

2nd YOUNGER MEMBERS CONVENTION

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Moat House, Glasgow

CRISIS? WHAT CRISIS?

- a review of the liability market

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Crisis? What crisis? – a review of the liability market

Agenda

- Introduction to the liability market
- Is there a crisis?
 - What has been the market's experience?
 - Including an international perspective
 - What has been the market's reaction?
 - What has been industry's reaction?
- Where do we go from here?

Introduction to the liability market

- Employers' liability
- Public liability
- Professional indemnity cover
- Motor

- Varying elements of compulsion

Is there a crisis? – employers' liability market experience

- Historically rates have always been low

Is there a crisis? – inadequate EL rates

Expenditure on EL/WCA as percentage of wage roll (1999)

	%
■ France	2.25
■ Germany	1.33
■ Italy	3
■ UK	0.2

Source: DWP report

Is there a crisis? – employers' liability market experience

- Historically rates have always been low
 - Over-capacity?
 - Naïve capital?
 - Poor management control?
 - Overly competitive?
- Emergence of latent claims - inadequate allowance in the reserves/no allowance in pricing
 - Compounded by retrospective legal changes
- The development of the compensation culture
 - CFAs

Is there a crisis? - shifting towards a compensation culture

Lord Justice Bingham

"I am of the opinion that such injustice as may be involved in imposing liability on a duty-breaking employer in these circumstances is heavily outweighed by the injustice of denying redress to a victim."

[June 2002: Fairchild, Fox and Matthews]

Is there a crisis? – employers' liability market experience

- Overall, high rates of claims inflation
 - Medical care
 - Longevity
 - Retirement ages
 - Legal fees
 - NHS recoveries
- Falling investment returns
- All this has led to poor (non-existent) profitability

Is there a crisis? – employers' liability market reaction

- Concern over build up of latent claims creating a "time bomb"
- 9.11
 - Downgrading of reinsurance credit rating
 - Reappraisal of businesses
 - Cost effective reinsurance cover disappeared
- Capacity taken out of market as other risks seen as being more profitable
 - 70% of market used to be controlled by 16 insurers, now controlled by 5 or 6 insurers
 - All existing players have considered exit
- Increasing capital requirements

Is there a crisis? – industry reaction

- Almost all insureds are seeing big premium increases, irrespective of experience
 - "Riskier" cases (e.g. engineering/building) are struggling to obtain any cover
- Major disquiet
 - employers facing dilemma of operating illegally or going out of business?
 - allegations of sharp practice
 - MPs demands for Government intervention
- Insureds are adopting defensive behaviours and/or self insurance
- OFT review
- Department of Work and Pensions review

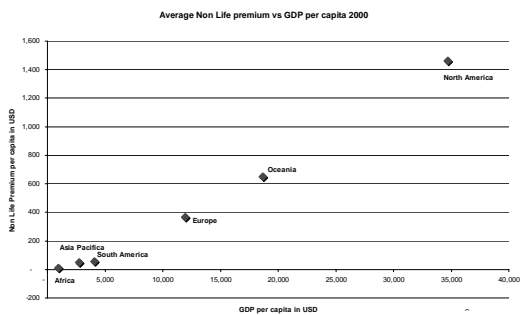
Is there a crisis? – a few quotes

- "Writing EL business is a definite value-destroyer in the insurance market and that is not sustainable" (*ABI*)
- "If the issues of EL and compensation culture are not dealt with soon, it could mean the end for many companies across the UK." (*CBI*)
- "210,000 UK businesses are operating without EL cover, and some 16,000 have no insurance at all." (*CBI*)
- "[D&O] insurance [premiums have] risen six-fold in the past two years, even for companies with low claims experience." (*AIRMIC*)
- "The cost of removing asbestos from workplace premises in the UK could be anything up to £80bn." (*AIRMIC*)

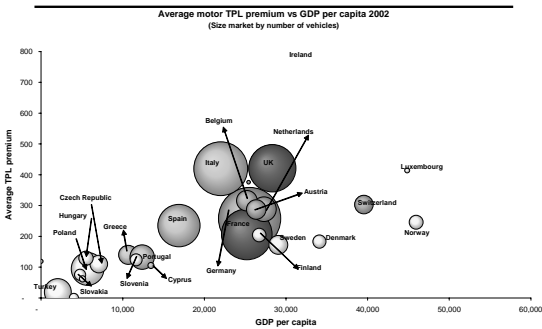
Is there a crisis?

