

Solicitors Newsletter

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In this issue we provide an update on what happened at the October 2011 renewal and our expectations for the 2012 renewal. In addition we have added some commentary on a potential problem for the unwary solicitor acting in the Commercial Property market.

Market Update

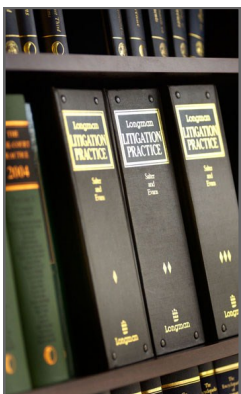
In spite of wide spread alarm in the months leading up to the October 2011 renewal it seems that nothing properly prepares us for the surprises thrown up in this most widely commented on of mass market renewals.

The inactivity post the Charles Rivers Associates review and report, and the ensuing consultation period, looked likely to give rise to some significant headaches; with established Insurers rumoured to be prepared to scale back, or in one or two cases to withdraw their participation. This coupled with the new entrants, which had been widely tipped to enter the market, withdrawing on the basis that the lack of changes meant that Insurers would continue to operate on a far from level playing field.

As it turns out the headline figures would make a casual observer ask what all the fuss had been about!

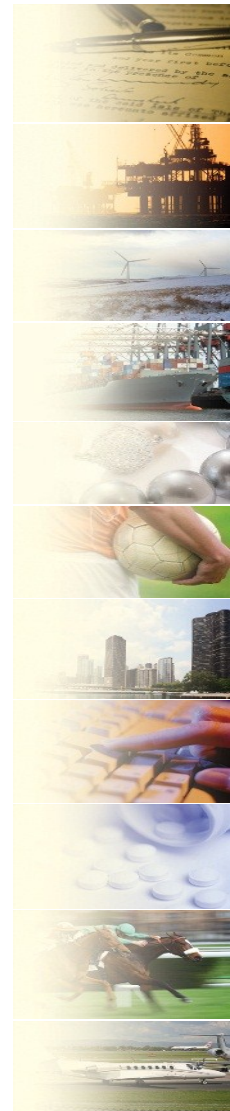
However, if we take a closer look, the swan's feet are actually paddling rather hard. The market did have new entrants, although they were not the ones we had anticipated. The new arrivals were First Title Insurance plc, Enterprise Insurance Company plc and European Risk Insurance Company (ERIC), which has subsequently come under some close scrutiny.

This gave rise to the extraordinary recent proclamation by an SRA spokesman, that their measures to change the market had been vindicated. It may of course be that in trying to rationalise the activity that we are on a hiding to nothing and that, for once, logic does not play any part in this market and to that extent the SRA may be right. From an Insurers' perspective I suspect some naivety, some writing for income and some activity on which I would rather reserve judgement on would answer the question better. The market did also have some withdrawals, i.e. Aspen Insurance, Lemma, SIMIA and A G Dore, but in fairness these were not really headline news.



And, in the past few years, one of the widely commented on barometers of appetite or otherwise for Solicitors' PI Insurance, i.e. the Assigned Risks Pool went from a heady 266 firms in 2010 down to a rather unexpected 38 firms, of which more later.

The table on the following page shows the overall participations, by insurer, for the 2011/12 year (both as a percentage and as a total figure) and compares these with the figures from the previous renewal.



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Rank	Insurer	2011/12 Participation		2010/11 Participation	
		Percentage	Value (£)	Percentage	Value (£)
1	XL Insurance Ltd	18.288%	46.76m	13.33%	28.47m
2	International Insurance Company of Hannover	12.514%	32.00m	14.41%	30.78m
3	QBE International Insurance Limited	11.782%	30.13m	8.22%	17.55m
4	Travelers Insurance Co Ltd	11.602%	29.67m	11.04%	23.50m
5	Zurich Professional Limited	9.411%	24.06m	12.90%	27.50m
6	Chartis Insurance (UK) Ltd (formerly AIG)	8.870%	22.68m	18.06%	38.56m
7	Allianz Global Corporate & Specialty AG	5.773%	14.76m	6.41%	13.20m
8	Barbican Syndicate 1955 C/O Libra	3.495%	8.94m	0.24%	0.50m
9	Alpha Insurance	3.333%	8.60m	0.86%	1.82m
10	Aviva Insurance Limited (prev Norwich Union)	3.333%	8.52m	4.24%	9.06m
11	E R I C	3.260%	8.34m	N/A	
12	QBE / D A Constable Syndicate 386	1.714%	4.38m	0.52%	1.10m
13	W. R. Berkley Insurance (Europe) Limited	1.467%	3.75m	1.83%	3.88m
14	Liberty Mutual Insurance Europe Limited	1.333%	3.41m	1%	1.35m
15	Enterprise	1.145%	2.93m	N/A	
16	First Title	1.075%	2.75m	N/A	
17	Royal & SunAlliance Insurance PLC	1.073%	2.74m	2.24%	4.78m
18	Chubb Insurance Company of Europe SE	0.342%	0.88m	0.47%	0.99m
19	Pembroke Syndicate 4000	0.159%	0.41m	0.44%	0.93m

