Covernotes

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Liability Cover to Consider, if Operating at 'Your Limit'

A tougher insurance market, coupled with a hardening attitude amongst insurers towards risk, are creating the conditions for an insurance product, with its roots in the 1960s, to attract greater levels of attention amongst those requiring public and products liability protection today.

The insurance product in question is Excess Liability Cover – a type of insurance that provides extra cover over that offered by the core (primary), public and products liability policy. Excess Liability Cover steps in whenever the limits of the primary policy are exhausted by a claim, which can happen in the event of a very serious injury, large-claim litigation case or product liability crisis.

Some describe such cover as insurance for your liability insurance. It is particularly used by companies that have regular in-depth interaction with the public, which run commercial transport fleets, or which operate in high-risk industries prone to high injury rates. Those working with high net worth clients, or who carry out a lot of contractual work that requires a high level of liability protection, are other types of purchaser of Excess Liability Cover.

As the level of court awards in liability cases and the value of property have risen, insurers have been keener to share risk around the market. This has led to a reduction in some of the policy limits on primary liability policies and this downscaling of the protection available may require the insured to seek extra cover as a top-up. Additionally, some off-the-shelf protection only has a limit of £1m, but many contracts require the successful tenderer to have £5m protection, so a £4m gap needs to be bridged through an Excess Liability Cover policy. This can be a particularly useful policy as a one-off purchase that suits the requirements of an individual contract or tender process.

Brokers have access to Excess Liability Cover for public and product liability. This policy is designed to cover the potential impacts of a severe incident – a scenario which could result in a very large claim that severely impacts on a business's finances or forces it to cease trading.

Such incidents are not exclusively risks incurred by large-turnover businesses. The number one source[1] of claims, to date, has proven to be heat work being carried out away from the business premises. Such claims can be significant in size, impacting on the bottom line of any business which does not have the Excess Liability Cover that can step in, if the limit on the primary policy is exceeded by the cost of the claim.

Businesses would be advised to consider the option of Excess Liability Cover if their policy limit is low and they are in a high-risk sector, or if they find their public and product liability limit reduced at renewal time. Those who also wish to quote for a contract but find themselves short on liability cover and thus unable to do so, should talk to a broker and discuss the Excess Liability Cover option, as a means to facilitate a tender submission for new work.

> “As the level of court awards in liability cases and the value of property have risen, insurers have been keener to share risk around the market”

[1]Data from Chubb Insurance, a provider of Excess Liability Cover

Why the Construction Industry Should Seek to Avoid the 'L' Word

Despite having many other pressures at the present time, litigation is one of the major concerns within the UK's construction sector, with contractors and sub-contractors battling this issue on two fronts – contractual and employee related.

Such is the concern about the 'L' word (litigation) that the Construction Leadership Council (CLC) issued a 19-page best practice guidance document in May 2020[2], to encourage construction companies to adopt the spirit of conciliation and to try to avoid a wave of protracted legal cases. Almost the moment sites reopened, it seems that the blame game began with regard to whether closures were necessary, whether work should have resumed sooner and whether consultancy advice had been appropriate.

Contractual disputes are also likely to revolve around the lack of materials in the supply chain, shortages of labour, reduced productivity due to coronavirus social distancing and the ongoing impacts caused by staff still being furloughed. 'Disruption' claims[3] could enable a contractor to recover additional costs or losses brought about through a situation such as a loss of productivity. Stakeholders could launch their own legal actions, if they believe unnecessary delays have impacted on the share price and anticipated financial gain from projects in which they invested.[4]

The Royal Institute of Chartered Surveyors (RICS) has also warned that litigation could lead to the demise of smaller firms and has urged that contracting parties make use of its own 15-day fast-tracked adjudication process or the Construction Industry Council's Low-Value Adjudication Procedure. Both put a cap on adjudication fees and that could be the difference between survival and liquidation for a construction business involved in litigation.[5]

