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## Environmental liability, keeping pace with the changes



Environmental liability has hit the headlines with surprising frequency over the past 12 months and the BP oil disaster once again put the issue in the public eye. Despite a number of high profile cases, there is some concern that environmental risk is not sufficiently high on the agenda for many risk managers.

One of the most significant regulatory developments in recent years has been the Environmental Damage (Prevention & Remediation) Regulations 2009, which implemented the European Directive on Environmental Liability.

These regulations are based on the 'polluter pays' principle, so the onus is on those responsible to prevent and remedy environmental damage. Following the introduction of this legislation, many in the insurance industry reported an increased take-up of specialist Environmental Liability cover.

Chris Green, partner in the regulatory services team at Weightmans, states that recently he has seen more prosecutions brought by the Environment Agency, and he questions whether this can be attributed to the introduction of the directive itself.

Indeed, there is a view that it is the weight of public and regulatory opinion that is driving the increased activity in environmental liability cases. The issue is certainly in the public eye at the moment, and it is increasingly important for businesses to identify the potential risks and look for insurance cover where necessary.

When cases end up in court, it can be an expensive and time consuming process. Mr Green explains that they can be costly, not necessarily just in the fine itself, but rather in terms of preparing them from the moment the incident occurs. This process includes research and comparisons to local air and water quality levels etc and consultation with environmental experts.

He adds, however, that as the liability is so strict, there aren't that many defences available. As a result, few cases go to trial and the Environment Agency often agrees alternative resolutions following incidents.

It is not just the threat of costly court cases and expensive clean-up operations which should encourage businesses to fulfil their environmental obligations. Stakeholders, such as investors and customers, are increasingly keen to support firms who are proactive in this area.

As far as insurance is concerned, brokers can help businesses to understand and identify their specific environmental requirements. There are some particularly relevant products currently available which aim to plug the gaps in general liability policies.

One of the obstacles preventing increased take up of Environmental Liability cover is a lack of awareness about what it actually does. There are also some common misconceptions, with businesses often believing their Public Liability insurance will cover them for all environmental liability issues.

In addition, products like Environmental Impairment Liability (EIL) are often viewed

as costly. In fact, times are changing and while EIL is not a new insurance, it has undergone some significant developments.

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**Ewen Brown, UK Sales Director at COBRA London Markets, explains that historically EIL was bought almost solely by large multi-national companies. It was considered an expensive product and one which was labour intensive - with much administration and information gathering involved.**

**However, in light of regulatory developments, consumer demands and headline grabbing cases, EIL insurance has become relevant to a far wider set of businesses and the insurance industry is responding with more innovative products.**

**Mr Brown observes that there is an increased need for EIL insurance at SME level and the insurance market has realised that. Companies like Liberty International have come up with products, systems and rating for smaller businesses.**

**As a result, the emerging products are more efficient and no longer cost prohibitive for smaller and medium firms.**

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The message is that tighter regulation combined with increased public attention on environmental issues mean businesses cannot afford to de-prioritise their environmental obligations.

The good news is that innovative insurance products are making it easier to manage those risks.

# Business travel insurance

## Volcanic ash cloud puts claims service in the spotlight



The insurance industry received mixed press last year following the volcanic ash incident, which saw travellers stranded across the world. So how will this impact the business travel insurance sector in the long run? Will insurance policies need to adapt and will insurers' claims service standards come under more scrutiny from policyholders?

Paul Dobinson, Head of Commercial Underwriting, Accident & Health for Chartis Insurance UK, points out that the volcanic ash cloud, which closed European airports in April 2010, was not an event covered by most travel insurance policies.

Conversely, leisure and business travellers, and the media, felt that this type of event should have been covered.

While insurers' responses to the incident were certainly mixed, the Association of British Insurers (ABI) was keen to point out at the time that it is an urban myth that insurers were relying on an 'Act of God' clause to get out of providing cover for this event. The ABI also added that where this event was not specifically covered by an insurer, some offered ex-gratia payments for customers stranded abroad.

In fact, some insurers, including Chartis Insurance UK Limited, announced early on that they would pay eligible claims from travellers affected by flights cancelled because of the volcanic ash cloud. Chartis did this by treating the cloud as a weather-related event, but, although this was an effective solution to provide cover in the short-term, Mr Dobinson observes that it is not sustainable.

Going forward, the volcanic ash cloud has thrown up the need for wider covers under travel insurance policies and new products are already being developed to address new and wider customer needs.

This is likely to mean that travellers and/or their employers will have a choice between cheaper policies without volcanic ash cover or more comprehensive policies that provide cover against a wider range of natural catastrophes, Mr Dobinson explains.

The implication is that given a choice between different cover levels and costs, both private and business purchasers of travel insurance will need to decide which benefits they need and then buy the policy that suits those needs best.

Despite mixed experiences during the volcanic ash event, it is unlikely that businesses will choose not to buy travel insurance.

Anne Godfrey, CEO of the Guild of Travel Management Companies, asserts that both TMCs and corporates are extremely aware of the duty of care to their employees and would always ensure that the necessary business travel insurance is in place before anyone travelled.