Winners and Losers

A number of comments become immediately worthwhile.

First – although the headline figure shows £40m or so more premium this year than last, this hides the fact that for the last few years the level of premium reported in these returns has not been an accurate reflection, which gave rise to a review of the way returns are reported earlier in the year on behalf of Capita, the Managers of the Assigned Risks Pool. It highlighted a number of activities by Insurers, which were questionable in terms of how they declared their income for the primary Insurance policies. It is not necessary to go into the details of the findings, but suffice it to say that the report suggested the 2010/11 figure was likely to have been under reported by around £50m. The rules to the Qualifying Insurers were subsequently restated to prevent this ‘mishap’ occurring in the future. As an example of this the 8th placed Insurer this year, Barbican, looks like it increased its market share from 0.24% to 3.5% whereas it is well known that they did not add any new Solicitor clients, there are a number of other examples.

The headline figures of the recent past perhaps haven't reflected the true position; going forward this situation should improve

The best game to highlight this would be to look at the participations of certain Insurers two years ago, one year ago and this year. Now that the rules have been clarified one or two Insurers demonstrate a classic U shaped graph of involvement, it would appear that they lost interest in 2010/11 only to re-find this interest in 2011/12. It is of course more likely that their participations have remained relatively steady over the last three years.

Last year's largest Insurer by value Chartis, deliberately looked to downscale their involvement, due primarily to their heavily publicised issues with the 2/3 partner firms which they had insured for a number of years. It seems that they may, having strategically commenced repositioning their book this year, have an appetite for new business next year.

This year's new leader is now XL Insurance which only entered the market in 2009 and now has a very significant hold. It will be interesting to see how their participation runs in the future as their book becomes more mature, i.e. as the reported circumstances start to translate in to claims.

Hannover, one of the other accelerated movers over the last couple of years again since their arrival in 2009 now seem to have stabilised and indeed started to rationalise their book, with pressure from their Head Office.

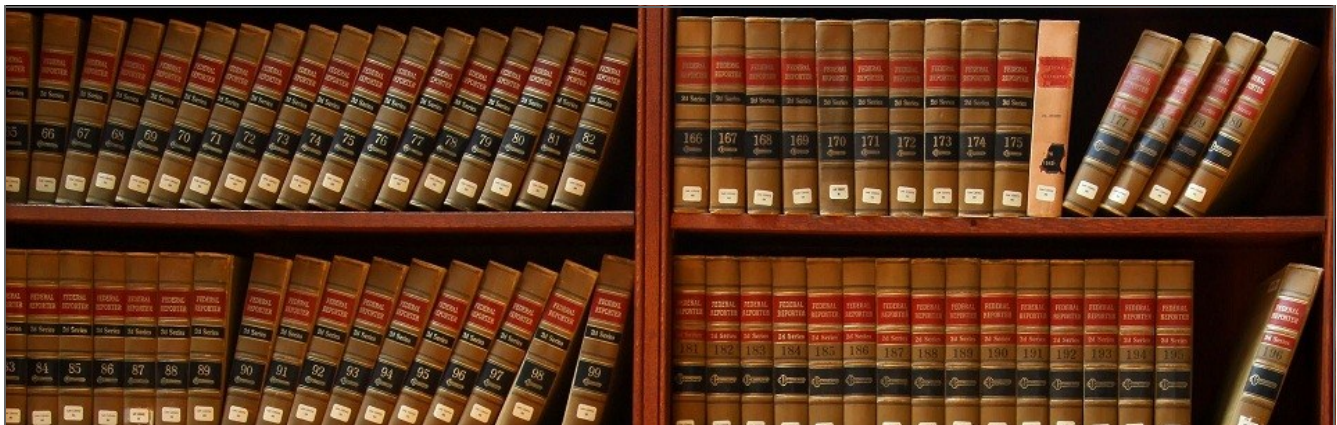
Some of the major players since the start of the open market, in 2000, have continued to reduce their participations, Aviva (formerly Norwich Union) continue to scale back but still have 3.33% of the market, but RSA are now down to 1%.

