

EBOLA: CRISIS MANAGEMENT AND INSURANCE CONSIDERATIONS

OCTOBER 2014



■ INTRODUCTION

The current outbreak of the Zaire strain of the Ebola virus has claimed thousands of lives across West Africa, while its isolated emergence in the US and elsewhere has triggered widespread public concern. Although health officials assert that a large-scale outbreak in the US is unlikely, organizations need to identify, understand, and prepare for the potential risks to their businesses and employees. Effective risk management and mitigation techniques — including updated and tested crisis management plans — can help minimize the potential damage the evolving Ebola risk could have if it touches an organization. At the same time, some insurance coverage may provide a measure of protection from financial and operational impacts, although it is important to understand the specifics of individual policies.

I RESPONSE PLANNING

As of this writing, the Ebola outbreak has not reached “pandemic” stage as defined by the World Health Organization (WHO). But even if it never reaches that stage, Ebola could have far-reaching implications for businesses, potentially affecting areas such as employee health and wellbeing, operations and productivity, and supply chains.

Ebola could severely test even the best-constructed preparedness program and requires a robust response for organizations that are in some way touched by it. Businesses should review and revise their plans immediately in light of the Ebola threat. A strong organizational preparedness program includes emergency response, business continuity management, and crisis management and should be able to identify, respond to, and recover from a broad range of potential incidents, including the effects of an Ebola outbreak. A means to monitor and track the progression of the situation, understand the potentially increasing threat to an area where operations and people are based, and a clear escalation process are all essential.

BEFORE EBOLA PUTS YOUR BUSINESS AT RISK

Risk professionals and other executives should consider the following before their organizations are affected by Ebola:

- ▶ Consider the nature of the disease — for example, its high virulence, mortality rate, and public fears — and within that framework define the potential direct and indirect impacts on the company’s employees, operations, resources, and revenue streams.
- ▶ Review and update crisis management and business continuity plans. For example, companies should ask: “Will my plan work in the event of border closures, travel restrictions, or reduced exports of certain commodities? What if we lose certain critical people or have staff working from remote locations? Will the fear of an infection affect sales? How can we position the company to respond positively to this negative event?”
- ▶ Consider additional risk management controls and human resource and travel policies as needed.
- ▶ Define economic priorities: Which products and/or services are of greatest value to the organization, and what is the potential revenue impact if lost or affected by Ebola?
- ▶ Review critical suppliers and vendors, especially if located in areas already affected by Ebola, and any potential operational or sales impacts. Consider alternative and/or geographically dispersed suppliers and vendors.
- ▶ Define the criteria that will be used to escalate response actions and activate additional plans and response protocols.
- ▶ Monitor for guidance and updates from public health and government officials, industry groups, and other experts, and adjust your strategy as appropriate.
- ▶ Determine procedures, including notification to health authorities, employees, and others, in the event of a suspected case of Ebola in an employee, an employee’s family member, or anyone visiting an area that is known to be affected by Ebola.
- ▶ Review or develop employee health procedures to minimize the potential for transmission of infectious diseases to other workers, which may include the need to self-quarantine or isolate individuals. Define additional cleaning protocols that may be implemented.
- ▶ Keep employees informed and educated about Ebola and the health care precautions they need to take at home and in the workplace. Think proactively about how other employee wellness programs are related to these precautions, especially with the onset of cold and flu season. Encourage employees to remain home when sick to avoid unnecessary concerns in the office.
- ▶ Exercise existing crisis management and business continuity plans in light of this emerging threat and make any necessary updates or adjustments.

TRAVEL PRECAUTIONS

Many government and health authorities have recommended against nonessential travel to West Africa during the current outbreak. The Centers for Disease Control and Prevention (CDC) has issued a “Level 3” warning – its most serious travel notice – for Guinea, Sierra Leone, and Liberia, indicating that travel to those countries is high risk. The US State Department has also issued warnings against non-essential travel to Liberia and Sierra Leone.