Furthermore, in April 2020, bodies such as the Institute of Civil Engineers, Network Rail and Transport for London, signed up to the Conflict Avoidance Package, to try to encourage the sector to avoid disputes and work together.[6]

During the health crisis, there has been an increase in cases heard by the Technology and Construction Court (TCC), which has been using video conferencing for proceedings, lifting many of the burdens and costs associated with litigation.[7]

Against this backdrop, there is also that of legal cases surrounding employment disputes. Nearly 10% of the total paid out through the furlough scheme was claimed by construction companies.[8] Any redundancies after the furlough scheme winds down need to be handled with care.

Other litigation could emerge from decisions taken by whoever acted in a principal designer role. If staff were forced back to what are deemed to have been 'unsafe' workplaces and suffered health impacts, or if staff refused to return and were then disciplined or illegally made redundant, compensation cases and tribunals could emerge. With a general backlog of such cases, it is too soon to predict how many might result.

Treading carefully and trying to come to conciliatory agreements is very much the preferred mode of proceeding from this point but it will not be the way for all and the stresses and strains on the sector could be increased when Britain finally severs all ties with the EU.

A wide range of insurance options are available to the construction sector, covering one-off projects, ongoing work all year round and contractual arrangements.

Bespoke insurance protection can be built by an experienced construction sector broker. Other insurance options such as required liability protections can be included in the insurance safety net, along with Trade Credit insurance, which can help overcome long-standing issues relating to late payment within the construction sector.[9]

During this trying period, the construction sector should seek to pull together, focusing on some of the positives such as the new boom in the housing market. Adopting this stance, with the right cover in place, would probably be best practice and best advice, at the present time.

> "The Royal Institute of Chartered Surveyors (RICS) has also warned that litigation could lead to the demise of smaller firms"

[2]https://www.constructionleadershipcouncil.co.uk/wp-content/uploads/2020/06/Construction-Leadership-Council-Covid-19-Contractual-Best-Practice-Guidance-7-May-2020.pdf
[3]https://www.pinsentmasons.com/out-law/guides/coronavirus-disruption-claims-in-construction
[4]https://www.kennedyslaw.com/thought-leadership/article/covid-19-potential-claims-against-construction-professionals-and-its-impact-on-ongoing-and-future-disputes
[5]https://www.rics.org/uk/news-insight/latest-news/news-opinion/avoiding-and-resolving-construction-disputes-in-the-covid-19-crisis/
[6]https://www.pbctoday.co.uk/news/planning-construction-news/rics-conflict-avoidance-pledge/75590/
[7]https://www.pbctoday.co.uk/news/construction-technology-news/cheaper-construction-disputes/80062/
[8]https://www.constructionenquirer.com/2020/06/11/furlough-claims-for-construction-staff-reach-1-8bn/
[9]https://www.designingbuildings.co.uk/wiki/Fair_payment_practices_for_construction

Trade Credit Reinsurance Scheme is Good News for British Businesses

On June 4, 2020, the Government guaranteed to back Trade Credit insurance schemes to the tune of £10 bn[10] through its Trade Credit Reinsurance scheme, announcing it would step into the market in such a way as to maintain coverage and credit limits for businesses.

Announcing the temporary support in June, Business Secretary of State, Alok Sharma, declared Trade Credit insurance to be "essential" in non-service sectors such as manufacturing and engineering and a "daily necessity". The Government's financial backing for insurers operating in the UK market and offering Trade Credit insurance was to be made available for nine months and backdated to April 1, 2020, so as to maintain liquidity within the UK supply chain.

The potential to extend the scheme beyond December 31, 2020 was mentioned and it was said that a review of Trade Credit insurance would be carried out following the end of the current arrangement.

