

MIND THE GAP- BULLET-PROOFING YOUR CLIENTS' D&O

For many brokers, working on their clients' Directors and Officers policies is not an everyday event, and unless a client is working within the financial sector, D&O is usually only a small part of the overall premium spend. While the higher priced property and liability policies are regularly analyzed in great detail by brokers (often as a means of demonstrating expertise) D&O policies are habitually overlooked. And yet to a Director who faces personal exposure as a result of his service to his company, protecting personal assets may be just as important as protecting business assets. Therefore, a little research into what makes a good D&O policy is a wise investment for a broker wishing to provide comprehensive advice to his clients and a higher level of service than his competitors. Here are some key things to look out for when selecting a D&O policy:

- Avoid the late reporting trap. D&O policies are typically written on a claims made basis. Some D&O policies only provide cover if a claim is made to the insurers on or before the last day of the policy. This can place a great deal of responsibility on the insured as the renewal date approaches if circumstances arise that could lead to a claim. Because should it not be reported to insurers before the expiry date coverage may be lost. Other policies, however, provide the insured with a grace period of 15 to 30 days after expiry, within which a claim arising before expiry can be reported. So it is important that the insured knows which type of policy they have and that they react accordingly.
- Moving Prior Litigation dates. Moving the prior litigation date when switching policies can cause problems with coverage. Unlike a retroactive date, which excludes claims that arise from events occurring prior to the retroactive date, a prior litigation date is there to prevent the insurer paying claims which have already been made, or which the insured already knows about when taking out the policy. However when writing a policy for the first time an insurer will sometimes seek to reset the prior litigation date to coincide with the new policy inception date. Therefore by moving to a new insurer who imposes a new date, depending on the new insurer's policy language, a gap in coverage could arise. For example, if the new insurer's policy states that any official investigations or legal proceedings commenced prior to the prior litigation date are excluded, then any such investigations and proceedings that have commenced but the insured does not become aware of until after the inception of the new policy would not be covered. However, they would have been covered had the prior litigation date remained unchanged or the new insurers policy language referred to claims known about by the insured. When utilizing policies with prior litigation dates it is preferable for them to remain at the date the insured first purchased D&O and only exclude claims and circumstances the insured actually knows about.
- Extended Reporting Periods or Discovery Periods (ERPs). Unlike periods of grace allowed shortly after expiration, ERPs are for longer periods - usually between 12 and 36 months, and the insurer charges an additional premium for them. Within these dates, the insured can report claims to insurers which occurred during the policy period but which only came to light after its expiry. Often overlooked at the time of underwriting, they can become invaluable to the insured who cannot obtain similar renewal terms after a large loss, or whose situation changes and a renewal

policy is not required e.g. in the event of a business disposal or administration. Unfortunately these clauses tend to vary greatly, and once in force, many insurers are reluctant to allow changes. Therefore it's important that the insured is aware of the applicable ERP conditions prior to taking out the policy. From an insured's perspective it is desirable for the ERP provision to be as flexible as possible, preferably invoked by either the insurer or the insured i.e. a bi-lateral discovery, and with as few preconditions as possible. And it should be available to the insured for a reasonable time frame after the policy has expired; usually insurers must be notified between 15 and 30 days after expiry with premiums payable within 60 days.

- Takeovers, mergers and acquisitions. With the number of D&O policies underwritten on the basis of application forms declining, and many risks now being underwritten on statements of fact only, the need to be aware of all of the insured's activities, both at the time of underwriting and throughout the policy period, has never been so important. D&O policies are somewhat unique in how they handle changes in organisational structure such as a share sale or the raising of finance. Such events are often of significance to a D&O insurer and depending on the extent of the financial changes involved, nearly all D&O policies require their timely notification. If the changes are significant it is likely insurers will impose different policy conditions going forward.

Takeover, Merger and Acquisition clauses also appear in nearly all D&O policies, and are often being used as sales tools by insurers to promote their policies. It is therefore important that the insured is aware of them. Typically in the event of more than 50% of the shares or assets changing hands, policies will require the insured to give insurers prior notice. After the transaction has gone through, the policy will often only provide coverage for claims arising from events which occurred beforehand. In effect, the new owners would need a fresh policy or reach agreement with insurers to continue the D&O policy. Acquisitions are usually automatically covered up to a predetermined percentage of the insured's assets and must be notified to insurers beyond that. To obtain coverage for takeovers, mergers, acquisitions or subsidiaries that involve any exposure in the United States or Canada, the insurer's prior agreement will almost always be needed before coverage can be given.

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NEW GUIDE HIGHLIGHTS WHAT MAKES A PI CLAIM

Professional Indemnity Insurance covers firms and individuals who are in the business of selling their skills or knowledge and wish to be protected in the event of a negligence claim relating to services they have provided.

