The Miscellaneous Minefield

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Miscellaneous revisited

View in 1997

- **Attractive to Insurers because:**
  - **Untapped market**
  - **Underwriters can choose or limit the cover they offer**
  - **Not impacted by recession type claims**
  - **Perceived as low risk**

- **Biggest worry then was Y2K!**

Miscellaneous revisited

View in 2013

- **Worrying to Insurers because:**
  - **Commoditisation of PI business**
  - **The dangers of wide wordings and extensions**
  - **Mis-selling – not just an IFA issue**
  - **Challenges of some miscellaneous risks**

- **Biggest worry now - ourselves?**

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Commoditisation of PI business

Change in customer approach, especially SMEs:

- **Loyalty to brokers reducing**
- **Looking for the cheapest deal**
- **Direct sales increasing – especially online**
  - o **1.5m Google hits for "Professional Indemnity Insurance online"**
  - o **Over 30 identifiable UK insurers**
  - o **Through hundreds of sources (Brokers, affinity groups, etc)**

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Commoditisation of PI business

Insurer approach

- Keep costs to a minimum
- Basic question sets and standard rates
- Online forms or tick-box approach
- Low premium levels mean no hands on underwriter involvement
- Tacit renewals on the increase

Broker approach

- Consolidating
- Increased numbers of deals
- Tied into broker's own wordings
- One or select number of Insurers
- Roll Over – wordings (DIC) and premiums
- Need to ensure client not disadvantaged
- Insurer takes bad with the good
- DIC wordings

Other Developments

- Consolidators have established PI products - on similar lines to the Meercat
- Underwriting Agencies with insurer pens - rewarded by commission/profit share

Commoditisation of PI business

- Professions with consistently profitable loss ratios lend themselves to this commoditisation – Miscellaneous professions fit the bill, e.g:
  - o Management Consultants
  - o Graphic Designers
  - o IT Consultants
- Some professions need more detailed underwriting, e.g:
  - o IFAs
  - o Solicitors
  - o Surveyors
  - o Design & Construct

  But doesn't stop their commoditisation

Commoditisation of PI business

- 'Miscellaneous' professions usually make a good return for insurers
- Current soft market and numbers of new offerings evidences this
- Future profitability at risk?
  - Lack of information – Insurance Contract Law Consultation "Don't ask don't get"
  - Risk of taking on "wrong" or unacceptable risks and rogue/phoenix Insureds
  - DIC clauses – Writing on unknown wordings
  - Premium levels reducing and higher commission levels
  - Inferior risk management not detected
  - Risk of application fraud increased
  - Innocent non-disclosure clauses give little chance of avoiding claims
  - Will U/W agency interpret authority too widely? Only as good as its staff
  - Claim defences may be weakened as underwriter's intent undermined by risk selection process and wording lottery

The dangers of wide wordings and extensions

Question: When is a PI Policy not a PI Policy?

Answer: When it's a PI Policy
Proliferation of extensions and broker wordings blurring the edges

The Past

- PI evolved as cover for legal liability arising from negligent advice, design etc to third parties
- Loss of own documents added many years ago:
  - but in effect is mitigation cover
  - a professional relies on documents to deliver the service

We are now asked to cover:

- Cyber risks (whatever they are?)
- Brand Protection
- Pursuit of Infringement of own copyright, patents, etc
- Claims Advocacy
- Continuous Cover
- Mitigation Costs

The dangers of wide wordings and extensions

Are PI policies becoming trading risk policies?

Some typical Clauses seen

- Cover for Fines and penalties
- Disciplinary hearing cover not linked to professional duties
- Fidelity cover included for full policy limit under a "dishonesty" heading with no requirements or conditions, minimum standards of control or system of check; wider than a typical crime policy and higher limit.
- Mitigation of loss coverage not triggered by potential legal liability. Effectively paying the insured to do the job they should have done in the first place.
- D&O cover
- Clauses which provide funding for the broker to bring a claim under the policy!

The dangers of wide wordings and extensions – Cyber Extension

Third Party

- Common "Cyber Liability" coverages
  - Loss of Data
  - Mishandling Data
  - Allowing hacker attack
  - Spreading virus
  - Breach of privacy / copyright
  - Defamation
- Question: Which of these third party "cyber" risks isn't already covered under a civil liability PI policy?
- Why add a Cyber Liability Extension?