In addition to volcanic ash, there has been some concern over the impact of the recession on business travel activity. However, the quarterly surveys by the Guild of Travel Management Companies have shown good recovery in the key sectors of business travel.

The surveys, which monitor the organisation's members' transactions across a range of categories, have shown increases in air, hotel, rail and, for the first time in more than four years, even car hire transactions.

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**As in most other sectors, the difficult economic environment has meant price remains a key factor for businesses when buying travel insurance. So, are they just looking for the cheapest price? Again, the message is that the volcanic ash experience has helped to focus attention on wider issues, other than cost.**

**Mr Dobinson comments that there is a tendency to see travel insurance as a commodity and buy on price. However, as the volcanic ash episode showed, different insurers will take a different view of cover in a claims situation. Choosing the wrong insurer can be an expensive error and it is here that a broker's professional knowledge is vital.**

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Mr Dobinson goes on to explain that brokers will want to ensure that the claims handling record of an insurer does not represent a risk to their clients - and clients are likely to see this as part of the reason for working through brokers.

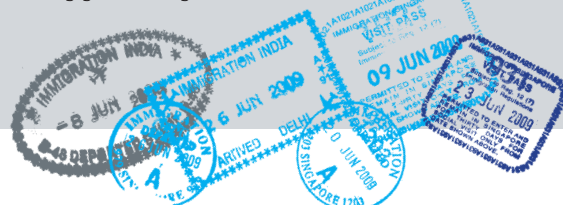
### Single or multi-trip?

Paul Dobinson, Head of Commercial Underwriting, Accident & Health for Chartis Insurance UK, summarises some of the pros and cons of single trip versus multi-trip insurance:

"The compromise is between cost, convenience and cover. Many customers will understand the difference between the two types of policy, particularly if they get professional advice from a broker; but with the vast majority of business trips abroad being to Europe, it is also important that they know the limitations of an EHIC (European Health Insurance Card) and don't fail to arrange travel insurance because the person travelling on business carries one.

On a cost basis, the comparison is easy. If each person is taking only one business trip a year, a single trip policy is predicated. If each person is taking several trips a year, multi-trip insurance will be cheaper.

However, the fast pace of business today is at odds with economising, as many people aren't able to know about business trips until a few days beforehand, if that. A multi-trip policy removes the risk of somebody forgetting to arrange cover, which can be very expensive if something goes wrong."



# Business interruption



Business interruption must go hand-in-hand with business continuity planning. The extreme weather events of recent years have left firms in no doubt of the damage floods and storms can do to their business. It is widely recognised that Business Interruption (BI) insurance is therefore critical, but businesses need to check that their cover is sufficient for their needs.

In addition to having BI cover in place, businesses must also ensure they have effective business continuity strategies, and there is some concern that for many this remains a low priority.

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**The likelihood is that businesses will have BI insurance even if they do not know they have it, as it tends to be included as standard in commercial insurance packages. Andrew Miller, Manager of Risk Control for Allianz Insurance, asserts that it is certainly critical and all businesses should have it.**

**He points to small shop owners as a case in point. If they have a fire, they will need to renovate the premises, redecorate, restock and recover their pre-loss trading position. That can take several months and no small business can really withstand that loss of cash flow. BI insurance will make up that turnover so they can continue to pay their bills and stay in business.**

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Typically, firms will have BI insurance for perils like theft, fire and water damage; but extensions to the standard cover are available and businesses are advised to check with their broker to ensure they have the most relevant cover in place. Hotels, for example, may need cover to take effect when infectious diseases in their area impact their business.

Businesses also need to be aware of the scope and limitation of their BI insurance. Often, it is standard to have a 12 month indemnity period. Mr Miller explains that this means any effect on your turnover during those 12 months will be made up by the BI cover; but if your interruption goes on longer, then it doesn't apply.

In fact, many businesses will need 18 to 24 months or more to fully recover from fires or floods. It is possible to extend the period of cover, and again, insurance brokers are best placed to advise.

While BI cover is clearly vital, it is also important for firms to maintain effective business continuity plans. This, explains Mr Miller, can cover factors that aren't always insurable. If, for example, a firm's best salesperson is out of action or other key staff are lost, this could have a serious impact on the bottom line. You need to consider where the key dependencies lie and think through the issues before problems arise.

Worryingly, a report published last year suggested that poor planning is putting over half of UK organisations at risk. Disruption and Resilience, a report published by the Chartered Management Institute (CMI) and the Cabinet Office, shows that only 49 per cent of UK organisations have adequate plans in place to face the unexpected, such as severe weather and IT disruption.

When the report was published, Ruth Spellman, CMI chief executive, commented that despite the pressures of the economic downturn, UK businesses have to appreciate that business continuity management is not a 'nice to have', it is crucial to business survival. Until UK managers have the time and skills they need to write, test and update these plans, and leaders give them

the priority they deserve, this will remain a severe risk for the UK economy.