Organizations should review their business travel approval procedures to ensure there is an escalation process to review any proposal to send an employee to West Africa or other affected territory. Unless it is business-critical, organizations should consider curtailing travel to affected countries or locations. If travel to the region is absolutely necessary, organizations should ensure that employees are educated about Ebola’s transmission and infection-control measures. Specifically, travelers to the region should:

- ▶ Avoid high-risk activities, such as contact with ill people or the bodies of people who have died from Ebola, with sick or dead wildlife, or with bush meat.
- ▶ Pay strict attention to hygiene – wash hands or use hand sanitizer frequently, refrain from touching of the face, and avoid close contact with persons who appear sick.
- ▶ Monitor their health and seek medical attention if exhibiting any symptoms commonly associated with Ebola, including fever, headache, achiness, sore throat, diarrhea, vomiting, stomach pain, rash, or red eyes.
- ▶ Always carry emergency medical assistance numbers provided by their employer.

Travelers should also be aware that screening and isolation measures are already or may be put into place, particularly following the WHO’s recommendation that countries affected by Ebola conduct exit screenings at international airports, seaports, and land crossings. In the US, five airports – John F. Kennedy International Airport in New York, Washington Dulles International

Airport, Chicago O’Hare International Airport, Hartsfield–Jackson Atlanta International Airport, and Newark Liberty International – have begun to screen passengers arriving from West Africa for elevated body temperatures in an effort to better contain the virus. As of this writing, countries in Europe, Latin America, and the Caribbean have also implemented similar airport screenings or bans against travelers from West Africa. Any screened traveler suspected of being sick or having had contact with an infected person could be quarantined.

IF EBOLA AFFECTS YOUR ORGANIZATION

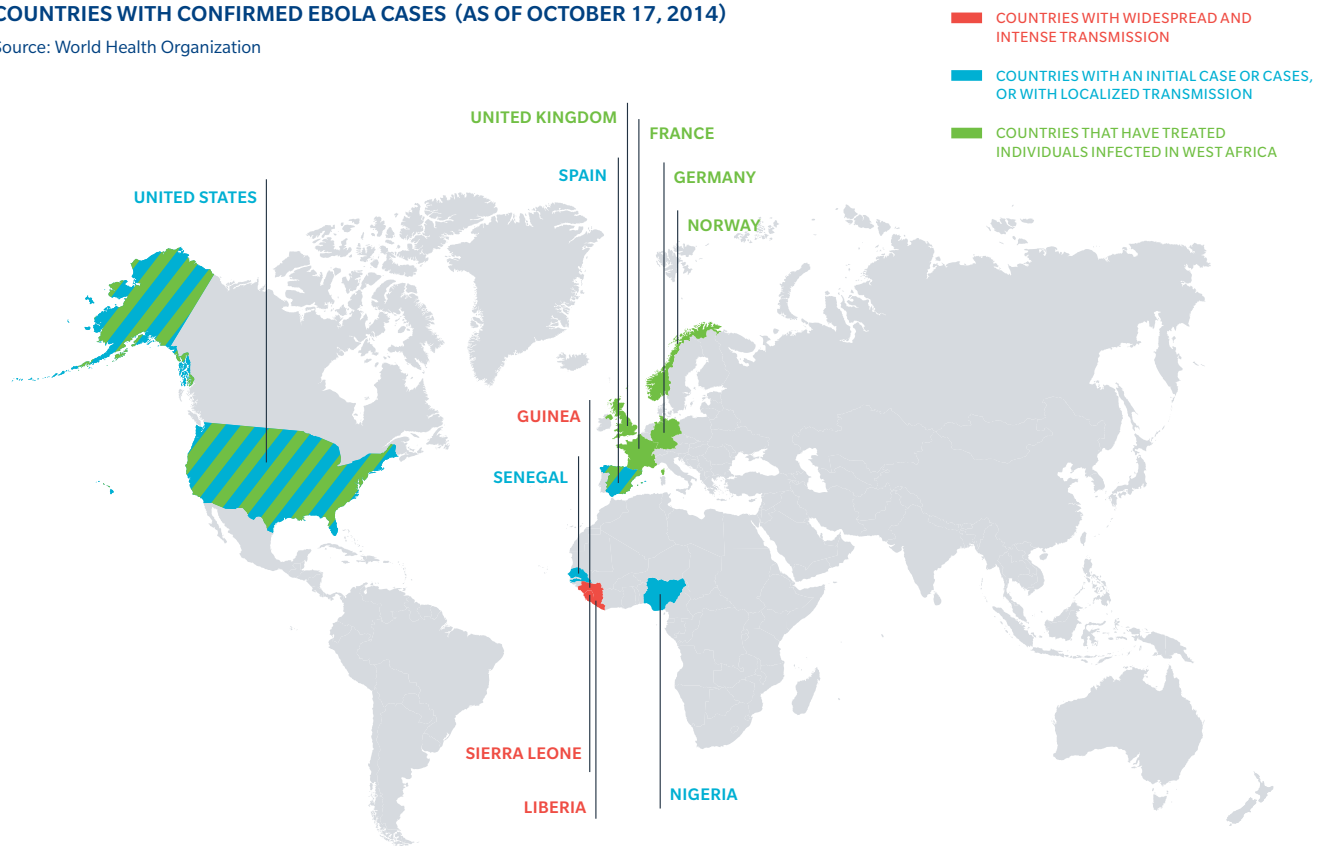
During a crisis, the ability of an organization to identify problems and respond quickly and effectively can make a significant difference to the success of protecting staff, revenue streams, and reputations.