The Association of British Insurers' Director, General Insurance Policy, James Dalton, said: "Maintaining cover as far as possible between suppliers and their clients will be a key component in allowing the UK economy to overcome the challenges of the current crisis."[11]

Unfortunately, objections by the European Commission (EC) led to a delay in the scheme's implementation, with the scheme only gaining agreement from the EC on 29 July, 2020 when the Commission ruled the scheme compatible with principles set out in the EU Treaty[12].

The scheme's introduction was met with support from trade bodies such as the British Toy and Hobby Association. Natasha Crookes, the BTHA's director of public affairs and communications, said: "It is news we have been awaiting for some time and I hope it can support the toy industry to trade more effectively over the coming months."[13]

The situation, as of September 14, 2020, was that nine insurers had registered for the scheme and are now participating in it.[14]

In answer to a question in the House of Commons, posed by Chris Elmore, Opposition Whip (Commons), Shadow Minister (Scotland), the Parliamentary Under-Secretary (Department for Business, Energy and Industrial Strategy), Paul Scully, said: "At present, insurers serving over 80% of the market have signed up to participate in the scheme."[15]

The business community has viewed the scheme as good news, allowing many British businesses to have more confidence in their business arrangements, knowing invoices will be paid. The insurance cover steps in when customers do not pay debts, or pay them late, beyond the payment terms and affecting cash flow projections. With Trade Credit insurance's support, businesses can extend credit terms to new customers and often also access more affordable funding. It is possible to buy cover for all invoice exposures, or just for individual accounts, minimising the impacts of customers' financial difficulties and possible insolvency – vital in the current turbulent economic times.

The cover also allows a business to have some control over factors outside of their control, such as political unrest, disasters and currency shortages, which can all affect payments.

Discovering what Trade Credit insurance can do for them is likely to become a more attractive proposition for businesses during current times. Taking a step to cover liabilities, in terms of potentially unpaid invoices, could be one that means business survival.

> "Secretary of State, Alok Sharma, declared Trade Credit insurance to be "essential""

[10]https://www.gov.uk/government/news/trade-credit-insurance-backed-by-10-billion-guarantee
[11]https://www.abi.org.uk/news/news-articles/2020/06/abi-welcomes-government-backed-temporary-reinsurance-scheme-so-businesses-can-continue-to-access-trade-credit-insurance/
[12]https://eureporter.co/uncategorized/2020/07/29/commission-approves-uk-guarantee-scheme-to-stabilise-trade-credit-insurance-market-in-coronavirus-outbreak/
[13]https://toyworldmag.co.uk/trade-credit-reinsurance-scheme-backed-by-the-government/
[14]https://www.gov.uk/government/publications/trade-credit-reinsurance-scheme
[15]http://qnadailyreport.blob.core.windows.net/qnadailyreportxml/Written-Questions-Answers-Statements-Daily-Report-Commons-2020-09-03.pdf

Getting Water Systems Back 'Online' is a Duty of Care

Getting a workplace or public venue 'back up and running' may not be as simple as turning the meter back on, running a duster around and turning the radiator controls. Some premises and business venues will also have water systems that present a particular and deadly risk, can also frequently contain a risk that is out of sight and out of mind.

> "10% of those infected with legionella, which manifests itself in flu-type symptoms and is a form of pneumonia, will die"

The risk in question is Legionellosis – a collective term for diseases caused by legionella bacteria[16], which thrives at water temperatures between 20°C and 45°C. It can also grow in water systems in which water is stored and circulated, within systems that produce and disperse droplets and in pipes, tanks and bends where deposits of rust, sludge and scale are a great incubator environment for bacteria.

Typically, issues arise where businesses are not maintaining water temperatures at under 20°C for cold water and at over 60°C, which kills the bacteria, for hot water. It also occurs where dead-leg pipes exist within a system and where water throughput is low. Equipment and features that are susceptible to bacterial growth include humidifiers, air washers, vehicle washers, indoor fountains, showers, spa pools, swimming pools, chillers, water softeners, heat exchangers, pumps and feed tanks. Cooling towers and air conditioning systems also commonly present risks, if not properly maintained.

