Insurance archaeology and noise induced hearing loss claims

Uninsured employers’ liability (EL) claims can cost companies dearly if they do not know what historic insurance coverage they had at the time of exposure to the injury. The main problem arises as a consequence of long-tail disease claims following exposure to noise, vibration or worst of all asbestos many decades ago.

Asbestos-related disease claims can come from an employee who was working as far back as the 1940s. This presents quite a challenge: the company is likely to have changed a great deal over the decades, potentially undergoing several mergers and acquisitions (M&A).

The exposure, to asbestos dust for instance, could have taken place over years, so the claim could also be spread across several EL policies issued by different carriers. Companies may not know what insurance, if any, they have to cover the claim. Understanding its potential exposure to historic disease claims can help an organisation build appropriate reserves. Documents detailing what insurance was in place at the time an incident or exposure occurred can provide significant protection against future claims costs.
UNCOVERING POLICIES

However, many organisations struggle to unpick the often complex paperwork, or find that records are missing. Insurance archaeology, a specialist service that helps companies locate historic liability policies, can help. Where insurance policies do not exist, teams of researchers sift through buildings, files, offices, court records and documents to recover evidence of policies that may have long been hidden. Companies needing this service should discuss with their insurance broker any gaps in coverage and the timeframe they want to investigate.

The evidence gleaned from insurance archaeology can be very useful for companies facing long-tail disease claims, which might otherwise have to be paid for by the company itself. This is a particular issue for companies historically involved in heavy industry, such as construction and manufacturing, because a greater proportion of their employees might suffer from long-tail diseases.

Insurance archaeology can also be useful for a company looking to make an acquisition, if due diligence has indicated that the target company might have particular exposure to disease claims, without showing evidence of appropriate insurance.

The ability to search for old EL insurance policies has also become easier thanks to the Employers’ Liability Database (ELD), launched in 2010 by the Employers’ Liability Tracing Office.

This database contains all new and renewed EL insurance policies from April 2011, policies from before April 2011 that have new claims made against them and policies that have otherwise been identified.

CLAIM SETTLEMENT SUCCESS

As part of our ambition to provide a bespoke claims service we have a specialist claims handling team located in Manchester. Recently the team has seen success in the settlement of national disease claims, including older businesses trading when specialist insurance policies weren’t available. Led by Iain Pye, the team recently saw success with a claim from a client who is a north west based automotive supplier who came on board as a client in 2012.

Whilst dealing with various noise-induced hearing loss (NIHL) claims for the client and looking into insurance archaeology, it was noted that the client had previously incurred substantial costs. Upon further investigation it was established these costs were related to a disease claim the previous broker had assisted the client in dealing with, and was at the time completely uninsured. This covered an exposure period of 1976 to 1990, which was a potential minefield.

Although the previous brokers had identified later insurers covering the period 1985 to 1990, the insurers had responded in such a way that it had deterred the client from pursuing the claim, as they had questioned settlement on breaches of work regulations, referring to a previous judgement and causation.

Whilst investigating insurance cover on behalf of the client, JLT had also identified insurance for the period 1977 to 1985 with QBE and RSA.

The team were advised of the previous claim in July 2015 and set about retrospectively recovering monies due from insurers. The JLT team in Manchester have long standing relationships with trusted local advisers and with the assistance of some experienced solicitors, successfully defended challenges from insurers on causation in their attempts to reduce their contributions to the claim.

To date the client has received two separate settlements and is awaiting a final payment from the third insurer.

Iain Pye, Claims Manager, JLT Speciality commented “JLT continue to have claims presented for NIHL against our clients which are uninsured against, whether in full or part. We are a client focused team, and worked alongside our clients and our panel of insurers, to deliver the specialist cover that was essential to their business.”

See our guide to long tail employers’ liability claims for more information.
Mergers and acquisitions on the rise

2015 was characterised by strong growth in the UK M&A market and this was reflected in the results from the North West advisory community.

Manchester based advisors were involved in 424 deals in 2015, an increase of 18% on the 357 transactions recorded during 2014.

There was a notable upturn in the number of small and mid-market deals in 2015, with management teams playing an increasingly active role. Peter Stevenson, Partner based in Manchester has a national development role within JLT Specialty. He leads our M&A capabilities in the North West. We offer our clients and connections a dedicated team, which caters for the needs of companies, investors and advisors involved in mergers and acquisitions. This M&A due diligence team has been advising clients since 1993 and understands the demands of the modern M&A market; speaks the language; is very commercial and operates to meet the expectations and timescale of all involved in corporate transactions.