The dangers of wide wordings and extensions – Cyber Extension

First Party

- Does the policy have a loss of docs extension?
- Yes? – then there is probably already first party "cyber" cover
- Typical Loss of Docs Cover
  - "in the event of loss of or damage to Documents......indemnify the Insured in respect of all costs and expenses reasonably incurred in replacing or restoring Documents"
  - "Documents means all documents (excluding bearer bonds coupons bank or currency notes or other negotiable instruments) including computer systems records the property of the Insured or for which the Insured is responsible"
- So – if computer data is lost, then the policy covers its replacement.
- Very wide cover, unless conditions and exclusions applied, e.g.
  - sufficient and proper procedures for security / back-up
  - impact of Virus
  - hacking

The dangers of wide wordings and extensions – Cyber Extension

Typical Cyber extension First Party covers:

- Rectification Costs
- Crisis Consultants Costs
- Public relations consultants
- Forensic consultants
- Security consultants

Following Hacker attack and Virus damage

- Did the client ask for the cover?
- Are they under a false impression of the extent of coverage?

All this without any questions

- What data?
- What systems?
- Security procedures?
- Each risk is different with various levels of data security and awareness.
- How can a PI underwriter assess the risk? Would a "cyber" underwriter just throw cover in without underwriting it?
- Separate Cyber cover provides the best protection

The dangers of wide wordings and extensions

Why should we be concerned?

- Extremely difficult to underwrite these clauses - PI proposal forms don't ask the right questions
- Shows lack of understanding
- Can give insureds false comfort
- Possible accumulation issues
- Could give surprise losses leading to increased rates

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Mis-selling – not just an IFA issue

- PPI claims on Miscellaneous risks from:
  - Car dealers
  - Money lenders
  - Debt management companies
  - Catalogue companies
  - Property Managers

- Many unfounded or within the excess (but is it per claimant?)
- Costly to deal with
- Was it envisaged?
- What's next?

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Challenges of some miscellaneous risks – Add on Insurance

- Sold at the time of other (larger) purchase – e.g. when buying a car
- FSA has concerns, which include:
  - Consumer is focused on primary sale not on cost and value of the add-on
  - Terms of add-on insurance sometimes mean that products are of limited use
- Announced study which will:
  - Build on FSA work already undertaken
  - Provide basis for decision on intervention to ensure that competition works well for consumers
- Concern for PI insurers?
  - PI market "piled in" to secondary intermediaries in 2005 when made compulsory
  - Is this the next mis-selling scandal?
  - Already seen PPI claims from some
  - Will we now be exposed to general insurance miss-selling?
- Per Claimant / Per Transaction Excess?

Challenges of some miscellaneous risks – Green Deal

- Established under Energy Act 2011. Allows home owners and businesses to carry out energy efficiency refurbishment of their property without any upfront cost. Pay back up to 25 years using a Green Deal finance plan.
- The golden rule: To be eligible utility bill savings must be equal to or greater than the costs of the installation.
- Green Deal Advisor (GDA) issues a Green Deal Assessment report.
- Improvements must be fitted by an accredited Green Deal installer
- So why a Problem?
  - Savings may not be as predicted
  - Loan charges may be excessive
  - Adviser may be employed by or associated with the installer or the Finance Provider
  - Potential conflict of interest
  - Miss-selling claims?

Challenges of some miscellaneous risks – Law Costs Draughtsmen

- Under Civil Justice Reforms:
  - Solicitors now required to provide cost estimates for approval of the court
  - Will be unable to recover costs in excess of the estimate agreed from the other side if they lose
  - Much closer scrutiny of costs generally
- Will this mean an increased exposure for Law Costs Draughtsmen?

Conclusions

- Miscellaneous PI – Not low risk
- Hidden dangers
- Increased risk as result of:
  - Reduced levels of information and underwriter involvement
  - Wide and “blind” wordings
- Changing external environment
- Are they still a good balance against solicitors / surveyors?

Questions and Answers