

Environmental liability spreads throughout Europe

The implications of the European Environmental Liability Directive (EELD) remain uncertain but one thing is clear: Europe is ripe for a surging increase into environmental insurance.

The EELD aims to make those who damage the environment legally and financially responsible for that damage - an application of the 'polluter pays' principle. If a company pollutes land, it will be liable for removing the risk to human health. But damage a protected species, natural habitat or water, and the polluter will have to return the environment to its previous condition - potentially incurring much higher costs than under existing legislation.

The other issue to put environmental insurance under the microscope has been a recent High Court ruling that essentially over-rides the remit of current public liability insurance. In this particular case, an on-premises fire resulted in adhesives and other products manufactured by the company concerned, contaminating a nearby watercourse. Remedial action was taken by the Environment Agency at the company's behest, after which it billed the company - who then claimed on their public liability insurance.

The company's insurers contested the claim and won in the High Court, on the basis that the company could not rely on its public liability insurance in this case. The company had no choice but to pick up the costs.

At the time of writing, environmental impairment liability (EIL) policies are being reworded to take account of the directive, but not in a drastic way. All the same, there is no escaping the fact that businesses and other organisations inevitably are facing far stricter, more stringent - and more expensive - pollution control regulations if not right away, at least in the near future.

Traditionally, cover for environmental impairment liability was taken out by parties in a land transaction, merger or acquisition. Now, though, EIL is becoming an essential element of many organisations' regular insurance portfolios. In the case of the company described above, it's easy to see why they should have been protected by an EIL, given that most of the products they manufacture were potential contaminants. However even if chemicals or oil are merely stored on the premises, in view of the new EU directive protection is still necessary. Consequently EIL will shortly be required by many more UK businesses and organisations than before.

Further protection can be gained if the organisation has a Directors' and Officers' (D&O) policy which, although it does not cover any penalties imposed by the authorities, does at least take care of legal expenses which can be considerable.

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insurance matters

Issue 1 - Spring 2008

INSURANCE INDUSTRY NEWS FROM ARTHUR MARSH & SON



Does your business enjoy the benefit of Commercial Legal Expenses?

If not, now is the time to reconsider

It is fair to say that this form of insurance has been considered as a peripheral insurance because of the perceived low value of claims. Things are changing.

The maximum Compensatory Award for Unfair Dismissal is now £60,600 and this amount increases annually. This is a major financial concern for a small to medium size business.

Did you know... there is no limit for awards relating to discrimination?

This includes, age, disability, sex and racial issues. Then you still have the legal costs to consider!

HM Revenue and Customs carried out 32,211 full enquiries and 75,830 aspect enquiries on businesses during 2004/05. The additional liabilities collected as a result were phenomenal, and as a further

consequence of the enquiries each business would also have incurred Accountants fees.

These are just two areas covered by our Commercial Legal Expenses policy. This cover is supported by the provision of 24 Hour Helpline including Legal and Tax advice and Counselling.

Now you can consider budgeting for these formerly unforeseen legal costs. Premiums start at only £52.50 including IPT for a business with a wage roll of up to £500,000 per annum.

Please get in touch with us to discuss further.



Welcome...

to the first issue of Insurance Matters, written especially for our customers to keep you aware of any key insurance and business matters that could affect your organisation.

This issue will be looking at a range of topics from legal expenses through to flood damage, household to corporate fraud.

If you have any comments or requests for topics you would like to see covered in future issues please contact us.

Inside this issue



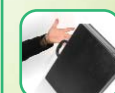
After the deluge - flood risk



Towergate Assist - claims handling made easy



Your home could be underinsured



Directors' liabilities grow



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This is a publication from the CCV Group.
Registered in England & Wales at 26-28 Pembroke Road,
Sevenoaks, Kent, TN13 1XR.
Company number 5879041.

Authorised and Regulated by the
Financial Services Authority.



Printed on 100% recycled, chlorine free paper

After the deluge

Inhabitants of Hull, Sheffield, Tewksbury and Gloucester were some of the worst affected by the disastrous flooding that took place last summer. Over 55,000 homes and businesses were flooded.

Rainfall between May and July was the heaviest since records began in 1766. To have lived through such an event must have been truly harrowing; seeing at first hand just how powerful and damaging nature can be. Latest estimates of insurance losses exceed £3bn, but the true cost will have been much higher. The trauma of having to live with the aftermath of a flooded property is something we can all empathise with.

But what can be done to prevent or at least limit the impact? Remember that although the Environment Agency are spending some £480m a year on flood defences they are the first to recognise that no system can provide 100% protection. Indeed, an

element of flood strategy is to deliberately sacrifice some areas to prevent worse flooding elsewhere.

Sir Michael Pitt's report to Government published in December 2007 made 15 urgent recommendations and made 72 interim conclusions largely relating to national and local strategic planning, all of which will be actioned in due course. At an individual level he recommended members of the public to;

Make up a flood kit consisting of key personal documents, insurance policy, emergency contact numbers, torch, battery or wind up radio, mobile phone, rubber gloves, wet wipes or antibacterial hand gel, first aid kit and blankets.