"We embrace entrepreneurial skills as well as the professional placement of risk. The CBI states a great awareness and greater use of equity finance could help more firms to invest, grow and boost the long term health of the UK economy"

Through our Manchester office we provide extensive transactional experience with a deep understanding of an evolving M&A insurance market. We create innovative solutions, delivered on time, tailored to meet your commercial needs on corporate deals.

THE INCREASING POPULARITY OF INSURANCE AND RISK M&A CONSULTANCY

Corporate buyers and dealmakers increasingly leave nothing to chance. Insurance M&A insurance consultancy, like any due-diligence is designed to help our clients (and their reliance partners) go into the deal with their eyes open, understanding from us:

- Our prospective on what the target does
- What we believe the risks and mitigations are (insurable or not)
- The core insurance and risk issues (current and historic) and the fixes
- Any contract or commercial risk factors affected
- The cost implications and techniques to mitigate risk and enhance value
- Claims and litigation commentary.

Output ranges from a one page "exceptional report" to in-depth, multi-line, multi-national studies.

Its 2014 Report, Slice of the Pie, highlights the senior underutilisation of equity finance.

Many growing business sometime lack the capability to engage with equity providers because the negotiation of terms can be considerably more complicated than with debt finance, requiring more in-depth financial expertise.

The Confederation of British Industry (CBI) has launched an online tool – FIND MY FINANCE (www.cbi.org.uk/findmyfinance). To help get firms started by analysing what type of finance is best for them.

Ultimately, due-diligence aids knowledge and this in turn drives competitive advantage in the right hands. With our work often paid for by our insurer’s partners, we will be delighted to discuss JLT’s M&A services and how we can competitively help you realise the full potential from your planned activity.

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Either a **seller** or **buyer** can use M&A Insurance

**UNKNOWN RISKS**
- Warranty & Indemnity (W&I) Insurance
  - Covers a breach of warranty or claim under the tax indemnity in a sale and purchase agreement (SPA)

**KNOWN RISKS**
- Specific Risk Insurance
  - Covers matters identified prior to signing of a deal that are deemed remote in probability but material in quantum versus the overall deal size

**DEAL ENABLER – STRATEGIC TOOL – PRICE DEAL RISK**

**SELLER POLICY**
- ‘Third party liability’
  - Seller can make a cleaner exit from the transaction
  - Warranties given when they would otherwise not be given, e.g. Liquidator
  - Non-management or silent investors can be protected if asked to give warranties

**BUYER POLICY**
- ‘First party liability’
  - Additional protection if seller has limited or no liability in SPA
  - Differentiate a bid in auction sale process by reducing SPA liability requirements
  - Avoid need to sue ‘near’ management team post deal

**SELLER USE**
- Backs indemnity given to buyer in SPA
  - Ability to assign a cost to a known deal risk / remove an ‘approval barrier’ to making the investment

**BUYER USE**
- Covers new liability assumed at signing of deal
  - Highly bespoke policies that can be used to break a negotiation deadlock

**Tax Liability Insurance**
- Identified, potential future tax liability

**Litigation Buyout Insurance**
- Pending, threatened or ongoing court case

**Specific Risk Insurance**
- One-off transaction specific liability

Regularly used to enhance a negotiating position and improve the overall outcome of the deal
Growing expertise
Stuart Lees, Independent Advisor

“...We are delighted that an advisor of Stuarts calibre will be working with JLT. Stuart’s expertise and experience is the perfect complement to assist in our growth plans.”

Entrepreneur and former national head of corporate finance for Arthur Anderson and Deloitte, Stuart Lees, will be working with JLT Speciality, one of the UK’s leading insurance brokers, in an advisory capacity.

His appointment as an adviser, will be a great contribution to the Manchester team, who will be collaborating with Stuart to increase their profile and presence in the northern professional community.

Peter Stevenson, Partner, JLT Speciality “We are delighted that an advisor of Stuarts calibre will be working with JLT. Stuart’s expertise and experience is the perfect complement to assist in our growth plans.”

Stuart who is renowned in the region, is on the ‘Chairman’s panel’ for five Private Equity houses in Manchester, acting as Chairman on behalf of the investing Private Equity firms for the period of their investment in the business.