Companies should consider developing pandemic escalation thresholds specific to their operations so that individual facilities, regions, and businesses can detect an emerging event and respond appropriately at each escalated threshold. Tiered planning should provide applicable guidance pertaining to:

- ▶ Health and safety issues and procedures.
- ▶ Operational responses.
- ▶ Allocation of company resources.
- ▶ Human-resource/benefits involvement.
- ▶ Internal and external communications.
- ▶ Government involvement.
- ▶ Product, facility, information technology, and intellectual property security controls.

COUNTRIES WITH CONFIRMED EBOLA CASES (AS OF OCTOBER 17, 2014)

Source: World Health Organization



THE EBOLA OUTBREAK

Previously unseen in West Africa, the first case of the current Ebola outbreak occurred in December 2013 in Guinea, though it was not identified as Ebola until March 2014. From there, the virus spread to Liberia, Sierra Leone, Nigeria, and Senegal. At this writing, the World Health Organization (WHO) has declared Nigeria and Senegal to be “free of Ebola virus transmission.”

There is a high risk that Ebola will spread to bordering countries, and a moderate risk that other West African countries will be affected, according to the WHO. To help prevent its spread, authorities in Guinea, Sierra Leone, Liberia, and elsewhere have established various screening, quarantine, and self-identification/health declaration protocols in infected areas, at borders, and at airports. The United Nations established the UN Mission for Ebola Emergency Response Headquarters in Accra, Ghana — which continues to be Ebola-virus-free — to coordinate and support global and frontline country efforts.

The first confirmed case of Ebola to be diagnosed in the US occurred at the end of September 2014. That patient, who had traveled to the US from Liberia, subsequently died. Within two weeks, and as of this writing, two nurses who had provided care to the man were diagnosed with the disease. A nurse in Spain similarly contracted Ebola after treating a patient in Madrid. Others who contracted the virus in West Africa — primarily health care workers — have also been treated in France, Germany, Norway, the US, and the UK.

According to the WHO and other health authorities, the risk of a wider global outbreak is still low because Ebola is not airborne; the virus is transmitted through contact with bodily fluids. Health authorities also cite the range of medical, contact tracing, and governmental resources available to handle suspected and actual cases in many countries outside of West Africa.