There can certainly be significant benefits for those who do take action. The Disruption and Resilience report shows that 79 per cent of those managers who had plans and were forced to activate them last year, admitted that the impact of unusual circumstances was reduced as a result.

So can those with good business continuity strategies expect to enjoy better terms on their BI cover? A recent study by the Business Continuity Institute indicates some links (see below).

Mr Miller points out that most insurers do not specifically give discounts for good continuity planning, although he adds that generally you get better terms for a better risk. It's really more about protecting your business rather than getting a discount, he observes.

The message is that business continuity strategies need to go hand-in-hand with BI cover. Unlike health and safety regulations, business continuity planning is not a legal requirement; however, it can make the difference between survival and failure.

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Last year, the Business Continuity Institute (BCI) published its report into the link between good business continuity plans and BI insurance. Publication followed a round table discussion that featured representation from across the insurance industry.

The meeting concluded that Business Continuity Management (BCM) could bring benefits in five key areas:

1. BCM is seen by insurers as a means to improve the quality of the business they are underwriting and to help organisations mitigate impact, recover faster and minimise losses.
2. BCM can be used to protect against losses incurred through traditionally non-insurable perils, such as supplier insolvency or pandemic influenza.
3. BCM can be used to better understand the requirements for BI cover (and potentially lower the amount of cover needed).
4. BCM can help obtain BI cover where otherwise it would not be available.
5. BCM can help to secure optimal terms for cover.

Source: Continuity Central <http://www.thebci.org>

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For more information on this issue please contact us.

# Risk management

## Redundancies

Redundancies have unfortunately become more widespread across the UK as a result of the credit crunch, and businesses who fail to manage the process correctly could find themselves facing expensive court cases.

Employment Practices Liability (EPL) insurance can provide vital protection against employment related disputes and disgruntled ex-employees; but employers also need to ensure that the relevant procedures are in place.

The evidence suggests that an increased number of disputes over unfair dismissal are going to tribunal. Robert Nicholls, Sales & Underwriting Manager for Abbey Legal Protection, comments:

“Our advice line call statistics tell a similar story of demand. We saw a huge increase in calls as the recession hit, and although the economy is growing, it is noticeable that redundancies are still significantly higher proportionate to two years ago.”

### So how can EPL insurance help?

**According to insurer Travelers, EPL insurance provides protection for businesses against claims made by employees for a wide range of employment practices, such as redundancy, discrimination, unfair dismissal and breach of contract. It covers awards made by the Employment Tribunal, as well as defence costs and expenses.**

However, those with EPL insurance in place cannot afford to be complacent. Claims for unfair dismissal can be time consuming and damaging to the company. Those embarking on a programme of redundancies need to ensure they avoid the pitfalls (see below).

Mr Nicholls explains that to avoid or reduce

the chances of becoming embroiled in an employment dispute, it is vital that the process to manage, dismiss or make redundant employees is done correctly. Although this may take time, it avoids problems later. The message is to make sure you get good professional advice.

So how far do businesses still suffer from lack of awareness regarding the correct processes whilst making redundancies? Mr Nicholls responds that in his view, businesses are getting better, particularly where they have had to make redundancies before. However, with smaller businesses where redundancy may be a ‘first time’ issue, there is still a lack of awareness.

There also continues to be some misconceptions about EPL insurance, although the insurance industry is working to correct these. Travelers says it works closely with brokers to build a stronger awareness of EPL cover and to help businesses to see the real value of that cover.

One question that often arises is whether firms are already covered by insurance such as Directors and Officers or Employers’ Liability.

Travelers explains that in brief, EPL insurance covers the organisation including its directors and officers, whereas D&O insurance covers certain individuals within the business only (in other words, not the entity). Employers’ Liability insurance does not provide Employment Liability cover.

The good news is that there is an increasing awareness of the need for this type of insurance. Travelers points out that the cost of taking out such insurance is not restrictive, and concludes that more businesses are realising the value of EPL insurance and have more of an acceptance of the benefits of the coverage.

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### COBRA Insurance Brokers

Matrix House  
12-16 Lionel Road  
Canvey Island  
Essex  
SS8 9DE

Telephone: 01268 511 115  
Facsimile: 01268 510 354  
Email: [bulletin@cobrainurance.co.uk](mailto:bulletin@cobrainurance.co.uk)

[www.cobrainurance.co.uk](http://www.cobrainurance.co.uk)

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Making redundancies involves much more than simply giving appropriate notice of termination of employment and administering any redundancy payment. Robert Nicholls, Sales & Underwriting Manager Abbey Legal Protection, identifies some common pitfalls in the redundancy process:



“The key procedural defects made by employers are: (a) inadequate or no consultation with the employee - this is going to take time, involving a series of meetings and consideration of ways to avoid redundancy; (b) unfair selection for redundancy; (c) failure to give due consideration to possible alternative employment within the business, or within any associated business; and/or (d) trying to use redundancy as an excuse to, say, dismiss a poor performer i.e. there is no genuine redundancy that falls within the meaning of the statutory definition. Any of these failings can result in a finding of unfair dismissal. In practice, employers tend to fall down on (a) and/or (b).”