Stuart commented, “JLT Speciality has excellent relationships with owner manager and entrepreneurial businesses, the foundation of our economy in the North, and by offering some really innovative schemes, I believe they will be a formidable firm in the region. I am delighted to work with them to further develop their ambitious growth plans.”
Managing flood claims

The impact to local businesses due to recent storms Desmond, Eva and Frank has been devastating, for businesses who have property and business interruption insurance, prompt settlement of their claim will be critical for financial recovery. As the waters recede and businesses start picking up the pieces, their thoughts will inevitably turn to insurance – what should they do to get their claims paid quickly and hassle free?

Some recent statistics revealed by the Association of British Insurers (ABI) are no surprise to see:

- 15,000 claims for property damage, 5,000+ from businesses
- Thousands of smaller claims being dealt with for storm damage
- £24 million of emergency payments made of which £15 million has been to businesses
- More than 8,300 initial visits have been made by loss adjusters handling the more severe claims.

Ged Smith, Head of JLT Specialty’s Manchester Risk Practice comments “now comes the time consuming process of evaluating the scope of damage and the costs, assessing the impact on schedules and programmes, validating and settling the claims. The latest estimates suggest the final amount ABI members will spend on customers affected by flood damage is likely to be around £1.3 billion so there’s still a huge amount of work to do. “

Below, Ged answers some of the frequently asked questions JLT Specialty has received in response to recent flooding claims:

I’m a Lancashire based construction firm and our part builds have been impacted by the flooding, what do I need to do to get the claims process started?

We understand regional companies in the construction sector will be fighting hard to minimise any delays caused by the floods and get schedules back on track without worrying about insurance claims. But if you want a prompt settlement, at the right figure, you need to be proactive, and agree all key decisions on the loss mitigation costs with the loss adjuster and gain their approval. This can be a challenge.

My claim is taking too long, what should I do?

Well to start you shouldn’t delay making decisions, carrying out repairs or workarounds as this might cause undue delay to construction completion dates. On the other hand, if you proceed with repairs without the adjuster’s agreement this may create problems. It is too late once the work has been carried out, if the adjuster disagrees with your approach and looks to reduce your claim. It’s important to be pragmatic and if you need to quickly get on with repairs to maintain your programme or limit delay, then that’s the right thing to do. The key is to make sure that you have all the evidence to demonstrate why you made the decision and took the action that you did. Write to the loss adjuster to confirm the actions you are taking in advance so there is a record and an audit trail. Communicate any problems, for example with suppliers, subcontractors, programmes, work schedules etc. to the adjuster immediately when they become apparent so you ensure the adjuster is aware of all the facts at the same time as you.

What evidence will I need to support my decision?

Having the right evidence to explain and justify your claim is essential. It’s not sufficient to provide the adjuster with piles of costs or paperwork. If you don’t explain them, the adjusters will draw their own conclusions, which may not be accurate. Make sure you collect the right information from the outset and collate it, with a good explanation of what the costs are and why they were needed - it’s really hard to do this retrospectively if you haven’t done it as you go.

How can I get a successful settlement figure?

There’s a lot of work for all stakeholders in getting to the right settlement. For contractors employers, the key to a successful settlement is understanding your insurance coverage, being proactive, communicating with the loss adjuster, fully documenting and explaining all the costs – and managing the expectations of all stakeholders.

Watch our video to find out more on managing flood claims
Insurance products adapt as product recalls increase reputational damage

The recent Mars supply chain issue has once again thrown a spotlight onto the provenance of ingredients in the food and drink sector, leaving many manufacturers, suppliers and retailers concerned about the potential implications of a product recall on their own business.

As companies become more reliant on a global supply chain, they have to prepare for the impact of unforeseen disasters and the untold damage it can have on a company’s reputation. Product liability risks are increasing for many firms, given the tendency to source components or food ingredients from parts of the world where they may not have strong regulations to reduce defects. In the Mars example, the plastic was consequently traced back to the Mars factory in the southern town of Veghel in the Netherlands. As a result Mars have ordered a recall of chocolate products in 55 countries, with a Mars Netherlands spokesperson commenting: “We cannot be sure that this plastic was only in that particular Snickers. We do not want any products on the market that may not meet our quality requirements, so we decided to take them all back.”

In the EU, legislation in the last few years has placed new obligations on manufacturers to share information and report any product safety issues in order for recall decisions to be made. With more information available, public perception of brands and is being shaped right the way through the supply chain.

Historically, public awareness around recalls has been phenomenal due to the mass media coverage of the incident, and the impact on future consumer behaviour has so far been immeasurable.

