



GUERNSEY INSURANCE INSTITUTE
INSURANCE DEVELOPMENT EVENT 2022

D&O AND PL INSURANCE 101

ED SMERDON



COVERAGE MATTERS

- A new consultancy dedicated to insurance products
- Serves the insurance industry
- Because ... coverage matters
- Founded by solicitor Ed Smerdon (that's me!)

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DIRECTORS' & OFFICERS' AND PROFESSIONAL LIABILITY 101

- Policy interpretation refresher
- Common themes in D&O and PL
- D&O - High Profile Claims
- D&O 101 - Product Features
- PL - High Profile Claims
- PL 101 - Product Features
- Current Trends
- Conclusions



POLICY INTERPRETATION REFRESHER

- Starting point is what the Policy's **words actually say**
- A clause will be interpreted in light of **all** the provisions in the Policy
- Evidence of matters **outside** the Policy is usually irrelevant
- Generally, a party's **own intent** is irrelevant
- "Objective intention" based on the provisions is what counts
- Only if **all else fails**: provision will be construed against the drafter
- Proving the cover is engaged is **on the Insured**
- Proving an exclusion applies is **on the Insurer**
- Proving a clause has been breached is **on the complainant**



COMMON THEMES IN D&O AND PL

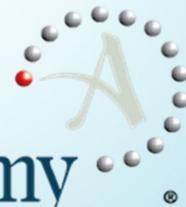
- As “financial lines” they are often linked eg in FI
- Are liability “long tail” policies
- “Claims made” trigger
- Cover individuals as well as entities
- Are “composite” ie cover everyone separately
- Have similar policy clauses, approaches and structures



D&O - SOME HIGH-PROFILE CLAIMS



Autonomy



HSBC



bp



D&O 101 - PRODUCT FEATURES

- Covers **Claims** against a Director/Officer for a Wrongful Act ("Side A")
- Covers the Company where it **indemnifies** the Director/Officer ("Side B")
- Covers the **Company** when sued in a Securities Claim ("Side C")
- Also covers **Investigations** involving a Director/Officer
- Includes **retired** directors/officers
- Usually a number of cover **Extensions** eg Pre-Investigations
- Covered **Loss** includes damages, settlements, defence costs
- **Excludes:** bad conduct, prior matters, things covered under other policies
- Directors to defend themselves



PL – SOME HIGH-PROFILE CLAIMS

ARTHUR
ANDERSEN

KPMG

M

M

DUFF & PHELPS

MOTT
MACDONALD

LINK Fund
Solutions

COLLYER BRISTOW

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PL 101 – PRODUCT FEATURES

- Extent of cover determined by regulatory requirements– “minimum terms”
- Covers claims for **Civil Liability** against the firm and its partners/people
- May also cover **Investigations** arising out of the **professional business**
- Mitigation of a potential claim
- Some first party **Crime** cover may be included
- Includes **retired** partners/people
- Civil Liability = an **established** legal liability
- Covers damages, settlements, defence costs
- **Excluded:** prior matters, pure contractual liability, disgorgement
- Insurers may assume defence on behalf of Insured



CURRENT TRENDS

- Market appears to be softening
- Regulatory risk – how do the products respond?
- Interplay with cyber – “silent” cyber
- Fines & penalties – are they [*or should they be*] covered?
- War exclusions
- Focus on product governance



CONCLUSIONS

- ↑ Competition
- ↑ Client needs
- ↑ Regulatory oversight

→ Now is a good time to review products / wordings



THANK YOU!

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