



# REICH

insurance brokers

ReView



Simon Taylor presents. (Picture courtesy of Zurich. Apologies for the poor quality!)

## REICH PRESENT AT ZURICH NATIONAL CLAIMS CONFERENCE

Zurich Financial Services recently held a National Claims Conference for all their Senior Claims Managers and Directors and one of our two Partners, Simon Taylor (pictured right), was asked to present to this esteemed gathering. Simon Taylor is a former Board Director of McLarens, at the time the UK's leading firm of Chartered Loss Adjusters, and still has very close contacts with Zurich nationally, at claims level.

where the expertise and the services of Simon Taylor have been called upon. As a result, we have assisted a number of clients to obtain very satisfactory claims settlements.

*Claims are of critical importance to our clients and it is an area where we differentiate ourselves from our competitors, ensuring our clients are never alone when losses occur.*

The two-day event took place in Oxford and Simon talked to some 40 senior claims staff about what a broker wants from an insurer in claims handling. The presentation went extremely well, and Simon was assisted at the event by Andy Kay, Reich's Compliance Manager.

There are many insurance brokers who automatically suggest appointing a Loss Assessor when a large claim occurs. We are different and will only recommend an Assessor if we feel it is warranted; indeed, we are often happy to provide this assistance ourselves wherever possible. Why pay if it's not required?

*If it is decided that a Loss Assessor is required, we will always advise our clients in order to ensure they get the best deal.*

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It is particularly significant that, of all the UK brokers who could have been asked to present, Zurich felt it appropriate to call upon the services of Reich.

There is little more important for a broker than to have an excellent relationship with the senior claims officers of the broker's principal insurers. Such relationships come into their own in the event of major client claims.

*At Reich we pride ourselves on the excellent claims service we provide*, and have a dedicated team of three claims specialists looking after our clients' every need. The new leader of the team, David Lennon, B.A.(Hons), ACII, recently joined us from Capita Insurance Services. David has a wealth of claims experience, and is also actively pursuing his Risk Management examinations. He joins Reich as our Claims & Risk Manager. If you are unfortunate enough to suffer a major claim or have any issues in relations to our claims service, please feel free to contact David. David is joined in the department by Richard Hargreaves and Lisa Shadbolt.

Over the last few years, we have become actively involved in a number of specific claims for our clients, in particular those substantial claims

In many cases, the relationships we have with the claims staff at our principal Insurers and Loss Adjusters, far exceeds that of most Assessors as we know our contacts personally. In addition, we have an arrangement with all the major insurers with whom we place business, for the pre-nomination of a firm of Chartered Loss Adjusters whom we are able to instruct directly in the event of a large loss. In all respects, this ensures an independent and customer focused reaction to a major loss. Also, if you are unlucky enough to suffer a major loss at a weekend or bank holiday we can promptly arrange an out of hours visit.

If you have any queries regarding our claims service or are worried about a claim you have made, please contact David Lennon, our Claims & Risk Manager, Simon Taylor, Partner, or a member of our Claims Team. We believe we have the strongest team of claims advisers of any comparable broker.



**0161 834 8877**

# VACANT PROPERTIES

## key points to be aware of



For Property Owning clients with a large portfolio, in many cases, unoccupied properties are unavoidable. Obviously, the situation is somewhat different where there is a full tenancy agreement in force as, invariably, responsibility for payment of the premium and compliance with the insurance terms, continues to lie with the tenant. Nevertheless, it is important to bear in mind that, in most circumstances, insurers will, after a short period of unoccupancy, invariably restrict cover to Fire, Lightning, Aircraft and Explosion only, with Property

Owners Liability thrown in. Very rarely will insurers give full All Risks cover whilst the property is unoccupied for any length of time and usually the restricted cover kicks in after one month.

Furthermore, an unoccupancy condition automatically applies and requires that a number of actions are taken to ensure continuance of cover. Most unoccupancy warranties require that mains services are turned off (except for the electricity supply to maintain the intruder alarm system) and that water systems be completely drained during the period 1<sup>st</sup> October-1<sup>st</sup> April, or the heating system be left on at a minimum temperature of at least 5°C. In addition, it is a usual requirement that the premises be inspected internally and externally, at least once every seven days, (by an authorised representative, and a detailed log be kept of such) plus letterboxes be sealed up, with steps taken to prevent accumulation of mail.

Finally, buildings must always be secured against unlawful entry, and the alarm systems maintained.

It is particularly important that our Property Owner clients ensure tenants are fully aware of such conditions as they are ***conditions precedent to liability*** – if they are not complied with, insurers can often

refuse to provide an indemnity in the event of a claim. The loss adjustor will check compliance if a claim is submitted.

There are a number of information fact sheets insurers are happy to provide for unoccupied buildings, and we can let you have copies of such, if you require them.

