

Matthew Houghton: Hi. I'm Matt from Management Liability Underwriting, and I'm joined by another Matt from our claims department today. I've got a couple of questions for you. The first one is, are all management liability claims dealt with in the same way, so across the three lines of cover; D&O, EPL, and CLL?

Matthew Harrison: The short answer, Matt, is absolutely not. As I'm sure you're aware, management liability covers a very wide umbrella of coverages. For example, if you start off with directors and officers liability, the types of claims that you're looking at there can vary from investigations to claims for damages. They are dealt with very differently. The common factor is they're complicated claims with more often than not, once they reach a certain stage, a requirement for legal advice to assist with the defense.

You jump onto corporate legal liability claims as the next bucket. That is also an incredibly wide spectrum of potential claims, and there claims can relate to anything from a breach of contract to infringement of intellectual property rights. Once again, I would say the common would be that these are complicated claims that take a long time to resolve. Once they reach the stage of, for example, a letter of claim being issued or a demand being made, more often than not, policyholders wanting assistance with those claims from us at Aviva.

EPL claims are a almost distinct umbrella of the law. They are dealt with separately in a specialist court, the employment tribunal. As such, there are strict rules and procedures that apply to EPL claims. They are often on a very tight timescale, whereas the claims we see on the other lines are potentially more long tail.

EPL claims themselves, while they have a similar procedural aspect, can widely differ in subject matter. Anything from discrimination claims to claims over employees being made redundant. They're very fact-specific in how you would deal with them. They are very intensive on what's required from a policyholder because they often go through courts fairly quickly if they're defended, so witness evidence is required, disclosure is required.

Matthew Houghton: Would you say that you've seen a change in the frequency of claims over the last couple of years. It's pretty well known that the D&O market, the ML market is hardened. I think is that reflected by either the number of claims that you're seeing or even maybe the claims getting more challenging in terms of complication and complexity?

Matthew Harrison: I think that it's fair to say the market is hardened because there's been an increase in volume and also I believe in complexity of claims. Tying into that will be consequences of COVID. We have already seen claims indirectly related to COVID. In particular, on the EPL book, I think we've seen a spike in claims relating to redundancies. I think we've seen an increase in regulatory claims. Regulators over the years have been gathering more powers and they also have been more willing to use these powers than perhaps we've seen in the past. Regulatory claims are incredibly technically complicated and can vary massively from regulator to regulate.

Matthew Houghton: I think that's a really good point about regulation. That leads onto one of those common perhaps misconceptions that when it comes to a

management liability claim, it's only the shareholders of the company who bring claims. That's not true, is it?

Matthew Harrison: That's not true at all. Yes, shareholders can bring claims. I think with the way the claims volumes look at the moment, those claims are significantly minority. The regulators who can bring investigations and prosecutions stem a wide range by anything from health and safety executive through to the office of competition authority, Financial Conduct Authority, investigations and prosecutions. There's a lot of bodies out there with power.

Matthew Houghton: They can also come from third parties, clients, customers. It can come from pretty much anywhere kind of.

Matthew Harrison: They can come from anywhere. I think there's been an increase in claimants and claimant law firms working out that they can bring direct claims against directors for even simple damages claims, whereas that wasn't the case in the past. Now, as you say, you can have breach of contract claims against an officer. You can have claims by liquidators against officers personally. There will be someone out there who can work out a way to bring a claim.

Matthew Houghton: Let's talk about one of the questions I get a lot as an underwriter when I speak to brokers, when I'm in front of clients. That's mainly around the use of panel firms, especially on the EPL section. It's a conversation I've had quite a few times, but could you give us just a little bit of an insight as to why we use a panel firm and why it's beneficial for the insured as well?

Matthew Harrison: Our panel has been carefully selected for their expertise and the breadth of their expertise. That really comes to the fore in management liability claims because the areas we've been talking about are all very niche areas of law, they're incredibly technical. Our panel firms are also large practices. Most instances you'll need a legal team that can, A, defend the claim but, B, has technical insight on a specific area of law. By having large firms, we can get that all in one shop.

While you may have companies that the insurer has excellent relationships with, that they are very happy with, that they've worked with for a long time, the unfortunate reality is that property lawyer or their general commercial contract adviser is not going to have the experience and technical knowledge of, for example, an EPL claim. You need to insure with management liability claims that you have the very best lawyers available because there can be severe consequences beyond damages being payable.

Matthew Houghton: Ultimately as well there's an extra little benefit there in that by being part of the Aviva panel, we can negotiate those hourly rates.

Matthew Harrison: Our panel firms work for us across most lines and as such, they can set rates which are lower than we would get from a law firm doing one piece of individual work. Some claims, particularly investigations, can become very significant in costs. Where you have multiple directors involved who each potentially need individual representation, there can be issues between how much limit is left for who by having a panel firm with lower rates. You hopefully avoid a large amount of that.

Matthew Houghton: We touched on EPL. Another question that I get quite a lot is about notification. I know this is a really awkward question for us to answer because there are so many moving parts in a claim that can prejudice and affect how we can deal with it. Could you give us any insight high level just how that notification provision works and what the best thing to do if a broker is thinking that they may have a claim on one of the policies?

Matthew Harrison: If there's any doubt, I think the broker should notify us or call us and we will be happy to help. If it's not something that's notifiable, from a claims perspective, it's not an issue. It's what we're here for. The earlier Aviva can come on board and start helping you potentially with a lawyer, the easier it can be to nip these issues in the bud. Sometimes if you delay, you miss an opportunity to do something which would have prevented a far larger issue from arising.

Matthew Houghton: As an underwriter, if I come across a renewal, it's had say 2 notifications in the last 12 months but they've both been closed with nil payments, nil reserves, we don't tend to prejudice the insured in terms of the renewal terms when we see a case like that with that kind of claims history. It just shows that in front of this, they're imprudent. If anything, it probably makes it feel like we're almost better at this than the one that's always reporting late because that gives me a feeling maybe about how they're running their risk management.

Matthew Harrison: Absolutely, yes, you know what's out there and in the pipeline. You're quite right. I think probably the majority of the notifications we get are things that come in where the insured's aware there's an issue, hasn't materialized into anything. At this stage, we're told it can sit as a circumstance on our file until, hopefully, nothing happens and we can close it. If not, we've got the information there and we're ready if it then takes off to step in and help.

Matthew Houghton: Thank you very much for your time, Matt. Hopefully, that will help just dispel those uncertainties and those myths around what happens when a management liability claim arises.