Facilitating a better future

Emerging Professionals Claims Community Presents: An Intro to FinPro Claims

Simon Garrett, Head of Insurance, Partner, CMS
Annabel Evans, Divisional Head of Claims, Casualty and Financial & Professional Lines, Enstar Group

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Your speakers

Simon Garrett
Partner, Insurance and Reinsurance, CMS UK

Annabel Evans
Divisional Head of Claims, Casualty and Financial & Professional Lines, Enstar Group

Agenda

- What is FinPro?
- Professional Indemnity
- Directors & Officers
- Financial Institutions
- Crime and Computer Crime

What is FinPro?

What is FinPro? : Principal types of cover

PI / Civil Liability policies	D&O policies	Crime policies	Other types of cover	'New' risks
(covering claims by customers/third parties for wrongful acts/omissions committed in the course of the Insured's business)	(covering claims against directors/officers for acts committed in their directorial/managerial capacity)	(covering first party losses arising from fraud by employees and/or third parties)	W&I, EPL, POSI	Fintech, peer to peer lending, crypto

Professional Indemnity

What does it cover?

Designed to cover professionals for claims by clients/third parties for loss arising from alleged negligent acts or omissions in the provision of their services.

Not meant to cover any losses that may arise from the running of a business or for which other insurance is available.

Terms often prescribed by the relevant professional bodies eg SRA, RICS, ICEAW

For policy to be engaged, claim must be first made in the policy period or arise from circumstances previously notified.

Coverage issues that can arise:

- Has a ‘claim’ been made?
- Scope of notification of circumstances
- Aggregation
- Exclusions

Coverage issues - wordings

Claim: “a demand for or an assertion of a right to civil compensation or damages”

Circumstances: “an incident, occurrence, fact, matter, act or omission which may give rise to a claim in respect of civil liability”

“All claims against any one or more insured arising from:

(i) one act or omission

(ii) one series of related acts or omissions

(iii) the same act or omission in a series of related acts or omissions

(iv) similar acts or omission in a series of related matters of transactions”

Professional Indemnity Claims

- Grenfell Tower - cladding
- BSkyB – PI vs CAR
- US law firm's targeted by Trump's Executive Orders
- Tax mitigation schemes eg Jimmy Carr and K2, Take That and Icebreaker
- Walkie Talkie melting cars

Directors & Officers

Nature of the cover

Side A

"The Insurer shall **pay to or on behalf of, an Insured Person**:

a) The Loss of the Insured Person arising from any claim first made during the Policy Period of Discovery Period (if applicable)"

Side B

"The Insurer shall:

a) **Pay to or on behalf of the Company** all Loss… that the Company is permitted to indemnify to an Insured Person… arising from any Claim first made… during the Policy Period or Discovery Period (if applicable)"

Side C

"The Insurer shall **pay to or on behalf of any Company**:

i) The Loss of such Company arising from a Securities Claim first made during the Policy Period or Discovery Period (if applicable)"

What does it cover?

*"The Insurer shall pay to or on behalf of an Insured Person: the **Loss** of the Insured Person arising from any **Claim**"*

Claim must be for "Wrongful Act" – any "act, error, omission or breach of duty / law"

Loss

- Damages
- Defence costs

What is not Loss

- Criminal fines
- Salaries
- Taxes

How is cover triggered?

- *Cover for **claims made** but subject to a retroactive date / past acts dates clause*
- *What is a **claim**?*
  any type of demand for monetary or non-monetary relief, whether or not in the form of a complaint
  Extended definition can include criminal proceedings and to regulatory or administrative proceedings
- *Notification of circumstances provision*

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What is not covered?

Check the insuring clause then exclusions:

- Claim
- For a Wrongful Act
- Against an Insured Person
- In their capacity as an Insured Person (director)
- For Loss (damages or costs)

Common exclusions:

- Fraud
- Intentional acts
- Illegal profit
- Claims notified to previous policies
- I v I claims (US)
- Entity claims
- Professional services exclusion

D&O Insurance Claims

D&O | Market wide claims

- FIFA bribery scandal
- VW emissions scandal
- BHP – dam collapse in Brazil
- CGR – Colombian Controlaria
- Steinhoff – fraudulent acts of senior management, securities actions, schemes of arrangement, criminal prosecutions
- Construction Blacklisting group actions – D&O entity extension, data protection/breach of confidence claims
- Petrofac – bribery of public officials
- Safeway v Twigger – entity cannot sue its directors for a fine personally imposed on the entity

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Types of claim

01 Civil actions

02 Regulatory or professional investigations

03 Criminal / quasi-criminal prosecutions

All three?