QUESTIONS TO ASK

Businesses looking to protect their employees and ensure continuous operations in the face of Ebola may find the following questions useful:

- ▶ Is the crisis management structure functioning well? Does it have access to forecasts and current status information on Ebola? Does it have access to a forecast of operational impacts and market reactions in the coming weeks and months?
- ▶ Are your response teams operating effectively? Do they have the necessary and readily available resources to support their activities? Where will the teams and their support resources stay if they have to travel or relocate to an alternate facility?
- ▶ Have continuity strategies been developed for the loss of key personnel and/or impacts to key processes? Do you have a consolidated view, particularly if multiple facilities and regions are affected?
- ▶ Have supply-chain dependencies been identified and alternative channels identified and secured in case of disruption? What happens if the backup fails?
- ▶ Are there alternative premises and facilities within and outside of an affected region that can be used? Are transport links likely to be sufficient to get people and resources to the alternate sites?

INSURANCE COVERAGE

A number of insurance policies may provide coverage if an employee, employee's family member, or third-party is infected or if an insured property or a third party's property is contaminated or otherwise affected as a result of an actual or perceived threat related to Ebola. Before any potential event, risk managers should understand how these policies may apply.

WORKERS' COMPENSATION

The facts of individual workers' compensation cases will vary, as will the coverage afforded under various policies according to state and federal laws, and a particular policy's terms and conditions if it provides coverage beyond what is mandated by law. Depending on the language in each state's statute relative to occupational disease, workers' compensation insurance could provide coverage for medical expenses and reimbursement of lost wages for Ebola-related disability, as long as the exposure meets the jurisdictional compensability standard.

EBOLA EXPOSURE OUTSIDE OF THE UNITED STATES

If an individual contracts Ebola while on assignment outside the US in the course and scope of his or her work, it is likely that his or her claim will be found compensable — at least for now. Claims for disability related to Ebola by employees on work assignments in geographic areas where the risk is identified should be filed under the appropriate policy. Many states extend benefits to those injured outside of their borders (whether in another state or outside of the country), provided that the contract of hire was made in the state or the principal location of employment is in the state.

Employers' liability coverage may also apply. But many employers prefer to address this exposure by arranging for a foreign voluntary compensation benefits endorsement or a separate standalone policy. Although terms and conditions can vary, a foreign voluntary workers' compensation (FVWC) policy typically provides voluntary coverage for the workers' compensation benefits of a given jurisdiction to employees not covered by state workers' compensation law. Such a policy also typically provides coverage for an injury or death arising out of endemic disease, even if the disease is not covered under the domestic workers' compensation or occupational disease law of the designated US state.

It is important to note, however, that Ebola has not yet been defined by the insurance industry as "endemic." An endemic disease is any disease that is:

- ▶ Infectious and generally recognized as a public health hazard.
- ▶ Restricted or peculiar to a locality or region.
- ▶ Not caused or aggravated by the conditions of employment.

If the industry determines that Ebola is not "restricted or peculiar to a locality or region," then coverage for Ebola may become obsolete.

FVWC policies also generally provide coverage for the cost of bringing an employee or his/her remains back to the United States. Use of a medical helicopter can cost more than \$60,000; and if an employee is brought back to the US via chartered plane with the proper isolation systems and medical supplies, the costs will also be high. Because the travel assistance and repatriation costs for an Ebola case can be prohibitive, some insurers are attempting to limit repatriation expenses. Other insurers have stated their intent to issue Ebola virus exclusions on all foreign policies. Meanwhile, a number of leading assistance services companies have ceased providing medical evacuation services for individuals showing Ebola symptoms.

EBOLA EXPOSURE IN THE UNITED STATES

An employee who contracts Ebola within the US presents additional coverage questions. Employees in certain industries, such as health care, hospitality, or airlines, have a higher potential for exposure to Ebola in the course of their employment. If such an employee contracts Ebola during the course of employment — for example, through contact with a customer or patient — workers' compensation insurance would likely provide coverage for costs related to treatment of the illness, lost wages, and, in a worst-case scenario, death benefits.