We all know that the claim process can sometimes be frustrating and that Directors and Officers and Professional Liability claims are notoriously complex. That's why when a claim comes into Angel, without exception, our CEO reviews it personally. With 25 years liability insurance experience he has both the industry relationships and in depth knowledge necessary to communicate effectively with the solicitors and other industry professionals who are involved in the claims.

So what should policyholders do when they feel a claim is likely to be made against them which may be covered by their PI policy?

"When you are dealing with PI cover there are a number of things that policyholders need to do and crucially a number of things they absolutely must not do. By understanding what information the Insurer needs and what not to do, an Insurer will be in a far stronger position when it comes to managing the claim and the claims process," said Angel Underwriting CEO Mark Shreeve.

To help support brokers and their commercial clients on what to do in the event of a claim, Angel Underwriting has created a PI Claims Notification Guide on the steps to be taken, which it has posted on its website –

www.angelunderwriting.com/uk/ResourceCentre/Claims

PI insurance is underwritten on what is known as a 'claims made basis'. This means that policies will only provide cover against those claims or circumstances that are discovered and notified to the Insurers within the dates specified in the policy.

So what is meant by a Circumstance?

There is no single or simple definition of what is meant by a circumstance, but the following may help in understanding what is likely to be deemed a notifiable circumstance:

- An intimation by any third party, whether expressed or implied, of an intention to make a claim against the policyholder
- Any criticism or dispute, whether expressed or implied, relating to the Insured's performance, or of any party for which they are responsible
- Any awareness by the policyholder that any services provided or actions taken by them, or by any party for whom they are responsible, have or could have failed to meet the standard required or have led or may lead to a third party loss
- A situation where the policyholder is having to investigate their work in order to justify their actions.

"A policyholder should not wait until a claim has been made against them to alert the Insurer of the issues. Should a situation arise which they feel needs to be notified, the policyholder should inform their Insurer as soon as they possibly can – irrespective of the amount which may be involved, or their views on the liability, or whether they consider the claim or circumstance to be spurious or whether they consider the

circumstance may disappear,” said Mark.

What information to provide?

According to Mark, when a situation arises about which the Insured feels they should notify their Insurer it is vital that they provide them with as much detailed information as possible. Information supplied should include:

- Complete details of the nature of the claim or circumstance including name(s) of actual or potential claimant(s) together with the Insured’s views on the claim or circumstances or any allegations that have been made or which it is felt may be made against them.
- Details of other parties involved (other than the claimant)
- The date the Insured first became aware of the claim or circumstance
- An estimate on the amount which may be involved
- Copies of all correspondence or documents including attendance and file notes relevant to the claim or circumstance

“When notifying a claim or circumstance it is important that the Insurer is in no doubt that they are being put on notice. The Insured should refer to specific circumstances, which may give rise to a claim, identify a possible claimant and the loss they have suffered or may suffer in the future. If the policyholder is in any doubt, they really need to contact their Insurer and discuss the details with them. An Insurer would rather have an initial contact to discuss the circumstances and provide advice than wait until the situation develops to the point where a claim is made before being contacted,” said Mark.

What Not to do

When it comes to PI, there are also some things that the policyholder **must not do** when they first become aware of a claim or circumstance which include:

- Making any admission of liability
- Make any payments or promise to make a payment
- Incur costs without Insurers approval
- Take any action which might prejudice an Insurers’ position or their ability to investigate the circumstances
- Provide details of the professional indemnity policy or disclose to the claimant that Insurers have been notified

Your duties in the event of a claim or circumstance

It is important to remember that there are legal protocols applying to professional negligence claims, which impose time constraints and procedural rules as to how claims should be dealt with. Insurers will have specialists to work hand in hand with the Insured to deal with these issues and if litigation is necessary, they will arrange and pay for the contribution of a legal expert.

“By creating the PI claim notification guide brokers are able to let their PI clients understand not only when they need to provide the Insurer with information but what type of information and crucially what not to do should they suspect a claim is likely to be made.

“There is no point having a really good PI policy in place if the policyholder doesn’t know when to make a claim or misses out on the vital pre-claim stages where the warning signs are there and they need to be alerting their Insurer. The earlier information is relayed to the Insurer the more effectively it can be handled.

“Our approach through all of our PI and D&O products is to not only provide comprehensive cover but to enhance that through a number of initiatives and services that bring practical advice, information and support, and the Guide is another part of this approach,” said Mark.

For more information on the P Claim Notification Guide, contact Angel Underwriting on 01206 215500.

