

Claims Made and Occurrence

60,000ft view of how policies react
in the event of a claim
& what LUG does

Michael Lay (Catlin)
LUG triggers working group
LUG Conference – Corpus Christi College, Cambridge 7/9/05

Bolton City Council - Mesothelioma

- Case study at LUG Conference
 - When is a claim a claim?
 - What policy pays?
 - Do underwriters know what they are writing, when they are writing?
 - ✓ Are they pricing for it?

LUG and its' role

- Talking shop and research
- Aim to have underwriters as clued up as possible on various subjects
- Working Groups
 - Asbestos – David, Gerald, Peter
 - Triggers – Neville, Gerald, Pete, Mike

Claims Made vs. Occurrence

- Helps manage the long tail
- Provides the Insured with a limit of indemnity appropriate for claims sizes at the time
- Avoids stacking of limit
- Can back you into a claim
- Can be broader than occurrence especially where Vendors extensions are used
 - When is a TP a TP?
 - Who knows what, when, why? What is realistic?

Occurrence vs. Claims Made

- Forward rather than backward looking
 - Always strange paying for things that have already happened
- Much easier product to sell
 - Promise to pay forever
 - Insured can feel c/m allows insurer to run away right when he is needed

Triple Trigger & Stacking

- Triple Trigger:
 - Bolton Case good entry point
 - ✓ When is an occurrence an occurrence?
 - Drugs
 - ✓ When you take it
 - ✓ As it injures you
 - ✓ When the injuries manifest themselves
- Stacking
 - So how much limit do you have?
 - Each “occurrence” vs one loss
 - ✓ Have you priced for this?

Types of Claims Made

- **Claims Made, Claim 1st Reported, Suit Filed, 1st Reported in writing to Insurer etc.**
 - The Insured is indemnified by this Section in accordance with the Operative Clause in respect of any claim or claims made against the Insured during the Period of Insurance for and/or arising out of accidental Injury and/or Damage occurring after the Retroactive Date stated in the Schedule. If no retroactive date is stated then the inception of the Policy will be deemed as the Retroactive Date.
 - In the event that a claim or claims are first made, in writing, against the Insured during the period of this Policy arising from a Loss which took place on or after the date specified in Item 5 of the Declarations (hereinafter referred to as the Retroactive Date), Underwriters will indemnify the Insured, subject to the Limits of Liability set forth in the Declarations and the applicable provisions of this Policy, for that amount of the ULTIMATE NET SUM PAYABLE in excess of the UNDERLYING AMOUNTS OBLIGATIONS OF THE INSURED which the Insured shall be obligated to pay by reason of the liability:

- **Occurrences Reported – Bermuda Forms**
 - notice of the **Occurrence** shall have been first given by the **Insured** in an **Annual Period** during the **Policy Period** in accordance with Article V of this Policy
 - ✓ **"Integrated Occurrence"** means an **Occurrence** encompassing actual or alleged **Personal Injury, Property Damage** and/or **Advertising Liability** to two or more persons or properties which commences over a period longer than thirty (30) consecutive days which is attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such; provided, however, that such **Occurrence** must be identified in a notice pursuant to Section C of Article V as an **"Integrated Occurrence"** and is subject to all provisions of paragraphs (1) and (2) of Definition V.

Loss Series & Batch

- Loss Series
 - (RSA occ) Event shall mean one occurrence or series of occurrences consequent on or attributable to one source or original cause
 - (Fubon c-m) All claims first made against the Insured in writing within a period of 12 months from the day that the initial claim was first made in writing against the Insured which are consequent upon one original cause shall be treated as if they had all been made on the day the initial claim was first made in writing against the Insured.
- Batch
 - (XL 004) "Integrated Occurrence" means an Occurrence encompassing actual or alleged Personal Injury, Property Damage and/or Advertising Liability to two or more persons or properties which commences over a period longer than thirty (30) consecutive days which is attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such; provided, however, that such Occurrence must be identified in a notice pursuant to Section C of Article V as an "Integrated Occurrence" and is subject to all provisions of paragraphs (1) and (2) of Definition V.
 - (Swiss Re) All claims or series of claims arising from the same or related cause including continuous or repeated exposure to the same general conditions shall be deemed to constitute one claim irrespective of whether claims are reported during one or more Period of Insurance and the number of claims made. Such claim shall be deemed to have originated at the time a claim was first made against the Insured.