But most state workers' compensation statutes do not view illness contracted due to exposure to fellow employees as a compensable occurrence, as the exposure to illness is not usually limited to the workplace. The exposure to Ebola would have to be proven to be solely a result of a workplace exposure, arising out of and in the scope and course of employment, to be considered for coverage under a standard workers' compensation policy. If an employee alleges a workplace exposure to Ebola, the employer should report the incident to its claims administrator and cooperate in any investigation. Compensability of each case must be determined on the merits of the situation and the law of the jurisdiction.

If a claim is found to be compensable, it could be costly for several reasons:

- ▶ Due to the nature of the virus, individuals who may be exposed are typically isolated for at least 21 days (the virus's incubation period, according to public health officials). To date, this has often meant that individuals have been confined to their homes. But if a worker begins to show symptoms, it could require use of a hospital isolation room. Employers would likely be held liable for the expense of the isolation room — estimated to be in the thousands of dollars per hour — along with lost wages and any treatment required to aid a diagnosed employee.
- ▶ Ebola has no known cure; treatment is being directed by public health departments, which may prescribe costly experimental drugs, medical procedures, and round-

BUSINESS QUESTIONS ABOUT EBOLA PREPAREDNESS

Although it has not reached a level of transmission that would cause the World Health Organization to declare it a pandemic, the current Ebola outbreak has created a sense of anxiety among individuals and organizations. Here are some questions that risk managers should consider asking themselves about Ebola's potential impact on their organizations:

- ▶ How are we tracking the Ebola outbreak globally?
- ▶ How do we anticipate risks from Ebola that could harm our company?
- ▶ How can we respond effectively to the threat of Ebola?
- ▶ What changes do we need to make to our travel policy?
- ▶ What should we do if employees are exposed to or develop Ebola?
- ▶ Can we keep our business operating if an employee, a critical function, or a key relationship (for example, a supplier) is affected?
- ▶ How can we manage Ebola-related disruptions in our supply chains?
- ▶ How should we communicate to our customers, employees, and suppliers the steps we are taking to deal with Ebola?
- ▶ Will property, casualty, and/or other insurance policies cover Ebola-related claims?
- ▶ Are we able to quantify how much Ebola could cost our company?
- ▶ What are the potential impacts to our markets?

the-clock care. Costs could also be driven up if a patient requires transportation to a hospital or other facility with a special isolation or infectious disease unit.

- ▶ If an employee dies, an employer could face dependency claims, which in many states allow spouses to collect benefits for life and for dependent children to collect benefits until age 23.

In addition to the risk to individual employees, organizations should be concerned about exposed employees spreading Ebola to family members and other employees. Each connected case could eventually become a general liability claim. Depending on individual retentions for applicable policy years, these compensable losses could involve reinsurance or excess casualty coverage. Due diligence is needed to make sure the same coverage is afforded across all risk transfer aspects of the appropriate policies.

GENERAL LIABILITY

Insurers generally take the position that a general liability (GL) policy extends only to actual injuries. They are likely to look closely at the nature of injuries alleged by third parties, and, while “bodily injury” may trigger coverage, insurers may reject claims based on fear of exposure, exposure without actual symptoms, or other mental or emotional injuries unless resulting from actual bodily injury.

A GL policy also responds to claims by third parties that an insured has caused property damage, but the policy requires physical injury to or loss of use of tangible property. Insurers may take the position that certain types of claimed damage are not covered or that the mere presence of the virus in or on a property does not constitute physical injury. GL policies do not cover damage to the insured's own property.

GL policies also typically provide coverage for “personal injury” — a number of specified wrongs, including wrongful eviction by an owner or landlord. Policy language and applicable law can vary, but in some circumstances it may be possible to argue that closure of a building or evacuation of premises fall within this definition.