2020 has not been a typical year. Premises in England, such as gyms and hospitality venues, were shut from the Prime Minister's ordering of lockdown on 16 March, until allowed to reopen on 4 July. Offices may have stood empty for longer, with staff reticent to return to the workplace when they can work from home. Water systems can easily have been neglected, and water usage may have been minimal. Reductions in staff numbers, perhaps even the furloughing of the 'competent person' appointed by the health and safety duty-holder within a business, may have left it short of the expertise that has enabled it to comply with its duties under legislation such as the Control of Substances Hazardous to Health (COSHH) regulations.

The law requires those with water systems that could present a risk to not only continually monitor, test and act on issues but also seek competent help from an expert with in-depth experience in legionella control. The reason is evident – 10% of those infected with legionella, which manifests itself in flu-type symptoms and is a form of pneumonia, will die.[17]

We have recently seen eight cases of Legionnaire's Disease in an outbreak in the West Midlands. Businesses reopening have also been urged by the Scottish and Northern Ireland Plumbing Employers' Federation (SNIPEF) to look out for signs of legionella[18] during risk assessments. Given what the law expects to see, in terms of health and safety actions with regard to this disease, it is imperative that a business that has been shut or under occupied, quickly gets back up to speed with its water system cleaning, maintenance and compliance.

Legionella monitoring and recording of actions needs to be a serious exercise and a living document of actions; test results and control measures need to be kept for two years, whilst records of any monitoring inspection, test or check, need to be kept for five. Risk assessments should include a schematic drawing of the water system on the premises and should also take into account how cleaning chemicals are stored and used. Documentation should cover areas including disinfection processes and schedules, commissioning and recommissioning procedures and emergency and shutdown procedures.

Given the need to have recommissioning procedures within an assessment, any business that has moved back into premises where water is stored, or aerosols used, should be referencing those recommissioning actions and ensuring they have been through them with diligence. Calling in expert help may well be required, to check that all is safe and compliant. Recording that these actions have been taken is key.

Businesses that could be a 'host' for legionella, and which have brought their water systems back 'online', should also pay great regard to the similarity between the symptoms of legionella and COVID-19. If any believe that they have suffered a COVID-19 outbreak or have had a member of staff take a COVID-19 test which has then been negative, despite them having severe flu-like symptoms, they should make doubly sure that what is actually causing the health issue is not legionella.

[16] https://www.hse.gov.uk/pubns/priced/l8.pdf
[17] https://www.cdc.gov/legionella/fastfacts.html
[18] https://www.pbctoday.co.uk/news/health-safety-news/legionella-infection-in-water-systems/81800/

Where Insurance Will Fit into the Brave New World Post-Brexit

The securing of the first exports of UK beef to the USA in 20 years has been heralded as a "fantastic boost to the sector" by the Agriculture and Horticulture Development Board, whilst International Trade Secretary, Liz Truss, has talked of free trade deal negotiations creating "a host of export opportunities for British agriculture".[19] However, many food and drink businesses, along with other importers and exporters, will have concerns about what the post-Brexit world will bring, if 31 December arrives with no deal having been negotiated with the EU.

Currently, the UK is covered by EU-third-country trade agreements, despite having left the EU. As from 1 January, 2021, such trade agreements will no longer apply to the UK.[20] Current Government efforts are being directed towards reproducing the effects of existing EU agreements for after 1 January, with the aim being to assist UK businesses and their trading arrangements by retaining as much continuity as possible.

New trade agreements are also being negotiated. When last updated, on 6 August, 2020, the Government website showed that 20 trade agreements had been signed[21], these being with countries including Chile, Central America, Iceland and Norway, South Korea, Tunisia and Switzerland. Discussions are underway with 18 countries with which the UK currently trades through EU trade agreements, with this list including Canada, Singapore and Turkey. The site talks of a trade agreement with Japan having been signed on 11 September, 2020 and Mutual Recognition Agreements being in place with Australia, New Zealand and the USA.

