



# The Guardrisk Update

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Incorporating Life Update

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**COMPANY** failures and personal bankruptcies have continued to soar at a shocking pace this year (*Business Day, 29 Aug*). The largest number of company closures were in finance and real estate, which rose 45,5% in July 2008, followed by retail and wholesale trade, which climbed 28%.

**THE** next wave of legal action against directors may be triggered by a lax attitude to cyber risks, with individuals held accountable for not taking preventative measures against phishing, data loss or data manipulation (*Business Day, 26 Aug*).

**TWO** of the largest auditing firms in SA have asked for a limitation of liability clause to be introduced into the Companies Bill along the lines of a similar measure recently introduced in the UK (*Business Day, 13 Aug*). This is in light of the worldwide trend of auditing firms being confronted with such large claims for damages for negligence that the sustainability of the profession is now threatened.

**A** wave of interest in liability insurance cover for directors and high-level managers has been triggered by the pending Companies Bill (*Business Day, 25 Aug*). The bill aims to improve regulatory oversight and protection for shareholders, and a recurring theme is that directors can be sued personally for alleged loss or damage caused to creditors, employees or shareholders.

**TIMES** are tough for short-term insurers (*Financial Mail, 15 Aug*). It is a savagely competitive market, and the underwriting cycle is careering towards the valley of terrible underwriting results. The motor sector is particularly problematic, as are major corporate fires (and possible fraud) and terrible weather.

## Global warming: an inconvenient truth, or lie?

**N**o doubt a few small forests have been decimated in the quest to alert us to the dangers of global warming. Scientists, politicians and environmentalists have joined forces to warn of the climatic disasters that await us if we do not act swiftly to reverse the damage that man has wrought on his home planet.

Recently a rather well-informed dissenter has joined the fray. But this is no off-the-wall conspiracy theorist; Dr Vincent Gray is a respected scientist, he has a first class honours degree in physical chemistry from Cambridge University and a PhD. He has been an expert reviewer of all four assessment reports that have been issued by the United National Intergovernmental Panel on Climate Change (IPCC) and is a foundation member of the New Zealand Climate Science Coalition. The IPCC is a scientific body, established by the World Meteorological Organization and the United Nations Environment Programme to evaluate the risk of climate change caused by human activity.

Essentially, Gray rejects the basic premise of former United States' vice president, Al Gore's "Inconvenient Truth" movie: that humans are causing global warming, and the effects are devastating. Gray recently resigned from the Royal Society of New Zealand, after the society released a controversial statement about global warming. Calling the society's take on global warming an "orchestrated litany of lies" written by persons "with a self-interest in perpetuating the global warming scare", Gray says it is simply not true that the globe is warming, in fact, he says it is currently cooling.

He takes issue with the society's prediction of further global climate changes. "This is another lie. Computer models of the climate have never been shown to be capable of prediction, and the IPCC recognises this by using the term 'projections' for the output from the models. This statement refers only to greenhouse gas concentrations anyway, not to any other global climate change."

According to Gray there is no evidence to justify the society's conclusion that global warming is because of increasing greenhouse gas emissions. "There are 'projections' of computer models but these are not predictions, they are merely the results of assumptions made in the model. No 'projected' result has ever been successfully related to an actual change in the climate."



He also disagrees that measurements show that greenhouse gas concentrations in the atmosphere are well above levels seen for many thousands of years. Gray cites others whose views give credence to his own: 90,000 measurements published in peer-reviewed journals since 1850, some by Nobel Prize-winners, have been suppressed by the IPCC (Beck 2007); stability of carbon dioxide in ice cores thousands of years old is questionable (Jaworowski 2007); and, recent measurements of carbon dioxide are confined only to exceptional circumstances over the ocean, and do not include measurements over land (Manning et al 1994).

Undoubtedly, for now, Dr Gray and his cohorts are in the minority and most people will continue to err on the side of caution in this matter. But his viewpoint does provide food for thought and brings to mind the old maxim: there are three sides to every story, yours, mine and the truth!

## Risk Barometer

**RISK** managers and insurers have expressed disappointment over the U.K. government's change of direction on liability claims reform (*Business Insurance*, 18 Aug). In a controversial move, the government excluded employers' liability and public liability claims from a new streamlined claims process. The process will now cover only traffic accident cases.

**COMPETITION** between captive domiciles gets more intense every year (*Risk Management Magazine*, Aug). A growing number of U.S. states and foreign countries are opening their doors to captive insurers, and established domiciles are working to refine their regulations and improve service to make them more enticing.

**FORENSIC** accountants' expertise in policy language and experience with insurers can help risk managers ultimately receive the maximum payment possible from a business interruption claim (*Business Insurance*, 4 Aug). And litigation stemming from business interruption claims is rare when forensic accountants are involved.