Extended Reporting Period

- ERP
 - If Underwriters decline to renew or cancel this Policy for reasons other than the “Insured's” non-payment of premium or non-compliance with the terms and conditions of this Policy; or
 - If the first Named “Insured” declines to renew this Policy; or
 - (c) If Underwriters require the specific exclusion of an “Occurrence”, product or operations on renewal of this Policy;
 - then the first Named “Insured,” upon payment of an additional premium calculated at the percentage set out in Item 14 of the Declarations of the premium set out in Item 7 of the Declarations, shall have the right to extend the Period in which a “Claim” made against the “Insured” after the Policy period set out in Item 5 of the Declarations, is treated by Underwriters as made on the expiry date set out in Item 5 of the Declarations:
 - (i) in respect of (a) or (b) above for a period of **seven (7)** years;
 - (ii) in respect of (c) above: for a period of **seven (7)** years in respect of the excluded “Occurrence”, product or operations,
 - Provided always that such “Claim” results from an “Occurrence” which first commences prior to or on the expiry date set out in Item 5 of the Declarations.
 - The “Insured” agrees that a change in premium, terms or conditions does not constitute a refusal to renew.
 - This right of extension must be exercised by the first named “Insured” giving written notice which must be received by Underwriters within thirty (30) days after the date the refusal to renew, cancellation or exclusion referred to above takes effect and paying the additional premium to the person or entity set out in Item 8 of the Declarations within forty-five (45) days after such notice has been received by Underwriters. If the notice is not received by Underwriters within such thirty (30) days the Insured shall not, at a later date, be able to give such notice. If the first Named “Insured” fails to pay the additional premium to the person or entity set out in Item 8 of the Declarations within forty-five (45) days after such notice has been received by Underwriters, all “Insured’s” rights under the Extended Claims Made Period shall be rendered null and void and Underwriters shall be relieved of all liability under the Extended Claims Made Period.
 - In no event shall the liability of Underwriters exceed the relevant Limits of Liability set out in Item 4 of the Declarations; such Limits of Liability shall apply to the Period of this Policy set out in Item 5 of the Declarations combined with the extended claims made periods set out above.
 - If the first Named “Insured” extends the claims made period in accordance with the above, Underwriters shall not be able to cancel the extension, nor shall the “Insured” be entitled to any return of all or any part of the additional premium paid in the event that the first Named Insured should cancel the extension.

Maintenance of u/l Insurance

- Regardless of the number of “Occurrences” or “Claims” that may be covered by this Policy:
- (a) where the Underlying Insurance(s) is any one “Occurrence” the “Insured” shall always be liable for either the Underlying Insurance(s) or the Self Insured Retention, whichever is the greater, in respect of each and every “Occurrence;”
- where the Underlying Insurance(s) is in the aggregate, the “Insured” shall always be liable for the remaining Underlying Insurance(s) or the Self Insured Retention, whichever is the greater, in respect of each and every “Occurrence”.
- The Self Insured Retention shall be subject to no aggregate limitation regardless of the number of “Occurrences” or “Claims” that may be covered by this Policy.
- The “Insured” shall have the right to insure all or part of the Underlying Insurance(s) and/or the Self Insured Retention

Case Study – Distributing a loss

- Chap abusing 8 boys at boarding school over a 4 year period. Claims are made 10, 11 and 12 years later.
 - We'll look at a £ 3m total settlement distributed by different forms.
 - ✓ Loss series?
 - ✓ ERP if there
 - ✓ Deductibles
 - ✓ Occ Rept/ C-M/ Occ
 - Different triggers on u/l

LUG

- Get involved
- There are no answers, just that
“knowledge is the bomb”
- Questions? Time to go home?