Government advice for food and drink businesses highlights the uncertainties with regard to goods declarations. It says importers and exporters should determine whether they wish to use an agent to handle this requirement. It talks of "new processes" that will apply to those exporting animals and animal products, as well as fish and fishery products. The EU Plant Export Scheme is set to be subject to UK import controls and much of the labelling currently used by many products will need to change, with no references to the EU or use of EU logos allowed and a variety of other labelling requirements to which to adhere.

If importers and exporters are encouraged to find new markets or have no option but to seek out new buyers, there is at least a current safety net that can add to their confidence when arranging new sales with customers with whom they have no previous trading history. The UK Government's bolstering of Trade Credit insurance, via its recently introduced Trade Credit reinsurance scheme, covers both domestic and overseas payments, meaning that exporters can back themselves with credit insurance, to be assured that their goods should be paid for.

The scheme is destined to support the 230,000 businesses at risk of not getting paid by international customers when exporting their goods and the UK Export Finance scheme, which provides the support, will cover UK exports to 180 countries.[22]

Export Business Credit insurance can support global trade development and protect a business from various situations that could lead to non-payment, such as war and civil unrest, the actions of overseas governments, import and export restrictions and constraints caused by currency conversion and transfer difficulties.

Having such cover could be one less worry for British businesses reliant on overseas markets. However, past statements from Michel Barnier, the EU's chief negotiator, which have related to there being a potential bloc ban on UK produce, will remain a concern, unless third-country style trade agreements can be put in place.[23]

With the situation seemingly going down to the wire, British businesses will need to follow the advice that exists for now, hoping for a more

[19] https://www.gov.uk/government/news/first-exports-of-uk-beef-to-the-usa-in-20-years-underway
[20] https://www.gov.uk/guidance/the-food-and-drink-sector-and-preparing-for-eu-exit
[21] https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries
[22] https://www.gov.uk/government/news/trade-credit-insurance-backed-by-10-billion-guarantee
[23] https://www.fwi.co.uk/business/markets-and-trends/meat-prices/delay-in-third-country-status-threatens-meat-exports-to-eu

promising outcome over the next few months and using insurance as a safety net, wherever possible.

Whilst Trade Credit insurance is one option, it may also pay to consider Product Recall insurance, particularly given the new labelling requirements. There are a host of other insurances, depending on the type of goods produced, the markets targeted, the modes of transport and distribution used and the business's day-to-day operations.

Consultants and others offering advice will need to check their Professional Indemnity Insurance is up-to-scratch, whilst Business Travel insurance may also need to be more robust, according to where sales trips and client or buyer meetings are taking place. Life after Brexit really does seem to be shaping up to be a brave new world and a well-considered insurance protection net will have its part to play within it.

Looking After Your Wellbeing, A New Essential Need of Today

Staff and your own health and wellbeing is being tested in these unique COVID-19 times and this "new normal" is set to be with us for some time to come. Preparation to handle these issues may not have been part of your expected working day, but they can most certainly affect the way you and your staff do their jobs today, whether at home or in the office.

There are a number of health support programmes available to you. "Doctor@hand" which is offered via AXA Health is one where you get unlimited access to a 24/7 GP service which offers 20-minute appointments with a GP to discuss concerns.

As well as protecting your business with the correct risk and insurance coverage, it is now important that you take care of your own business family. Please talk to us, your local broker, to provide the cover for all your requirements.

Brexit Means Green from 31 December

A reminder that if you are taking your car into Europe from 1 January, 2021 you will need a Green Card – this will be a legal requirement. This WILL include driving into the Republic of Ireland.

This is a physical document you will be required to carry with you. If you have a trailer or caravan, you will need a separate Green Card.

Please contact us to discuss your needs and ensure you have the correct documentation and coverage for your journey.

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