Of the new Insurers First Title plc, were much heralded, but have only written around 1% of the total which is significantly less than anticipated. E R I C on the other hand seems to have fared significantly better. It will be interesting to see whether this may prove to be the catalyst for the SRA to become more involved in looking at the financial strength of the Qualifying Insurers.

With much publicised concerns from the beginning of 2011 through to June 2011, many practices were keen to get their proposal forms, complete them and get their terms and if manageable move on. The reality was that proposal forms from many of the Insurers were later than normal and then many of the Insurers advised that they would not be quoting until at least 1 August, blaming additional strategy work or their actuaries' final ratings, but whatever the reason it made an already nervy customer base even more concerned.

Some which had moved Insurers in the recent past, who had been promised terms, were left waiting for these until the very last moment. When they arrived they were in-line with expectations but this has generated some bad feeling about the way the firms were treated.

The newer Qualifying Insurers are taking a large share of the market, whilst established players continue to reduce their participations

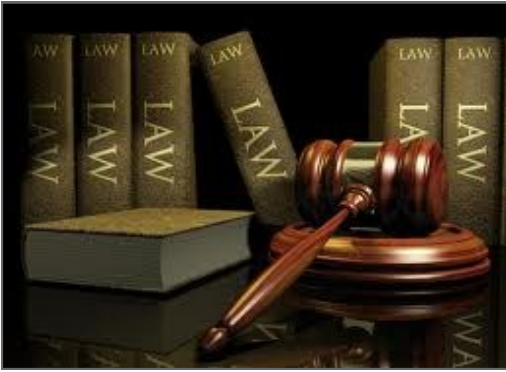


What next for the ARP?

This is the last year of the Assigned Risks Pool under its current guise, as next year the costs will fall to a 50/50 split between the profession and the Insurers.

Many firms have been worried about how this will be funded, with a suggestion that the costs of the practicing certificate will have to rise again. The reality is that there are still funds sitting in a reserve account from the days of the Solicitors Indemnity Fund which will be called in to finance the profession's share.

The next stage is that the ARP will cease from the 2013 renewal, which means that the last Insurer (i.e. the primary Insurer from the 2011/12 renewal) will be left with the cost of the 6 year run-off, assuming that that firm cannot find insurance elsewhere.



So what can we expect next year?

As we move closer to the October 2013 disbandment of the ARP, an Insurer, as mentioned above, which has a firm on their books which fails to find Insurance in that renewal will be stuck with the 6 year run-off for that firm. The firm will no longer be able to trade. So we can expect a continuing focus on the financials of firms.

We can probably expect the regulator to be forced to pay more attention to the financial standing of the Qualifying Insurers. It is simply unlikely to remain sufficient to say that they are relying on the FSA responsibilities. There is an increasing amount of focus on when they should decide an Insurer is suitable simply on the grounds that they will write to Minimum Terms and Conditions required. In addition to this it is very likely that some of the very aggressive writers of new business in the last 2 to 3 years will start to scrutinise their book further.

As mentioned earlier we have seen the start of a rationalisation process at Hannover and we expect that to continue. In addition, there may well be a period of review with XL Insurance as their rapid growth will start to catch up with them in terms of the claim position. Conversely some of the Insurers which realigned their book over the last couple of years will be keen to look at new opportunities and there is no reason why they will not now look to grow their accounts again.

We are expecting to see some interesting discussions on some of the new arrangements for Alternative Business Structures (ABS) particularly relating to wording and coverage issues.

We know that there are other Insurers waiting to get involved in this market and their entrance, some this year, some at some stage in a couple of years' time. This will be down to a number of factors: the prevailing economic climate; the ARP performing better in terms of claims and more modest number of firms entering it, whether they can find a niche which will allow them to offer something to one of the market areas where there are less claims; and, whether there are opportunities around the ABS structures.

At Windsor Partners we are already talking to some of the potential new entrants about what areas of the profession interest them and indeed whether they are prepared to look at practices in a different light to the standard partner size split. We remain optimistic that competition will still exist in 2012 and certainly believe for some firms, new relationships with Insurers can be established in the first half of 2012 that will ensure this competition exists.

