

General Insurance Spring Seminar

**19-20 May 2003
Scarman House**

Introduction

- The Thomas Miller Group
 - Private company founded in 1885
 - Managers of mutual insurance companies; originally limited to international transport sector
 - The management services - underwriting, claims handling, investments, regulatory requirements

Introduction

- The Professional Indemnity Market in the mid 1980's
 - An impulse to protect the public
 - Shrinking capacity and escalating rates
 - Mutual insurance companies as a solution

Introduction

- The attractions of mutuality
 - Moderate rates – no outside shareholders
 - A sympathetic insurer
 - An informed insurer

Introduction

- The expansion of Thomas Miller's business to the professions
 - Solicitors' mutual (1986)
 - Architects' mutual (1987)
 - Barristers' mutual (1988)
 - Patent Agents' mutual (1989)
 - Occupational Pensions Defence Union (1997)
 - Thomas Miller Litigation Management Ltd (2002)

Nature of my address

- An examination of professional negligence claims from an insurer's perspective
- Not a lecture on the law of professional negligence

The basic law: the core ingredients of a professional negligence claim

■ In Contract

- A breach of contract - s.13 Supply of Goods & Services Act 1982

■ In Tort

- The existence of a duty of care
- Breach of the duty of care
- The breach of duty causes loss
- The loss is recoverable in law

The course of a professional negligence claim

■ The Unhappy client

- Dissatisfaction at the service provided
- The client feels that it has suffered financial harm
- The client requests an explanation
- Notifying the insurance company
 - the dangers of acting alone
 - the dangers of being penalised by the insurers for not notifying circumstances that could give rise to a claim
 - an early run at the insurance policy
 - adequacy of cover

The course of a professional negligence claim

■ The client puts the claim on a more formal footing

- Solicitors are instructed
- The letter before action (pre-action letter under the protocol)
- Proceedings
- Claimant's Part 36 Offer

The course of a professional negligence claim

■ Reaction to the claim

- Fight or settle?
- Investigating the merits of the allegations (documentary evidence and potential witnesses)
- Is the claim out of time?

The course of a professional negligence claim

■ The decision is to settle the claim

- Settlement negotiations
- Mediation
- Making a Part 36 Offer / payment into court

The course of a professional negligence claim

■ The decision is to fight the claim

■ Preliminary considerations

- Appreciating the financial cost
- Appreciating the call on management time and disruption to the business
- The impact on individuals
- The potential publicity
- The risks of litigation

The course of a professional negligence claim

■ The decision is to fight the claim

■ Preparing the defence

- On breach of duty
- On causation
- On loss
- On the quantum of damages

The course of a professional negligence claim

■ Tactics for the defence

- Putting up a road block
 - Applying for summary judgment
 - Applying to strike out the case
 - Applying for a trial of a preliminary issue on a point of law or a question of fact
- Taking the wind out of the claimant's sails
 - Applying for security for costs
 - Applying for a separate trial of liability and quantum
- Blaming somebody else
 - Seeking an indemnity or a contribution from a third party

Reducing the risk of claims

■ In relation to the duty of care

- Restricting the parties to whom a duty of care is owed
- Limiting the scope of the duty of care
- Exclusion clauses

Reducing the risk of claims

■ In relation to the standard of care

- The need to be careful
- Importance of written records
- Continuing professional education

Reducing the risk of claims

■ Limited resources

- The level of cover
- Limited liability partnerships
