter Hacker
Tel +44 (0)20 7528 4121
Email Peter_Hacker@jltgroup.com

Construction

Paul Knowles
Tel +44 (0)20 7528 4044
Email Paul_Knowles@jltgroup.com

Credit, Political and Security Risks

Nick Robson
Tel +44 (0)20 7558 3643
Email Nick_Robson@jltgroup.com

Cyber & IT Risks

Dawn Simmons
Tel +44 (0)20 7528 4832
Email Dawn_Simmons@jltgroup.com

Directors' and Officers' Liability

Mike Lea
Tel +44 (0)20 7558 3686
Email Michael_Lea@jltgroup.com

Echelon Claims Consultants

Candy Holland
Tel +44 (0)20 7558 3230
Email CandyHolland@echeloncl.com

Entertainment, Event Cancellation and Sport

Duncan Fraser
Tel +44 (0)20 7528 4885
Email Duncan_Fraser@jltgroup.com

Financial Institutions

Paul Towler
Tel +44 (0)20 7558 3327
Email Paul_Towler@jltgroup.com

Global Insurance Management

Tracey Clayton
Tel +44 (0)20 7558 3786
Email Tracey_Clayton@jltgroup.com

Kidnap & Ransom

Charlie Matheson
Tel +44 (0)20 7528 4177
Email Charlie_Matheson@jltgroup.com

Life Science & Chemicals

Neil Campbell
Tel +44 (0)20 7558 3996
Email Neil_Campbell@jltgroup.com

Marine, Oil & Gas

Martin St Pierre
Tel +44 (0)20 7558 3910
Email Martin_St_Pierre@jltgroup.com

Natural Resources (including Power, Mining and Renewables)

Peregrine Towneley
Tel +44 (0)20 7459 5505
Email Peregrine_Towneley@jltgroup.com

Offshore Energy

Roger Backhouse
Tel +44 (0)20 7459 5518
Email Roger_Backhouse@jltgroup.com

Onshore Energy

Jeremy Swan
Tel +44 (0)20 7459 5662
Email Jeremy_Swan@jltgroup.com

Product Recall

Simon Milner
Tel +44 (0)20 7558 3647
Email Simon_Milner@jltgroup.com

Professional Indemnity

Warren Hattwich
Tel +44 (0)20 7558 3457
Email Warren_Hattwich@jltgroup.com

Property

Nick Murrell
Tel +44 (0) 20 7558 3397
Email Nick_Murrell@jltgroup.com

Real Estate

Terry Edwards
Tel +44 (0)20 7528 4237
Email Terence_Edwards@jltgroup.com

Residual Value Insurance

Steve Allum
Tel +44 (0)20 7528 4458
Email Steve_Allum@jltgroup.com

Terrorism

Kelly Crouch
Tel +44 (0)20 7528 4242
Email Kelly_Crouch@jltgroup.com

Transport, Engineering and Water Utilities

Andy Bear
Tel +44 (0)20 7558 3979
Email Andy_Bear@jltgroup.com

**For all other queries call Jon Screech
on +44 (0)20 7558 3316 or email
Jon_Screech@jltgroup.com**

HAVE YOU GOT WHAT IT TAKES TO WIN THE JLT FANTASY WORLD CUP 2010 COMPETITION?



- ⊖ FREE TO ENTER
- ⊖ PRIZES FOR 1ST, 2ND AND 3RD PLACES
- ⊖ PICK YOUR SQUAD MANUALLY OR WITH LUCKY DIP OPTION
- ⊖ MAKE UNLIMITED TRANSFERS ON YOUR SQUAD FROM NOW UNTIL THE 11TH JUNE 2010
- ⊖ SCORE POINTS FOR GOALS, ASSISTS AND CLEAN SHEETS

REGISTER AT WWW.JLTFANTASYFOOTBALL.COM

Jardine Lloyd Thompson Limited. Lloyd's Broker. Authorised and Regulated by the Financial Services Authority. A member of the Jardine Lloyd Thompson Group. Registered Office: 6 Crutched Friars, London EC3N 2PH. Registered in England No. 01536540. VAT No. 244 2321 96. For full terms & conditions please visit www.jlrfantasyfootball.com