**AT** least 100 US organisations have reported losing sensitive information of more than 9.4 million people so far in 2008 (*Business Insurance*, 4 Aug). Increasingly sophisticated hacking techniques combined with new identity-theft legislation have created a potential minefield for companies maintaining consumer information on their networks.

**FEARS** of US-style class actions in the UK have grown after the Civil Justice Council (CJC) made recommendations to the British government which could pave the way for such action (*Insurance Day*, 18 Aug). The CJC has formally recommending new legislation to make collective opt-out actions, which are generally associated with US-style class actions, generally available in England and Wales.

**THERE** is less captive activity now than there has been over the last few years, but the health of the captive industry is still strong (*Risk Management Magazine*, Aug). People are continuing to look for captives, risk retention groups or other vehicles to handle hard-to-place risks or those where they want to retain some of the risk.

# Life Update

## Life Barometer

### Local

**THE** Life Offices Association (LOA) is awaiting approval from the competition commission to implement a standard disclosure grid for critical illness products (*Business Report*, 28 Aug). The grid shows policyholders the percentage of insurance cover that would be paid out for four major medical conditions that make up 70%-90% of all critical illness claims: heart attack, cancer, stroke and coronary artery bypass graft. The competition authorities could interpret the introduction of this grid as collusion of some sort.

**A** proposal in the draft Revenue Laws Amendment Bills to exempt all proceeds from life insurance policies from estate duty would open up a yawning loophole for tax evasion, tax experts have warned (*Business Day*, 20 Aug). Lump-sum retirement benefits would also be exempt from estate duty in a bid to help financially distressed families who lose their income provider.

**THE** LOA is disbanding, it will be merged into the new Association for Savings & Investment SA - Asisa (*Financial Mail*, 8 Aug). The final remnant of the LOA will be a separate risk and insurance committee, made up by the board of the current LOA.

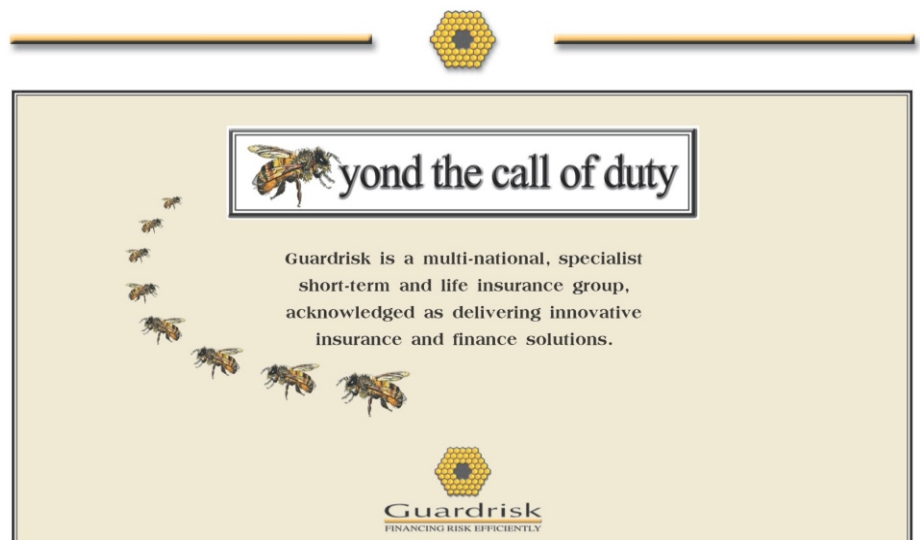
### Offshore

**UK** life insurers have withstood the credit crunch with strong operating performance and resilient balance sheets (*Insurance Day*, 15 Aug). The sector has maintained its stable rating outlook but there is still potential danger lying ahead for the industry as customer confidence on new policy sales and policy cash-in rates remains shaky.

**A** fifth US court ruling that cash balance pension plans do not violate age discrimination law ends years of uncertainty and costly litigation that threatened their future (*Business Insurance*, 25 Aug). While the wording in the decisions has varied a bit, all five courts rejected arguments by plaintiffs' attorneys that the plans are age discriminatory because the benefit earned by younger employees are worth more - expressed as retirement annuity - than the same benefit earned by older retirees.

**THE** corporate drive to fund employee benefit risks of US employees through captive insurance companies is slowly picking up steam - compared with purchasing coverage in commercial markets, employers can save up to 10% on costs (*Business Insurance*, 11 Aug). The advantages of captive benefit funding - chiefly cost savings and improved cash flow - are becoming better known, and corporate interest is rising.

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