Most liability policies contain broadly worded pollution exclusions. Among other things, these exclusions may apply to all solid, liquid, or gaseous contaminants, irritants and waste. It is possible that some insurers will contend that viruses constitute a “contaminant” within the meaning of the exclusion, or that other consequences of an event constitute “waste,” and deny claims on that basis. But the definition of “pollutants” does not usually include “virus,” and jurisdictions differ as to what is considered a “pollutant” and the type of damage that falls within a policy’s pollution exclusion.

Because of varied wording and legal interpretations of GL policy language, potential claims should be reported to both primary and excess insurers. Umbrella policies are generally broader than primary coverage, so it is important to make sure that all umbrella and excess carriers are placed on notice for all liability claims, including employers’ liability.

EMPLOYER STOP-LOSS

Many employees’ family members are covered under self-insured medical plans sponsored by their employers. If an Ebola infection spreads from an employee to a covered family member, the family member’s medical expenses would likely be covered under the employer-sponsored plan. If the employer has purchased a stop-loss insurance policy, it may apply if expenses exceed the policy’s deductible.

PROPERTY AND BUSINESS INTERRUPTION INSURANCE

Generally speaking, each insured’s policy should be reviewed individually. Some policies include specific time element coverage for “infectious disease outbreaks/notifiable disease,” typically under clauses for communicable disease cleanup, removal, and disposal and interruption by a communicable disease. But without such language, coverage is unlikely to be triggered. For example, coverage would not be triggered simply by a fear that Ebola or any other communicable disease may be present in or near the insured’s property, thereby leading to employee absences or diminished customer traffic.

Coverage may be provided — if the insured has an extended policy — in the notifiable disease, communicable disease, or outbreak provision/extensions. Coverage may require a suspension of the insured’s business activities at an insured location if the suspension is caused by the order of an authorized government agency. The policy extension may also cover the reasonable and necessary costs for decontamination, disposal, and removal of an actual substance that is causing the spread of a communicable disease. Such coverage may have a qualifying period.

The policies should also provide a definition of “notifiable disease,” “communicable disease,” and “contamination,” with certain sublimits applying. Property contracts generally require physical loss or damage triggers by an insured peril either to the insured’s property or to property that precludes ingress/egress to the insured’s property. This includes civil authority extensions.

If an insured feels that it may have a potential claim resulting from an occurrence of a notifiable disease, it should immediately begin the process of gathering documentation to support a potential claim. This should include details of the specific case to the extent that information is available to the public, including:

- ▶ Where the case was diagnosed.
- ▶ Where the infected individual is in relation to insured property.
- ▶ What authorities have been or are required to be notified.
- ▶ The specific date of the occurrence.

CONTRACT FRUSTRATION

Countries affected by the spread of Ebola could see ancillary economic effects, including employee absences or closures of major ports. This could increase the risk that businesses in these countries cancel contracts with or default on payments or deliveries to their foreign counterparties. Contract frustration insurance policies can provide coverage for these counterparties; such policies can be designed to cover nonpayment, nondelivery, or contract cancellation for any reason, including the potential economic effects of an Ebola outbreak.

ENVIRONMENTAL LIABILITY

If an individual becomes infected with Ebola, there may be a need for cleanup or removal of waste or other materials at the individual's workplace or home. A government authority could order a property to be closed while such activities are completed. Whether coverage exists under a pollution legal liability (PLL) policy will depend on the facts of the claim and any specific wording contained within the policy. This includes, but is not limited to, policy definitions and exclusions related to viruses and bacteria.

A number of insurers offer environmental policies for the health care industry that may contain language providing a degree of coverage for disinfection, cleanup, and emergency response costs related to "pollution conditions" that include, among other things, viruses and bacteria. But policyholders should carefully review their PLL policies for specific language or terminology that may limit or exclude coverage. Policy language may restrict coverage to "facility-borne illnesses," and it is unclear how carriers will interpret this language as it relates to the Ebola virus. The existence of relevant environmental laws or cleanup standards may also play a role in determining whether the policy is triggered. And coverage may be conditional upon a written recommendation by a certified industrial hygienist or written requirement from the CDC or local health authority.