Food and agriculture companies are increasingly looking to purchase product recall insurance to cover the significant non-physical and reputational damage a large-scale global incident can inflict.

Product recall insurance policies have been changing as a result of this demand, creating an emphasis on insurers and brokers alike to cater more for the growing non-physical/reputational aspects of a company’s recall. Until now most policies required a physical trigger to pay a claim: a policy would cover a company for the costs of a recall and for lost revenue, but the claim was dependent on the risk of physical harm to consumers. For example, the horsemeat scandal in 2013 was uninsurable because, even though there had been product contamination, eating horsemeat didn’t cause physical harm to consumers.

**PRE-EMPT COVER**

In direct response to these growing pressures on companies, we have developed a specialist cover called Pre-Empt. This allows our clients to buy a policy and consultancy expertise aligned to their market sector but, most importantly, has the potential to go beyond conventional coverage levels in contemplating extended policy triggers, with the potential to cater for adverse publicity, brand damage and reputational losses.

The type of recall challenges can vary greatly between individual insureds and sectors, so products are designed around the clients to ensure they address sector-specific risks. In order to get the broadest coverage possible, a bespoke approach is required in terms of wording, programme design and retention levels. This approach demands a close understanding of a client’s risk and strong tripartite relationship with the partner insurer.

By working closely with the client, a solid risk management strategy can be drafted, identifying supply chain and product risks before the unexpected happens. The new pre-empt service will proactively work to neutralize those risks, reducing any potential financial and irreparable reputational damage. Given the restrictions of standard product recall cover, companies with strong brands or products sensitive to media flurries may feel the need to extend or replace their current cover to better cater for their specific risk profile.

Expert advice combined with carefully chosen insurance cover can provide the protection your business needs to safeguard against the loss of profits created by negative publicity following an incident such as product recall.

Read our product recall blog for more information.
JLT Specialty Limited provides insurance broking, risk management and claims consulting services to large and international companies. Our success comes from focusing on sectors where we know we can make the greatest difference – using insight, intelligence and imagination to provide expert advice and robust, often unique, solutions. We build partner teams to work side-by-side with you, our network and the market to deliver responses which are carefully considered from all angles.

Our Regional Risk Practice division provides risk and insurance services to corporate clients. We also have a specialist broking team dedicated to placing business and supporting our industry specialisms. As a division, we focus on providing excellent service delivery, innovation and market shaping solutions for our clients.

This newsletter is published for the benefit of clients and prospective clients of JLT Specialty Limited. It is intended only to highlight general issues relating to the subject matter which may be of interest and does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. If you intend to take any action or make any decision on the basis of the content of this newsletter, you should first seek specific professional advice.

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Motor fleet forum

On 2nd March, JLT Specialty held its sixth Motor Fleet Forum at the Preston headquarters of Bako North Western with Group Head of Finance, HR and Logistics where the North West’s leading fleet operators plus motor industry professionals gathered for an engaging discussion on the role of driver training and corporate safety cultures.

Fleet risk specialist, Stuart Gemmell, led a group discussion around the significance of corporate culture and the impact this has on driver performance. Using a real life scenario citing the tragedy in Glasgow on 22nd December 2014, when a refuse wagon out of control killed six people and injured a further 17. The driver knew how to drive, but could the culture underpinning Glasgow City Council have been engrained into the workers further? It’s not the sole responsibility of the fleet managers to be culture custodians if this message isn’t being cascaded from the senior management team.

Employers should work towards a culture of supporting the drivers to be open and honest about areas of failure, concerns and worries. A 360 feedback cycle will provide an open forum for drivers to communicate and have their concerns listened to.

Some notable questions worth asking if you manage a fleet are:

- Do you already use the very best systems to manage your workers?
- Is there a service delivery gap, between what senior management expect from drivers, and what drivers perceive to be expected from them?
- Does your organisation provide a forum for drivers to discuss their feelings and emotions?

Stuart summarised that capability is not normally the key feature in poor driver performance but rather that organisational culture and the way things are actually done, rather than what is written in company policies and procedures, can significantly influence what happens on the road.

His presentation spawned a number of spin off discussions within the group around how fleet operators might understand the psyche and motivators of individuals, through supervisor relationship and feedback on driving matters, both on a personal ‘coaching’ basis and from organisations as whole.

The next JLT Motor Fleet Forum will be held on 6th July 2016 at Speedy Hire, Warrington. If you, or your fleet manager, would be interested in attending please email jackie_hamlett@jltgroup.com.