IN THIS ISSUE, WE...

...provide an overview of current insurance market trends that point to the ongoing resiliency of a soft market, with the exception of workers’ compensation, where increases are either flat or low single digits. Given the current financial strength of the insurance industry, it appears that this trend will continue for the near future barring a catastrophic event.

...focus on extreme weather as an emerging environmental risk that can affect a company’s balance sheet in terms of potential legal liability, fines/penalties, financial disclosure requirements or, at a minimum, create adverse public relations unless action is taken to adapt to climate change.

...take another look at the risks surrounding guns in the workplace due to recent “Bring Your Gun To Work Laws” passed by a number of states and the steps and resources available to an organization to guard against workplace violence.

...review the IRS’s recent position permitting a sponsor of a self-insured group health plan to claim tax deductions for transitional reinsurance contributions.

...highlight the SmartBurner™ product now available from Pioneering Technology that helps prevent stovetop fires by replacing the existing burner elements on an electric range with new built-in temperature-limiting technology. Since electric range-top fires are the leading cause of household fires in the U.S., this product should interest our clients that own or manage residential, senior citizen or student housing properties.

MARKET TRENDS UPDATE

As we indicated in a notice recently sent to our colleagues, pricing in 2015 will ultimately be determined by the impact of new capacity, the continued growth of industry surplus and the occurrence of natural catastrophes, particularly hurricanes and earthquakes, or man-made catastrophes, such as acts of terrorism.

In 2014, catastrophe losses worldwide, which were below the 10-year average, totaled $34 billion, down from $45 billion at year end 2013. The relatively favorable trend was influenced by the absence of any hurricanes making landfall. The largest claim in 2013 was due to a May hail and thunderstorm and totaled $2.9 billion. Hail, thunderstorms and tornadoes are emerging as a major concern for many underwriters, particularly in specific geographic areas, along with the ever-present threats of flood, hurricanes and earthquakes. 1

The size of the reinsurance market, which some believe has more capacity than demand, was enhanced by the influx of $20 billion in alternative capital. 2

Industry surplus, another key determinant in overall pricing direction, is expected to close 2014 in excess of $700 billion. 3 This is up from $653 billion year end 2013 4
and $393 billion year end 2004.⁵ The industry, despite the recession, has grown substantially, increasing the supply of insurance.

There is debate over how large a claim (such as Hurricane Katrina or September 11) must be, given the size of industry surplus, to influence the general direction of softening rates. We have seen estimates ranging from $50 billion to as high as $100 billion.⁶ ⁷

From an operational standpoint, insurers increased their net income in 2014 by 6.4% year over year, despite a small deterioration in the combined ratio from 98.0 to 98.9. Underwriters are making a profit, an important objective for them in today’s low interest rate environment.⁸

All of the aforementioned factors are culminating in a softening market. According to MarketScout, which opines that we are on the cusp of a softer market, December rates for most lines of coverage declined, albeit slightly. This is noteworthy as this is the first empirical evidence compiled by MarketScout indicating softening rates since the market firmed in November 2011.⁹

An exception to the general trend of lower rates is workers’ compensation, where rates are either flat or are increasing in the low single digits. NCCI expects the workers’ compensation combined ratio will drop to 96% at year end 2014¹⁰, one of the few years in the past 20 where underwriters made a profit on workers’ compensation.

We are closely monitoring the impact of the increase in frequency of environmental claims. Frequency has increased 20% per year since 2009.¹¹ This could affect pricing but illustrates the need for clients to consider purchasing environmental insurance if they have not.

Results vary significantly from one account to another and between carriers. It is vitally important to match the risk with the right carrier. We have seen wide variances in response among carriers on a given risk underlining the need to select the appropriate carrier, provide detailed underwriting information and begin the process early to achieve the optimal result.

Environment: Extreme Weather-Related Risk

Weather-related environmental risk and natural hazards/disasters continue to make the top 10 list for many risk managers and insurance professionals worldwide. Why? Because we learned some very unfortunate lessons over the years, thanks to the likes of Hurricane Katrina, Superstorm Sandy and other natural catastrophes in terms of the unexpected frequency and severity of pollution losses due to excessive rain, storm surges and overall damage caused by water (e.g., pollution release from floating drums of chemicals, cross-contamination of neighboring properties from historic/pre-existing contamination, sewer authority system back-ups, landfill containment breaches, mold growth, etc.). Many businesses suffered financial loss due to legal liability, fines/penalties, government regulations, financial disclosure requirements or simply public relations surrounding responsible corporate citizenship. If any light is forecast to break through the dark clouds ahead it is in the increased awareness by the risk management community and the acknowledgement of the need for adaptation and proper planning – which can take the form of reducing the overall carbon footprint and greenhouse gas emissions via amendments to site improvement or development plans that incorporate better surface water management systems.
We’ve blogged about this risk in the past ([here](#) and [here](#)) and it remains important to address this business risk as the underwriting community will continue to modify their risk appetite and terms and conditions for certain classes of risk.

