

# Professional indemnity policies

John Bierre, Partner, Morgan Coakle Lawyers, September 2009

## How claims made policies operate

Claim must be made against the insured during the period of the policy to trigger cover

Two types of PI policies

- Errors or Omissions (cover against loss sustained due to negligent acts or omissions)
- Legal liability (cover against loss sustained as a result of being held legally liable to a third party)

# Professional indemnity policies

## The notification

From a broker's perspective:

- have all the conditions for notification been complied with?
- does what you are being told have to be notified?

Notification during the policy period required

Look at the policy wording:

*-Sinclair Horder*

## The notification (cont)

Application of section 9 of the Insurance Law Reform Act 1977

Claims made and *notified* policies

Prejudice

- *UEB Packaging v QBE*

## What needs to be notified

What constitutes a claim?

An assertion by the third party of a right against the insured – but also note definitions in policy:

- a lawyer's letter of demand
- a 'hold liable' letter from an assessor
- legal proceedings

Extensions for 'circumstances' that could give rise to a claim

Difficulty in ascertaining whether *circumstances* should be notified

- *QBE v MAF*

## Scope of cover

Cover for negligent acts and omissions will be more limited than a 'civil liability' wording

Cover only for liability arising from the conduct of the insured's business – how is the insured's business defined?

Are the activities of the insured those of a *professional*?

## Scope of cover (cont)

What's not covered:

- obligations assumed by contract – unless akin to common law obligations
- willful or deliberate acts
- business losses or risks

## Helping the insured help themselves

Main driver - premium and excess

Encourage professional firms to :

- Adopt standard forms of agreement
- engage in active risk management programmes
- clearly identify parties and themselves

## Summary

How claims made policies operate

The notification

Scope of cover

Helping the insured help themselves

Questions

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