We would like to be able to provide some further commentary on possible ABS ramifications from an Insurance perspective but at the time of writing a number of things could best be described as 'grey'. We will aim to utilise a future edition of this newsletter to cover this in more detail as this becomes clearer.

Tax changes set trap for unwary solicitors

The Treasury has announced radical changes to tax legislation with effect from April 2012, which will affect all solicitors and others carrying out conveyancing work.

The proposed changes affect capital allowances, i.e. the mechanism by which purchasers can obtain tax relief for fixtures or other plant in a new or second-hand property. This is often thought of as the domain of accountants, or as something which can be dealt with once a property deal has completed. However with effect from April, this will certainly no longer be the case.

From April, the wrong clause in a contract, or a failure to raise the issues, could lead to the client irrevocably missing out on the tax relief he is entitled to. Every property is different, but the cost to the client would generally



be equal to 10% of the purchase price of the property (but can be as much as 25%).

So, a client acquiring a £1 million property could end up paying additional tax of £100,000. Obviously, if he believes this stems from inadequate or incorrect legal advice during the transaction, he is likely to seek compensation. Capital allowances experts are aware of an increasing readiness of property purchasers to take action against their conveyancing advisers for the capital allowances outcome of property transactions. The majority of cases are resolved out of court, frankly indicating recognition by solicitors that they may indeed have been at fault. This will plainly become a more common occurrence under the new legislation.

Details of new legislation

For property transactions completing on or after 1st April 2012 (companies) or 6th April 2012 (individuals or partnerships), the purchaser will only be able to claim capital allowances if he does one of two things.

Either, he must enter into a formal tax election with the seller, or he must take his case to a tax tribunal within two years. Whichever option is chosen, a purchaser will be well advised to commission an expert capital allowances valuation, either for use in the tribunal, or as the basis of negotiations regarding the election. Doing nothing, or choosing a figure at random, is not an option.

Some advisers may think the issue can be easily addressed by making sure the client signs an election at the time of the transaction. However, there is a seller's interests to propose an election in This means that the purchaser will be able Typically, plant (as defined for capital purchase price. So, on a £500,000 £100,000. If the client is advised to sign understanding the consequences, he may inadvertently agreed to pay extra tax (to a higher rate taxpayer) of just under £50,000.



considerable danger in so doing. It is in a as low an amount as possible, typically £1. to claim allowances, but only on £1. allowances) may equate to 25% of the purchase, the value of the plant may be the election for £1 without properly be upset to later discover that he has

Most advisers carrying out conveyancing will not regard themselves as tax experts, and cannot be expected to be intimately familiar with the detailed rules. However, they do have an obligation to ensure their clients understand what they are signing. Indeed HM Revenue has stated that it expects this matter to become a standard aspect of the property sale process.

Action needed

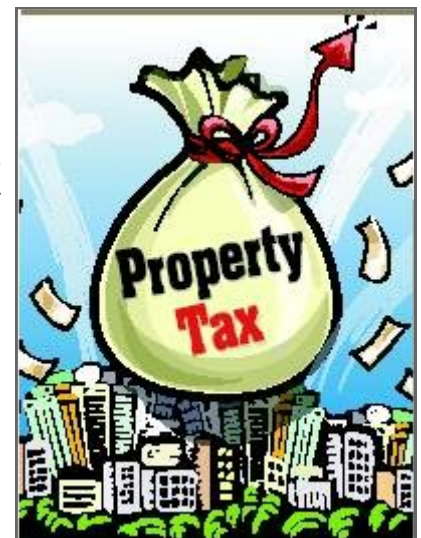
With effect from April, solicitors will need to ensure that the parties to a property transaction agree that they will, as soon as possible and no later than two years, enter into an election to transfer allowances to the purchaser. The election should be based on a valuation exercise carried out by capital allowances specialists (generally at the purchaser's expense, unless the value of the allowances is, exceptionally, negotiated to be split between seller and buyer).

Solicitors advising purchasers should furthermore take the lead in advising their clients to obtain specialist capital allowances advice. There are a number of firms claiming to be capital allowances experts, some of whom are little more than call centres. Windsor works only with the leading firm, professionally qualified and with more than twenty years' experience.

If you would like some further information on this area please contact:

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Windsor Partners Limited's specialist solicitor team are available to discuss any concerns you may have about issues raised in this Newsletter or any other matter

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