PG&E D&O captive given go-ahead despite creditor fury

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A judge has approved controversial plans by bankrupt Californian utility PG&E to set up a captive for directors' and officers' (D&O) cover after it was priced out of the excess management liability market, *The Insurance Insider* has learned.

The plan has drawn the ire of creditors, with lawyers for PG&E debt holders arguing the Californian utility has "no legitimate reason" to lock up $50mn for five years in a captive insurer.

PG&E, which entered Chapter 11 bankruptcy protection on January 29, has approval from a San Francisco Bankruptcy Court to set $50mn aside in a protected cell structure to self-insure for D&O.

The vehicle will be administered by Energy Insurance Services (EIS), a subsidiary of South Carolina-based Energy Insurance Mutual.

The protection afforded by the captive will sit above PG&E's existing $300mn D&O tower. Should that $300mn limit be exhausted and PG&E's existing insurers withdraw $180mn of reinstatements the utility has in place, the captive's coverage will come into play. Those reinstatements could be refused if it is deemed the losses incurred have in fact arisen from the same event.

PG&E's current D&O policy lasts for two years and is due to expire on 20 May 2020. The utility is concerned the coverage it has in place will not be enough to cover individual directors if claims costs mount.

Insurers have already incurred large losses from PG&E's 20 May 2018-incepting D&O policy, although the details of claims have been redacted from court filings.

Those filings state that PG&E's broker Marsh spent "significant time" looking for extra D&O cover in the commercial market, but the quotes received were "very costly".

The utility was quoted an approximate 20 percent rate on line for $100mn of D&O coverage. Specific D&O coverage for incoming CEO William Johnson was quoted at closer to a 30 percent rate on line.

PG&E's lawyers argue that the captive cover is necessary to "attract and retain board members and qualified senior management during the pendency of the Chapter 11 cases".

"The debtors respectfully submit that the EIS policy provides a layer of protection that is essential," explained lawyers from Manhattan-based firm Weil Gotshal & Manges and San Francisco's Keller & Benvenutti.

But lawyers for PG&E's unsecured creditors are sceptical about the proposed captive structure, noting in a filing dated 2 July that the need for a new D&O policy is "purely speculative".

"Debtors [PG&E] should not be permitted to lock up $50mn for five years for a new policy they may never need," the creditors' filing states.

Counsel for the creditors adds that the utility, which investigators believe is responsible for some of the most costly wildfires in US history, has not shown "any sound business justification" for the captive structure.

Oliver Schofield, managing partner at risk consultancy RISCS, told ***The Insurance Insider*** that "self-insuring the D&O exposure in this case makes sense".

Schofield added that the structure proposed "is not perhaps put together in the best way for all the stakeholders in this situation".

He said that, instead, using a "funds-withheld" structure and buying $50mn of reinsurance, with a premium rebate in the event of no claims, could help alleviate creditors' concerns.

A spokesperson for PG&E told ***The Insurance Insider***: "On July 9, the judge approved our request for an additional layer of insurance coverage.

“PG&E requested this insurance for new and current directors and officers because there may be circumstances under which the existing coverage may not be adequate.

“The cost for this additional coverage will not be recovered through customer rates and the entire cost of insurance, less any tax or operating expenses, would be returned to PG&E if no claims are filed.

“This is a sound financial approach and an advantage over traditional insurance, for which the premium paid typically would not be returned, even if no claims were made during the policy period.” the spokesperson added.

Marsh declined to comment and EIS had not responded to a request for comment at the time of publication.