Solicitors Professional Indemnity “Price, process and profitability”

Jon Davies
Assistant General Manager
Financial and Professional Services
Background

- Dissatisfaction with SIF
- September 2000 – a new era
- Profession voted for change and choice
Law Society safeguards

- Qualifying Insurer’s Agreement
- Minimum Terms and Conditions
- Joint Venture with St. Paul
- Assigned Risks Pool
### 2000 Qualifying Insurers

<table>
<thead>
<tr>
<th>CGNU</th>
<th>R E Brown</th>
<th>Mitsui</th>
<th>Wellington</th>
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<td>Independent Ins</td>
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2000 Qualifying Insurers writing primary in 2003

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## 2003 Qualifying Insurers

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<td>W R Berkley</td>
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2003 Qualifying Insurers writing primary business

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2003 Qualifying Insurers writing primary business

17 Qualifying Insurers participated

But...
80% from 6 markets
60% from 3 markets
What would SIF be charging?

1999/2000 - £215m
5% exposure growth per annum
7% claims inflation
2003 @ £343m
2004 @ £385m!
Primary adjusted rate change

-50  -40  -30  -20  -10  0

1999  2000  2001  2002  2003

Rate change

Year
Claims inflation

Between 1989 – 1999

- average litigation settlement went from £16,000 to £43,000

- average claim ex conveyancing went from £24,000 to £44,000

- commercial claims quadrupled!
Who are the ‘worst’ insureds?

Architects
Engineers
Media Companies
Management Consultants
Solicitors
Surveyors
Claims frequency by profession

- Mgt Consultants
- Engineers
- Media
- Surveyors
- Architects
- Solicitors

% of risks with claims

0 20 40 60
Where are the claims coming from?

Claims by number

- 22% Personal Injury
- 14% Commercial
- 15% Property
- 12% Litigation
- 37% Non-Litigation
Where are the claims coming from?

Claims by value

- Personal Injury: 6%
- Commercial: 38%
- Property: 29%
- Litigation: 11%
- Non-Litigation: 16%
All firms – claims by number

<table>
<thead>
<tr>
<th>Type of claim</th>
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<tr>
<td>Litigation – Conduct of Action</td>
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<tr>
<td>Personal – Conduct of Action</td>
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<tr>
<td>Commercial Contract Terms</td>
<td>6</td>
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<td>Commercial Lease/Assignment</td>
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<td>Residential Searches/Enquiries</td>
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### All firms – claims by value

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All firms – relative claims value by activity

- Commercial: £1,000
- Litigation: £1,010
- Non-Litigation: £1,270
- Conveyancing: £2,310
- Personal Injury: £4,920
## Major firms – claims by number

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<td>Other Litigation - Conduct of Action</td>
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Claims against major firms

- New clients
- Non UK
  - infrastructure
  - jurisdiction issues
- Commercial property – leases
- Tax
- Pensions
Assessing risks for large firms

- Claims history and trends
- Fee income and work type
- Geographical spread
- Excess/retention
- Approach to new clients
- Management structure
- Claims handling and risk management
- Relationship
Issues for Insurers

- Mandated wording
- Non-voidance
- Disclosure
- Fraud
- Costs in Addition
- Aggregation
- Run-off
- ARP
Issues for the profession

- Adequate capacity
- Fair allocation of premiums
- Reducing claims...
Is the open market better?

Law Society was looking for...

- Public protection
- Long term solution
- Continuity
- Wide coverage
- All sectors covered
- Ability to revert back to mutual
Is the open market better?

Law firms were looking for...

- Choice
- Competition
- Opportunity to make their case

Insurers were looking for...

- Long term opportunities
- Profitable business
Is the open market better?

Law Society?

they set the rules
Is the open market better?

Law firms?

Choice but with responsibility
Selective competition
Make their case but half are worse than average
Is the open market better?

Insurers

- Long term: yes
- Profitable: ?
Conclusion

For the open market to fare any better than SIF...

1. focus on claims reduction must intensify
2. adequate capacity comes from adequate pricing
3. underwriters need to know what they are covering
Solicitors Professional Indemnity
“Price, process and profitability”

Olivia Burren
Senior Risk Management Consultant
Cost of claims

£250 million per annum
Property
Commercial Law
Tax
Past claims experience

Property work is still the biggest area for claims against solicitors.
37% of claims by volume.
6 of the top ten categories of claims against all firms relate to property work.
High risk – high turnover – low profit.
Past claims experience

Commercial work – increasing
14% of claims by volume, but 38% by value
29% of claims against major firms are related to commercial work
62% of payments in respect of major firms arising from commercial work
What do lawyers get wrong?

They rarely get the law wrong

- Administrative errors
- Routine clerical mistakes
- Client selection
Why do they get it wrong?

Pressure of work
Traditional culture
Training and organisation
What goes wrong?

Analysis of 26 large claims, over the first three months of 2004:
17 related to commercial property
1 – matrimonial
2 – litigation
4 – commercial contracts
2 – tax advice
They included:

Insured did not investigate planning permission, and client proceeded to buy a property that they could not use.

Insured reserved rights for client over part of property being sold off, but failed to register this, making it ineffective.
Insured served break notices, but did not ensure that all other requirements had been complied with – notice was ineffective

Company restructuring did not have desired effect of tax saving

Agreement for sale did not clarify who was entitled to outstanding rent

In one case, advice resulted in client potentially committing criminal offence
What does this reveal?

The client’s instructions were not followed
Documentation prepared did not reflect those instructions
The documents were intended to do what the client wanted, but failed in their purpose
Lawyers gave advice in areas where they did not have sufficient expertise
Why does this happen?

Client/matter vetting and supervision not adequate
Clients instructions not recorded clearly
Communication with the client poor or inadequate
Ineffective procedures for checking documentation
Three major problems

Time Limits
Delay
Communication
Three straightforward answers

Diary system
File review
Keeping detailed notes
How can firms reduce risk?

Raise risk awareness throughout the firm

Ensure partners understand their responsibilities

Have procedures and review systems that work
Encouraging compliance

A clear chain of responsibility
Named individuals to manage risk
Regular reviews of procedure
Making risk management integral, not additional