Civil claim (example)

- Safeway fined c. £20M for breaches of competition law
- Morrisons buys Safeway, new board
- Commence civil proceedings against old Safeway board
- Seeking damages up to the amount of the fine
- For breach of duty of the former directors
- Engaging in alleged price fixing activities
- Claim struck out on public policy grounds

Regulatory investigations (examples)

Types of investigation:

- FCA
- SFO
- Competition & Markets Authority
- Health & Safety Executive
- Environment agency
- Professional bodies (e.g. ICAEW, Financial Reporting Council)
- Information Commissioner
- Department for Business and Trade
- Lloyd's Disciplinary Proceedings

What is at stake:

- Prohibition
- Private warnings
- Public censure
- Personal fines
- Criminal conviction and imprisonment

Regulatory proceedings (example)

- 2016 - FCA investigate three traders re market abuse
- Each trader appoints his own lawyers
- 2020 – FCA commence enforcement action
- 2022 – RDC (FCA body) find each trader liable
- Each trader refers case to Upper Tribunal (High Court)
- 2025 – Upper Tribunal confirms RDC findings
- Total defence costs (c. £13m)

Financial Institutions

Financial Institutions

What do we mean by FIs?

- Central Bank
- Retail & Commercial Banks
- Internet Banks
- Investment Banks
- Brokerage Firms
- Insurance Companies
- Mortgage Companies
- Fintech

Nature of the cover

Civil Liability

D&O

Computer Crime

What does it cover?

1. Regulatory Investigations
2. Internal investigations
3. Dawn raids
4. Enforcement actions
5. Criminal proceedings
6. Civil claims by customers/investors
7. Class actions/group actions
8. Regulatory redress schemes

Crime and Computer Crime Cover

Genesis of traditional cover vs the new world

- Historically a **first party cover** to protect employer against employee infidelity
- Scope of cover and coverage issues increasingly complex in context of **evolution in technology** facilitating how money is held, financial transactions are processed, development of cryptocurrencies, cyber-crime, social engineering
- Wordings now more bespoke and sophisticated (e.g. social engineering extensions / exclusions, cyber-crime cover) in **ever-changing environment**
- Unprecedented scale of and threat posed by increasing levels of financial crime

FI Crime Cover

- Employee Dishonesty
- On Premises Theft
- In Transit
- Counterfeit Money
- Transfer Instructions
- Telephone Toll Call Fraud
- Forgery or Alteration
- Electronic Data, Media and Instruction
- Transfer Instructions
- Computer System
- Automated Device
- Fraudulent Mortgages / Stop Payment

FI Insurance Claims

Financial Institutions | What does a claim look like?

- The GFC and credit crunch
- Ponzi schemes – Madoff & Stanford
- FMO – claims arising out of ECHR issues
- Mortgage prisoners claims & redress schemes
- The Australian Royal Commission
- TSB data migration
- Danske Bank AML investigations /claims
- Motor Finance commissions

Computer Crime example - Data Migration

- Main Migration Event (MME) took place between 20-22 April 2018. TSB's data was migrated from a platform hosted by Lloyds Banking Group to Proteo4UK platform owned by TSB.
  - Intended to resolve TSB's lack of operational autonomy.
  - Complex operation: Involved design, build and operation of new Proteo4UK platform with SABIS Spain and UK.
  - TSB and SABIS supported by extensive assistance from third parties.

- The migration did not proceed smoothly.
  - Nearly 2m of TSB's customers were locked out of their accounts.
  - There were also data breaches, failures with banking services, and issues with payment and debit card transactions.
  - It was not until December 2018 that TSB returned to business as usual.

Financial Consequences

- TSB fined **£48.65m** by the PRA and the FCA for risk management and governance failures.
- TSB paid **£32.8m** to customers who suffered losses as a result of fraud, including in respect of unauthorised transactions.
- TSB set up a redress scheme to compensate all other affected customers.
  - TSB paid out **c. £25m** as compensation for financial loss and for distress & inconvenience.
  - TSB incurred operational costs of **c. £75m** in connection with the design, set up and implementation of the redress scheme.
- Led to a claim by TSB on its insurance of c. **£184m.**

Employee dishonesty – fraudulent invoices

- The Suspect would create and approve PVs to fictitious payees on the system
- The bank account details and name of the payee were entered manually
- Once the PVs were included in the batch for payment at the end of the day the Suspect would then exploit “a weakness in the system” whereby the details of the payee could be amended within a 24-hour period even after the payment was processed by the bank.
- The new PV would contain the details of legitimate brokers so that anyone reviewing the PVs, or the payment report extracted from the system, would think that the payment has been made to a genuine broker rather than the fictitious payee
- All the fraudulent payments made by the Suspect were below jhis AED 100,000 limit
- £8M stolen over 6 year period

Questions

Contact us

Simon Garrett
T: +44 20 7367 2786
E: Simon.Garrett@cms-cmno.com

Annabel Evans
Divisional Head of Claims,
Casualty and Financial &
Professional Lines, Enstar Group

Lloyd's market association

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