BIBA RESEARCH HIGHLIGHTS THE IMPORTANCE OF INSURANCE ADVICE

The role of brokers in supplying small business owners with essential insurance advice, in addition to the right level of cover for their organisation is much valued by small business owners according to the results of a survey carried out by the British Insurance Brokers Association (BIBA).

For those small businesses that use brokers, the vast majority says they are reassured by the advice and service they receive according to the results of the BIBA survey.

However, BIBA says it is concerned that at a time when SMEs are looking to reduce costs and focus their efforts on customer retention, they may lose out by failing to take proper advice on what is the most appropriate cover.

The research reveals confusion among small businesses about what constitutes advice and where they should go to get it. A third of SMEs who purchased through non-broker channels thought they received advice when it is likely they did not.

Angel believes the survey findings should act as a catalyst for brokers to drive home how important their support can be to their commercial clients and embrace initiatives such as Angel's Risk Management Support Service – bringing benefits to the policyholder and offering a real added value service by the broker.

Those brokers who can differentiate themselves by delivering benefits over and above a policy alone, will be more likely to develop stronger customer loyalty says Angel.

The company says its Risk Management Service, which brings a number of very measurable benefits through the lifetime of the policy, is a perfect example of how brokers are able to bring not just advice and the right cover for today's business risks, but practical and ongoing support to small business owners.

"It is estimated by the Federation of Small Businesses that there are half a million small businesses established every year in the UK, in addition to the 4.7 million already in existence – all of which need a range of business insurance solutions as they battle with growing legislative responsibilities, an increasingly litigious culture and mounting regulation which results in them having to wade through a mounting sea of red tape," said Angel Underwriting Business Development Director Gary Green.

"The survey findings highlight that the advice of brokers is very much valued by small business owners and that's where our Risk Management Service works really well – by combining market leading D&O cover with business support and information.

"The Money Saving Checklist for Business Book that we offer with our small business D&O product, is packed with a range of practical advice designed specifically for small business owners showing them exactly what they need to do to get their organisation running as profitably as possible. That, and the free 12 month subscription to the Tips

and Advice Company Director newsletter and the Tips and Advice Personnel Newsletter that we offer for purchasers of our main D&O product, as well as access to a free legal helpline for all policyholders, enables brokers to give their commercial clients exactly what the BIBA survey says they are looking for and value” added Gary.

Key findings of the BIBA survey included:

Insurance advice is valued by SMEs:

- Advice is highly valued with 96% of SMEs who used a broker stating that advice was important
- 94% of those using an insurance broker felt the broker provided reassurance that they have the right cover in place
- 89% felt using a broker allowed them to focus on their business
- 85% felt using an insurance broker ensures they always have a competitive premium
- 81% that say that their broker identifies a suitable secure insurance policy and explains why it is appropriate for me with specialist advice

“Brokers provide an invaluable service to small business owners and the survey findings back this up and they really must not underestimate the contribution they make to their clients insurance purchasing requirements,” said Gary.

For more information on Angel’s Risk Management Support Service, contact Angel Underwriting on 01206 215500.

DIRECT DEBIT PAYMENT SCHEME HAILED A SUCCESS AT BIBA

The Direct Debit scheme launched by Angel Underwriting at this year's BIBA Conference in Manchester has been hailed a major success.

The Launch, across its entire range of directors and officers and professional indemnity policies was in response to feedback from Angel's growing nationwide network of brokers and is intended to make it even simpler and more cost-effective for a broker's commercial customers to buy any of Angel's D&O or PI products. Under the scheme, clients can choose to pay premiums via direct debit in interest free monthly instalments, should they so wish.

This latest initiative has been designed to complement Angel's online broker portal and QuickQuote system available through their web site - www.angelunderwriting.com. Using the system, not only can brokers gain instant D&O and PI quotes and bind policies at the touch of a button, but they can now introduce additional convenience and savings to their clients, while being released from the burden of collecting and remitting premiums.

According to Angel Underwriting's Business Development Director Gary Green, the launch of the new Direct Debit Payment Scheme was widely welcomed by those visiting the Angel Underwriting stand at BIBA.

"BIBA 2009 was extremely positive for us –not only were we able to launch the interest free Direct Debit premium payment scheme, which is obviously a significant and exciting development at Angel, but we also had our whole range of products on show, one of which is our latest professional indemnity product, the A-Tech policy for companies in the information technology sector.

Through the Direct Debit launch we have been able to remove the burden from brokers of having to collect premiums. This also helps our policyholders by enabling them to spread their premium payments over monthly instalments, completely free of interest, making it easier than ever for brokers to provide D&O and PI cover." said Gary.

For more information contact Angel Underwriting on 01206 215500 or email gg@angelunderwriting.com.