We also invite you to visit our [website](#) for past publications or other information about environmental issues. For additional information please contact Anthony Wagar in our Environmental Practice at 212 915 7768 or [anthony.wagar@willis.com](mailto:anthony.wagar@willis.com).

**GUNS IN THE WORKPLACE - EMPLOYERS CAUGHT IN THE CROSSFIRE**

The Bureau of Labor Statistics reported for 2012 that 688 workers were killed due to homicides and suicides. Shootings were the leading cause of death for both homicides (81%) and suicides (48%). A 2005 study of North Carolina workplaces found that “workplaces where guns were permitted were about five times as likely to experience a homicide as those where all weapons were prohibited.”

Twenty-two states have passed legislation stating that businesses cannot ban guns kept in employee vehicles in the company parking lot. Details vary by state, but employers are prohibited in most cases from:

- Asking if a firearm is present in a vehicle while parked on company property
- Restricting access to company property based on the presence of a weapon inside a vehicle
- Terminating or discriminating against an employee (or job applicant) who legally carries a firearm in their vehicle

“Bring Your Gun to Work Laws” are being seriously considered by the legislatures in a number of additional states.

These new gun laws appear to be in direct conflict with the general duty clause of the Occupational Safety and Health Act of 1970 (OSHA), which requires employers to provide a workplace that is “free from recognized hazards that are causing or likely to cause death or serious physical harm.” However, employers that have argued this point in the courts have so far been unsuccessful with respect to having firearms banned in their parking lots. The fact that OSHA has not established any standards to regulate firearms at private workplaces has been a key point noted by the courts in reaching their decisions to uphold the constitutional rights of individuals to transport or store firearms in their vehicles over private property owner rights to ban them.

This leaves employers potentially vulnerable to the following legal exposures:

- Citations under the OSHA’s general duty clause, even though there is no specific employer duty to prevent workplace violence
- Workers’ compensation claim benefits where employees are deemed injured in the course of their employment under applicable state statutes
- Third-party claims alleging negligent hiring, supervision and/or retention (these types of claims will focus on whether or not the employer should have known that an employee could have caused harm to others and, if so, whether or not the employer responded in a reasonable manner given the situation)
WHAT CAN AN ORGANIZATION DO?

To prevent workplace violence, employers can:

- Conduct thorough pre-employment screening
- Recognize the warning signs of violence
- Create a policy that clearly states that any type of violent behavior in the workplace will lead to discipline and possible termination
- Ban firearms from business premises and employer-owned or leased vehicles (NOTE: employers still have this right even in states that permit employee firearms in personal vehicles)
- Since employers are now on notice that employee vehicles may contain firearms, take additional steps to maintain security of the parking lot and vehicles
- Establish response procedures so employees know how and who to contact if they feel threatened in the workplace
- Identify potentially critical locations where violent incidents could occur, such as entrances and exits and train employees located there on the proper response to an employee or third party posing a threat
- Establish a working relationship with local law enforcement and seek their input in the development of response procedures and coordination of activities if an event occurs
- Educate, train and retrain annually all employees and supervisors on workplace violence policies and procedures
- Establish employee assistance programs (EAP) to identify and help resolve employee problems before they escalate into violent behavior
- Consult a local attorney with respect to the development of any policies and procedures as gun laws can vary significantly by state

RESOURCES

The Federal Bureau of Investigation’s paper *Workplace Violence: Issues in Response* “highlights findings from the collaboration of experts who looked at the latest thinking in prevention, threat assessment and management, crisis management, critical incident response, research, and legislation. It also offers common-sense recommendations for those in the position to do something about workplace violence.”

The Department of Homeland Security (DHS) announced the availability of a new independent study course titled: *Active Shooter, What You Can Do (IS-907)*. This is a no-cost training course developed to provide the public with guidance on how to prepare for and respond to active shooter crisis situations. This new online training is available through the Federal Emergency Management Agency (FEMA) Emergency Management Institute (EMI) at [http://training.fema.gov/EMIWeb/IS/IS907.asp](http://training.fema.gov/EMIWeb/IS/IS907.asp).

Employers should continue to monitor the changing gun laws in the states in which they operate and be prepared to address what appears to be an increased duty of care placed on their organizations with respect to workplace violence.

For more information, contact Kevin C. Wilkes, Vice President, Midwest Regional Director, Risk Control Services, Security Practice Leader, Security Risk Consulting, Risk Control & Claim Advocacy Practice at +1 412 645 8531 or Direct: 412 645 8531 kevin.wilkes@willis.com.

IRS SAYS REINSURANCE FEES ARE TAX DEDUCTIBLE

On October 31, 2014, the Internal Revenue Service (IRS) republished a Frequently Asked Question (FAQ) that addresses the deductibility of the transitional reinsurance fee for federal tax purposes by sponsors of self-insured plans.