- Yes, there is a crisis
- Crisis for a number of stakeholders
 - insurers
 - insureds
 - society in general
 - Governments
- International crisis

Crisis? What crisis? – an international perspective

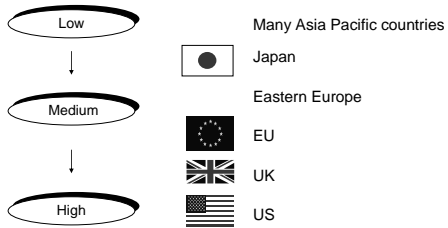


Crisis? What crisis? – an international perspective



Crisis? What crisis? – an international perspective

Bodily injury awards



Crisis? What crisis? – an international perspective

Japan and Asia Pacific

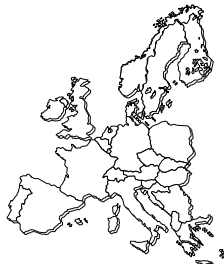
- Low bodily injury awards
- Standard amounts
- Small pain and suffering payments



Crisis? What crisis? – an international perspective

Eastern Europe

- Small pain and suffering payments
- Lump sums or annuities
- Annuity inflation risk
- Converge to Western European levels?



Crisis? What crisis? – an international perspective

France

- Lower bodily injury awards than UK
- Number of claims down by 3% per annum during 1990s
- Average cost up 6% per annum during 1990s
- Speed limit, drink driving, car safety, political campaigns
- Substantial reduction in motor bodily injury claims frequency during 2002 and 2003
- Employers whose employees contracted asbestos-related diseases have been grossly negligent



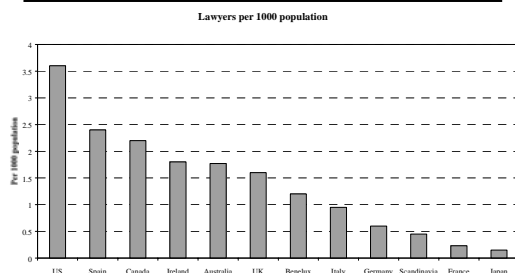
Crisis? What crisis? – an international perspective

Australia

- Spiralling personal injury claims
- Widespread unavailability of PL insurance
- Many businesses in the leisure and tourist sector have closed
- Proposals to cap pain and suffering awards



Crisis? What crisis? – an international perspective



Crisis? – yes, but will it continue?

- Claim reserves will continue to increase
- Premiums will continue to increase (but not by enough?)
- Reinsurance premiums will increase by a larger percentage
- More value will be destroyed
- EL market may collapse
- Which crisis do we want?
 - Unprofitable insurers
 - Unaffordable premiums
 - Reductions in scope of cover
 - Capping of bodily injury claim amounts

Crisis – the OFT's view

- Premiums for EL and PL increased by an average of 50%/35% in 2002
- No evidence to support reported concerns that recent increases in premiums were such that many businesses had been unable to secure liability insurance at any price, and were consequently trading illegally or closing down.
- Certain types of business have suffered:
 - IFAs
 - SMEs
 - high risk sectors
 - Northern Ireland

Crisis – the OFT's recommendations

- Longer renewal notice periods
- Improving relationship between health and safety practices and liability insurance premiums
- Increasing use of rehabilitation

Crisis – the DWP’s view

- More evidence is needed to assess whether a radical separation of long-tailed disease claims from other EL claims is justified
- Enforcing and reforming, if necessary, the arrangements to prevent companies who do not purchase EL cover from gaining a competitive advantage over those who do
- Exploring ways of reducing legal costs
- Industry reaction?
 - Mixed
 - Realistic commentary
 - Lack of firm actions
 - Missed opportunity

Crisis – so where could we go from here (1)?

- Differentiate “Accident” from “Health” claims
 - What is a “health” claim?
 - Who funds?
- Captives
 - Small business captives
 - No one wants to fund the capital
 - Still want cheap rates

Crisis – so where could we go from here (2)?

- High risk pools
 - Insurers obliged to take portion of risks
 - ...but who determines price?
- Taxation/Government scheme
 - Employers' liability insurance premium cheap compared with National Insurance
 - Benefits already integrated with NI scheme
 - ...but “stealth tax”?

Crisis – so where could we go from here (3)?

- Claims made coverage
- No-fault-based workers compensation system
 - ABI is opposed
- Rehabilitation
 - ABI/TUC have proposed establishment of a Rehabilitation Institute
- Fixed legal costs regime
- Better system for arbitration of disputes
- Tariff of compensation for specified conditions
- Structured settlements (periodic payments)
- Cap payments for pain and suffering

Conclusions

- Insureds want cheap solutions, especially in the current economic environment
 - 80% think that there will be another series of PI claims in future
 - 80% don't see need to increase premiums!
- Society wants more compensation
- Government not willing to intervene
 - Bureaucracy
 - Funding
- Market has a PR problem
- There needs to be radical action (not just ideas)