Increase their personal state of readiness and resilience to floods, make sure they have adequate insurance, check the EA's web-site, register on one of the flood warning schemes, keep valuables including documents in a safe preferably waterproof container and know where to locate and operate gas, water and electric services.

We would add that it is advisable to take up the Towergate Assist product designed to help individuals and businesses cope with disasters. This has proved of great value to many policyholders already.

The lesson is that flooding is something that can be managed if not totally avoided. Our best advice to businesses is to prepare for such events by having a disaster recovery plan in force.

Claims handling made easy

Ever had to make an insurance claim? A small claim may seem to be hardly worth the effort because of the form filling involved, and a major claim can create considerable hassle and frustration.

Having a professional guide you through the process can save a lot of time – and result in a much better settlement.

Some recent claims handled through the Towergate Assist service reinforce the value of having a loss adjuster on your side. A printing firm had a press put out of action by a fire. The insurers insisted that the machine should be repaired – the client thought he should have a replacement. With our help, and after considerable negotiation, a replacement printing press was delivered.

A lorry demolished a retail client's shop window. Using the Towergate Assist service prompted him to write "Within a few hours one of the claims men came along to sort everything out".

A restaurant owner experienced serious flooding. He said, "Our broker got someone along quickly and he certainly knew his stuff - we received about £10,000 to keep us going. The loss recovery claims handler organised a surveyor and builders".

These clients benefited from Towergate Assist service. The service provides access to a quality loss adjuster who can help with the smooth settlement of your claim and help fight your corner.

The loss adjuster will:

- **Contact you within two hours of your call**
- **Advise on loss mitigation**
- **Visit you within 24 hours**
- **Manage the negotiations with your insurer**
- **Source replacement equipment**
- **Supervise contractors**
- **Help you to prepare a comprehensive claim**
- **Hold your hand from the start**

Directors' liabilities continue to grow

Recent accident at work cases show that directors and senior executives are under attack, personally, with heavy fines, and in the case of fatal accidents, prison sentences.

Increasing regulation across a wide range of topics poses many different threats and latest piece of legislation to put more pressure on directors is the Companies Act 2006.

Although many of the provisions do not come into effect until October 2008, the heightened responsibilities of directors include a duty to take account of the effect of their decisions on a local community, the environment and maintaining the company's reputation for high standards of business conduct.

Despite a lack of guidance on how these will be enforced, it is clear that the scope for legal action against directors and senior executives could increase. In addition, shareholders are being given a statutory right to sue directors on behalf of the company for negligence, default and breach of duty or trust.

Potential Penalties

The range of penalties available to the courts or regulators could result in:

- **Disqualification as a director**
- **Criminal prosecution**
- **Personal bankruptcy**
- **Loss of job and reputation**
- **Family trauma and financial hardship**

The protection of corporate limited liability is gradually being eroded. With directors personally liable to defend these types of claims, their personal assets at risk, they should seriously consider the importance of Directors' and Officers' (D&O) insurance.

An organisation's compulsory employers liability insurance does not cover directors and senior executives from personal prosecution or civil action. D&O protection, however, gives the essential personal cover in the event of legal action against individuals. While fines or penalties cannot be insured against, the costs of the lawyers fees can.



A few guidance notes for company directors

- **Always act in the best interest of your company, taking everything you think relevant into account**
- **Obey the company's constitution and decisions taken under it**
- **Be honest and remember that the company's property belongs to the company and not to you or the company's shareholders**
- **Be diligent, careful and well informed about the company's affairs. If you have any special skills or experience, use them**
- **Make sure the company keeps records of your decisions**
- **Remember that you remain responsible for the work you give to others**
- **Avoid situations where your interests conflict with those of the company. When in doubt disclose potential conflicts quickly**
- **Seek external advice where necessary, particularly if the company is in financial difficulty.**

Your home could be underinsured...



One of the most important issues for a homeowner is to ensure their home insurance is up to date and adequate for both Buildings and Contents. Underinsurance or no insurance at all was one of the most worrying findings with one in four of householders affected during last summer's floods not having Contents insurance.

Every homeowner needs cover to protect their home's contents and personal possessions - when you look around your home its easy to add up how much you would need to spend to replace everything - and its often more than you expect!

Imagine the cost of replacing computers, cameras, flat screen TVs, MP3 players - for all members of the family, plus clothes, watches and jewellery as well as furniture and white goods and you can see how quickly it adds up.

If you need guidance on checking the adequacy of sums insured

for both Contents and Buildings speak to us and we will be happy to advise you.

You should also check your policy covers Emergency Assistance to help deal with any initial emergency. Our Home Insurance automatically provides the following cover FREE to all its policyholders:

- **24 hour emergency helpline**
- **Access to reliable tradesman and up to £300 towards call-out and replacement parts**
- **Cover applies to emergency incidents such as; plumbing problems, sudden and unforeseen roofing problems, central heating or boiler failure and gas or electricity failure within your property.**

If you have any concerns about whether your home and possessions are adequately protected you should speak to us so that we can help make sure you and your family obtain the best possible protection...at the best possible price!