BACKGROUND

As summarized by the IRS, the Patient Protection and Affordable Care Act (PPACA) established the transitional Reinsurance Program to help stabilize premiums for coverage
in the individual market/exchanges during the years 2014 through 2016. Self-insured group health plans (as well as health insurance companies) are required to make contributions under this program to support payments to individual market insurers that cover high-cost individuals. A self-insured plan may use a third-party administrator (TPA) or administrative services-only (ASO) contractor to transfer the plan contributions under the program.

Previously, the Department of Labor (DOL) advised that it is permissible to use self-insured plan funds to pay required contributions under the transitional Reinsurance Program, because that was a permissible plan expense under Title I of ERISA. That DOL guidance was provided in the preamble to the proposed transitional reinsurance fee regulations issued on December 7, 2012 (http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/pdf/2012-29184.pdf, see 77 FR 73118, 73198, footnote 56).

DEDUCTIBILITY OF TRANSITIONAL REINSURANCE FEES
To the extent a sponsor of a self-insured group health plan pays the transitional reinsurance contributions on behalf of the plan (i.e., the fee is paid out of the sponsor’s pocket and not from the plan trust or other plan funds), the sponsor can treat the contributions as ordinary and necessary business expenses, subject to any applicable disallowances or limitations under the Internal Revenue Code. The contributions are deductible regardless of whether the fees are paid directly by the sponsor or through a TPA or ASO contractor.

The IRS recognized that a plan may pay the transitional reinsurance fee directly or through a TPA or ASO contractor, for example, if the plan is a multiemployer plan or the plan is funded through a voluntary employees’ beneficiary association (VEBA). In that circumstance, the employer or employers contributing to the plan are permitted to deduct their contributions to the plan, subject to any generally applicable disallowances or limitations.

The Willis Human Capital Practice offers a variety of health care reform-related tools, publications and presentations. We invite you to click here to review the archive of available information.

We update our site as new developments occur and new guidance published, so please check back often.

STOVETOP FIRES: NEW PREVENTION TECHNOLOGY

The electric coil stovetop has changed little in the last 150 years. Stovetop cooking fires are the number one cause of household fires in North America (approximately 44% of all household fires, according to the National Fire Protection Association – this is up from 20% in 1980). Electric stovetops are still predominant and the leading cause of these fires by 3 to 1. 17

So, why are these fires increasing in spite of the best efforts of the fire service to prevent them? The primary cause of stovetop fires is unattended cooking. Cooking is part of our daily routine and occurs millions of times a day across North America. When you combine the frequency of cooking with how easy it is today to be distracted from the task, it’s no wonder stovetop fires are increasing. These are difficult behaviors to change. Statistically, the most at-risk groups for these fires are people in subsidized housing and senior citizens, who also happen to be the most difficult audiences in which to implement behavioral change.

An electric coil on high can reach temperatures in excess of 1291 °F. That’s hot enough to melt an aluminum pan and significantly hotter than what is needed to cook. In fact, cooking theoretically stops at about 662 °F. Above that temperature, food starts to burn and will catch fire.
A pan of oil unattended on an electric coil on high will catch fire in as few as eight minutes. A stovetop fire doubles in size roughly every minute. Leaving a stove unattended while cooking can quickly turn to disaster.

Safe-T-element® was designed to help prevent these cooking fires. Until now, the Safe-T-element’s (STE) patented temperature-limiting control (TLC) technology, engineered to help prevent stovetop cooking fires (professionally installed on over 100,000 stovetops without a single stovetop cooking fire reported) has only been available to large, multi-residential customers (affordable, senior, university and military housing providers), because the technology requires a professional installation.

Now there is SmartBurner™! This new, easy-to-install, consumer version of the Safe-T-element delivers all the benefits of the original Safe-T-element except that this new consumer version does not require a professional installation. Because the SmartBurner’s multi-patented TLC technology is built right into the burner elements, anyone can now install it in minutes. Take the existing element out and slide the new one in…it’s that easy!

The SmartBurner not only helps prevent stovetop fires but gives an electric coil stovetop and kitchen a designer look, cooks food more evenly and thoroughly, is easier to clean and maintain, reduces warping of pots and pans and can also help reduce insurance costs.

Furthermore, because of the way SmartBurner works, it helps generate substantial energy savings when cooking. When you combine the energy savings with the savings from fire prevention, the SmartBurner can pay for itself in as little as two to three years. The energy savings can qualify, in a number of jurisdictions, for subsidies from local electrical utilities that help offset the initial investment, reduce the payback period and increase the ROI.

With a simple investment of $189.73, you can help eliminate fire risk, reduce energy consumption and create a positive return on investment. A special discounted price is available for Willis clients. I urge you to consider adding this simple, effective, proven and easy-to-install solution to your electric ranges.

To learn more, contact Laird Comber at 905 712 2061 X 230 or lcomber@pioneeringtech.com If you would like to see us online, come visit us at www.pioneeringtech.com or visit smartburnerisbetter.com.

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