Anticipated impact of Covid-19 on Professional Indemnity Claims

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Following the outbreak of the Coronavirus, the unprecedented measures taken around the world to ensure that health services are able to cope in slowing the spread of cases is causing a severe negative impact on the global economy. Financial commentary indicates that a global economic recession, worse than that suffered in 2008-09, may ensue as a result of Coronavirus and its after-effects. In the UK, the Office for Budget Responsibility has already warned that the UK economy may shrink by more than a third in 2020.

One immediate effect of this, both for individuals and businesses, is an increased risk of investment and savings' strategies failing. By contrast to periods of financial growth, corporations face significant losses, and the public face losses through their property, savings, and pension exposures.

The natural reaction is to seek to recoup such loss from their available insurance(s) and, where cover is not otherwise available, from their professional advisors, backed by PI insurance.

Recent days have seen the Hiscox Action Group founded to challenge that insurer's decision not to pay out for Business Interruption losses (Hiscox already receiving adverse publicity for refusing to meet claims lodged by Chef, Raymond Blanc, in respect of the closure of 37 restaurants). However, where BI claims tend to derive from damage to property, it is, perhaps, understandable that where a Government-directed lockdown of such outlets has arisen, not all BI policies would respond to provide cover in those circumstances.

As the insurance industry rushes to meet a raft of challenges thrown up by COVID-19, tension will inevitably arise between insurers asserting that pandemic-specific cover had never been offered, let alone been procured, whilst policyholders argue that wordings / extensions operate to provide cover in these most difficult of times.

One of the most vulnerable groups of professionals in that instance comprise insurance brokers. Where insurers are unwilling to meet claims, policyholders (already suffering losses as a result of the continuing lockdown / social distancing requirements) will look to their advisors to 'make up the shortfall'.

In such an eventuality, those brokers, and their own PI insurers, will be well-advised to study precisely what claim is being pursued against them and to respond accordingly. Simply alleging that a broker did not obtain cover that would be responsive in a pandemic is unlikely to be successful where such cover was not otherwise readily available in the market or where seeking its procurement was not considered reasonable at the time.

Whilst, for example, The All England Club ("TAEC") took out pandemic cover to protect itself should Wimbledon not be able to take place, similar sporting / concert host venues were not so foresighted. As claims for cancellation / interruption materialise will those who advised TAEC be seen as the exception or the rule? Brokers facing Covid-19 related claims will be keen to know!

Whilst professional mistakes are no more or less likely to occur immediately before a financial crisis, those errors that do occur prior to (and during) an economic downturn are more likely to see claims pursued as a result. Professional service providers should, therefore, expect increased scrutiny over the coming period of decreased economic activity.

While professional errors cannot be eliminated entirely, professionals should remain vigilant to ensure good risk practices are maintained. Where staff are working from home the temptation to take fewer or less detailed notes in more relaxed surroundings is but one concern. Now is a good a time as any for professional organisations to consider if internal processes and procedures need to be reviewed and overhauled.

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