

purchasers we have seen) and explain that you are insolvent. After this kind of treatment your London company will be! This enables you to withdraw gracefully from the scene, leaving your reinsureds to contact your pool members for settlement. The resultant howls of anguish should drown out any voice of reason, and the ongoing melee will cover any tracks you might have left.

3. THE PROFESSIONAL INDEMNITY INSURANCE MARKET

by Martyn G. Roffey
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It was not really that long ago when the likelihood of a client instituting claims procedures against his professional adviser was extremely remote, even in cases where the client had actually suffered a financial loss following professional advice. A rather quaint attitude existed in those days whereby the aggrieved party would merely admonish himself for having sought advice from one particular practice rather than having approached another firm which would surely have handled his affairs more efficiently. No thought was given to claiming for damages. Today the situation is totally reversed and I believe there are three main reasons for this change.

1. The American Influence

The American legal system has incubated, nurtured and successfully bred a contagious disease known as litigation fever. The rapid spread of this disease is currently threatening the very fabric of professional practices and although there are some firm reasons as to why it can to some extent be contained within America, the damage caused by its influence has already been done.

2. Consumer Protection

We now live in a highly consumer protected environment where legal redress is an available commodity. Consequently public awareness of rights and remedies has significantly increased and although many facets of this changed environment are commendable there is a definite need for a sense of balance to be maintained.

3. Economic Climate

A tighter economic climate means that people are no longer prepared to absorb losses for their own account where there may be a possibility of recovery from another party.

The business of insurance underwriting has always been cyclical and is likely to remain so. As premiums rise underwriting competition increases which means that premiums fall until underwriting competition slackens, so premiums rise again, and so on. However history has shown us that on rare occasions and in exceptional circumstances the combined forces of the market place have been strong enough to re-shape that market place, and it may well be that we are currently witnessing one of those occasions.

The professional indemnity insurance market has always been led by a small number of specialist Lloyd's underwriting syndicates and insurance companies. In the late 1970's and early 1980's high interest rates prevailed on the world money markets and insurers were hungry for premium in order that they could earn substantial investment income. The capacity of the professional indemnity market expanded considerably on the misguided theory that underwriting profit was unimportant particularly as business taken on today was unlikely to produce claims settlements for three or four years hence. In this fiercely competitive environment premium rates fell in real terms, and it was even said that one major insurer issued an instruction to underwriting staff to match any rates in order to hold onto business regardless of how low or suicidal they might be. At the same time the basis of cover being provided was becoming wider and wider in its application and the courts of the world, firmly led by the Americans, were awarding ever increasing damages against negligent professionals.

The very obvious result of this scenario was that massive underwriting losses were suffered and to make matters worse interest rates came down significantly. Everything came to a head at the end of 1984 when some of the major reinsurance companies, on to whom the direct professional indemnity underwriters had been off-loading some proportion of their risk, said enough was enough and withdrew from the market. Left without this reinsurance protection many of the direct underwriters also withdrew whilst others were forced to severely reduce their capacity. Overall the world wide market for this risk was substantially reduced while the remaining underwriters set about putting their houses in order by dramatically increasing premiums. Increases between 200% and 300% were common during 1985 for policy holders with good claims experience. Those with the bad claims record suffered even more.

Although with hindsight the prudent underwriter could have avoided these dramas one must respect, or at least acknowledge, the forces of competition that drove the market down the slippery slope. Undoubtedly insurers lost a lot of money and severe premium increases were necessary but, there is no sign that continued increases in premium and reductions in capacity are abating. So I ask the question – is the insurance market's reaction reasonable?

I believe this reaction is right in principle but it is difficult to assess whether or not it remains reasonable. A period of five years is probably required to find out if the premiums being charged today are sufficient to meet the claims reported today which will not be finally resolved for say five years. Certainly this class of business was unprofitable and certainly dramatic action was required but it now appears to me that the rolling stone of ever increasing premiums is out of control and is in danger of rolling over the cliff. Many underwriters, knowing that their product is still in demand and that there is little or no competition, are playing a market situation rather than applying genuine underwriting principles. This is a complacent and dangerous attitude to adopt, particularly with the professional insurance purchaser who is clever enough to appreciate that alternative arrangements to direct insurance may provide a more attractive long term solution to the problem, and could result in the loss of large slices of primary professional indemnity business to the market for a considerable period of time.

There appear to be three key factors which will affect the future of the professionally qualified business man.

1. Law Reform

There is no doubt that in recent years the exposure of the professional to liability has significantly increased following developments in the law relating to his duties. In the USA rampant consumerism has spawned well over 600,000 lawyers which represents something like 1 in every 380 members of the population and the contingency fee system produces astronomic costs and settlements. If the efforts currently being made to implement some form of statutory ceiling on liability meet with some success then we may witness some stabilisation and possible reduction in claims experience.

2. Risk Control

It is a fact that the ultimate counter to increasing premiums is a reduction in the number of claims. Consequently every effort should be made to tighten office management and control procedures including the accurate recording of telephone conversations, the checking of work by others, professional training of staff and the issue of instruction or procedural manuals as appropriate. In addition the current climate affords greater opportunity for the implementation of contractual limitations or disclaimers which were previously not commercially viable.

3. Alternative "Insurance" Arrangements

As hinted at earlier there have been occasions in the past where the non-availability of insurance in a particular area, or limited availability at

penal rates has forced the birth of alternative arrangements founded upon mutualisation. In simple language unsatisfied purchasers have clubbed together to form an association which subsequently provides a pool of resource which offers protection on a basis that is more commercially satisfactory than that available from the conventional insurance market. It may well be that on account of the pressures now in the market place we shall see arrangements being made along these lines.

Whatever the future holds it is of paramount importance that the professional in whatever discipline retains the ability to provide a high quality service. This position will be in jeopardy if he is unable to limit adequately his personal liability for negligence either by way of insurance or legal reform.

4. INTEGRATION OF ACCIDENT AND LIABILITY INSURANCE

**by Harold Caplan,
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I am grateful for this opportunity to fly a kite before Members of the British Insurance Law Association. I have no expectation that what I say will make the slightest difference to anyone. The insurance industry itself is conservative, and the lawyers who serve it usually see themselves as conservators rather than innovators. All I can do therefore is outline some changes which in the long run may become inevitable. Members of this Association will be forewarned long before mobs take to the streets demanding urgent changes in the law relating to compensation and insurance! I am comforted by the thought that the reports of Lord Justice Winn's Committee (Cmnd. 3691) and Lord Pearson's Commission (Cmnd. 7054) are peacefully gathering dust.

My observation is that the insurance industry has evolved not as a compensation system, but as an economical method of risk spreading for the benefit of specialised groups. Some of the Groups are very large, such as the community of people who require life insurance, or the various groups who require accident insurance, and some of the groups are comparatively small, such as those who fear the financial consequences of rain on school sports days.

The separate groups who require insurance have generated distinct sectors of the insurance industry, all of which require capital, management, staff and premises. The underwriters of life and accident business have very little contact with the underwriters of fire and legal liability business. Most people