Insureds outside of the health care industry may also receive claims for cleanup costs and loss of income as a result of contamination following an Ebola incident. If this occurs, any PLL policies that are available should be reviewed carefully for potential coverage. The availability of coverage under a PLL policy may depend on the policy's definitions of "pollution condition" and "government orders."

The standard definition of pollution refers to solid contaminants and waste, but does not specify viruses, and the question of coverage may therefore depend on state law. Many policies drafted to take into account mold or legionella contain language referring to "microbial

matter," fungi, or bacteria, but insurers may argue that viruses do not fit within these definitions. Some policies contain specific language dealing with infectious diseases, which may exclude or limit coverage, require coinsurance, set sublimits, or impose other terms and conditions that could limit an insured's recovery.

PLL policies also typically restrict coverage to cleanup undertaken in response to government order, and some policies further specify that such orders must be issued under governing environmental laws. It is unclear whether an insurer would accept a decontamination or disposal order issued by a health authority, but policies that provide coverage for mold frequently expand environmental laws to include health laws and regulations. PLL terms and conditions will likely include a requirement of prompt reporting to relevant local, state, or federal government agencies in addition to timely written notification to the insurer, and will likely bar coverage for actions taken and expenses incurred without the insurer's consent.

MANAGING EBOLA'S RISKS

As public health officials work to limit the spread of the Ebola virus, now is the time for organizations to review their insurance programs and evaluate, update, or create crisis management plans. Proper risk management planning and an understanding of how insurance coverage may respond can help organizations to minimize the potential impact of Ebola on their people and operations and more quickly recover should they be directly affected.

■ ADDITIONAL RESOURCES

This paper has examined a range of insurance and risk issues for businesses related to the Ebola virus, but is not intended to be an exhaustive treatment. Organizations should refer to additional guidance from federal, state, and local government and public health agencies, including:

- ▶ *The Centers for Disease Control and Prevention.*
- ▶ *The World Health Organization.*
- ▶ *The National Institutes for Health.*
- ▶ *The US Department of State.*
- ▶ *The Occupational Safety & Health Administration.*

■ ABOUT MARSH

Marsh is a global leader in insurance broking and risk management. We help clients succeed by defining, designing, and delivering innovative industry-specific solutions that help them effectively manage risk. We have approximately 27,000 colleagues working together to serve clients in more than 100 countries. Marsh is a wholly owned subsidiary of Marsh & McLennan Companies (NYSE: MMC), a global team of professional services companies offering clients advice and solutions in the areas of risk, strategy, and human capital. With more than 54,000 employees worldwide and approximately \$12 billion in annual revenue, Marsh & McLennan Companies is also the parent company of Guy Carpenter, a global leader in providing risk and reinsurance intermediary services; Mercer, a global leader in talent, health, retirement, and investment consulting; and Oliver Wyman, a global leader in management consulting. Follow Marsh on Twitter @MarshGlobal.



MARSH IS ONE OF THE MARSH & McLENNAN COMPANIES, TOGETHER WITH GUY CARPENTER, MERCER, AND OLIVER WYMAN.

This document and any recommendations, analysis, or advice provided by Marsh (collectively, the "Marsh Analysis") are not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Marsh shall have no obligation to update the Marsh Analysis and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any statements concerning actuarial, tax, accounting, or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as actuarial, tax, accounting, or legal advice, for which you should consult your own professional advisors. Any modeling, analytics, or projections are subject to inherent uncertainty, and the Marsh Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change. Marsh makes no representation or warranty concerning the application of policy wording or the financial condition or solvency of insurers or reinsurers. Marsh makes no assurances regarding the availability, cost, or terms of insurance coverage. Although Marsh may provide advice and recommendations, all decisions regarding the amount, type or terms of coverage are the ultimate responsibility of the insurance purchaser, who must decide on the specific coverage that is appropriate to its particular circumstances and financial position.

Copyright © 2014 Marsh LLC. All rights reserved. MA14-13108 7654