It always represents good risk management, from a property owner's perspective, to ***automatically*** provide a copy of fire safety advice to tenants where the building remains unoccupied (with a lease still in force), so as to minimise any potential for loss.

It is often the case that the premium will increase where the premises are unoccupied, as such represent a higher risk than that posed by an occupied building.

***Finally, please remember it is critically important that you notify us at Reich Insurance Brokers immediately a property becomes vacant so we can, in turn, notify insurers.***

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## WHY SHOULD I BOTHER WITH RISK IMPROVEMENTS?

As you are no doubt aware, insurers apply a premium based on a number of factors according to their perception of the risk; the higher the risk, the higher the rate, and, therefore, the higher the premium.

In most cases, insurers agree to offer a premium without ever having viewed the property in advance. There usually follows a survey which is designed to make sure the property corresponds with the assumptions the insurer has made in rating the risk, and also identifies any areas where the risk can be improved.

The survey report will identify ***"requirements"*** and ***"recommendations"***:-

***Recommendations*** are suggestions to improve the risk to either minimise the chance of a loss occurring or reduce the effects of a loss once it has occurred. Clearly, the implementation of such has benefits to the freeholder, tenant and insurer.

***Requirements*** are actions that are needed to bring the risk in line with the assumptions the insurers have made when rating it. These are ***mandatory*** and failure to carry these out will almost certainly result in restrictions in cover, such as applying a larger excess, or even increasing the rate (and therefore the premium). However, non-compliance within a stipulated timescale can also result in insurers withdrawing

cover altogether. Once this has happened it will prove very difficult for us to replace the cover as you would have to disclose the fact that the previous insurers had declined cover due to non-compliance with risk improvements. This makes the risk very unattractive to an alternative market.

We know that risk improvements can often seem a nuisance, but non-compliance is simply not an option.

As always, if you have any problems in meeting a requirement imposed by insurers, please contact us. We are here to assist you.

## WHY WE WILL NEVER RECOMMEND PROPERTY OWNERS ALLOW THEIR TENANTS TO INSURE THE BUILDING.

Occasionally, we are asked by our Property Owner clients whether it would be advisable to amend the lease between the two parties, in order to allow the tenant to arrange the insurance for the building whilst noting the owner's interest. It is often suggested to us that the tenant would like to do so to achieve a more competitive premium.


In *all* cases to date, we have had no hesitation in recommending that our Property Owners *always* retain responsibility for insuring their properties and decline the tenant's request. The overwhelming reason for this is that if the policy is in the name of the tenant and simply notes the interest of a property owning landlord, the *tenant has complete control* in the event a claim

occurs. It is up to the tenant to submit the claim, the payment will be made in the tenant's name, and the tenant can decide, for argument's sake, whether or not to rebuild the property in the event of a total loss or to pursue a cash option. Would you, as a Property Owner, want to pass such control to your tenant? This control will be totally lacking if the policy is in the name of the tenant, noting solely the interest of the landlord.

It is often pointed out to us that the tenant could be part of a major plc, perhaps even multi-national. In our mind, this makes absolutely no difference whatsoever. Often, it could highlight, even more clearly, why the landlord should refuse the request to

take out the policy in the tenant's name. Many multi-national policies, or those of large plc's, come complete with either substantial deductibles or First Loss limits. Full protection is not provided for the Property Owner where a decision is made to cover the landlord's building, under such policies.

*In all cases, please seek our advice before making a decision.* It is very rare, however, that we will recommend you allow the tenant to take over responsibility for insuring what, in essence, is your own asset and should be protected by a policy under your sole control.

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## WHY IS THE "NON-INVALIDATION CLAUSE" SO IMPORTANT?

We all know one thing about an insurance policy - it invariably looks like a list of clauses and exclusions. However, possibly the most useful, and perhaps little known, clause of all to Property Owner clients, is the *Non-Invalidation Clause*.

To best explain this clause, an example is needed. Last year, one of our Property Owner clients suffered a fire loss at a property. The property had been let to tenants on a long-term lease but the tenants had vacated the premises some time previously and had sub-let it to a firm of welders. The welders had occupied the building for 6 months or so, when they, too, vacated. Some 8 or 9 weeks later a fire occurred at the property and the insurance company were notified in the usual way, with one of our nominated Loss Adjusters appointed. The Property Owner was not only unaware that the property was unoccupied, but also that it had been sub-tenanted to the welders by the main lessees. They had certainly not sought the permission of the landlords/our clients, to do so. The main lessees continued to pay rent to the Insured and the Insured had no reason to consider anything untoward.

As stated elsewhere in this Newsletter, an Unoccupancy Warranty kicked in immediately after the premises became unoccupied. On this occasion this warranty required that the premises be inspected, internally and externally, once every 7 days and a log retained. However, the Property Owners could not comply with the clause as they were unaware the property was unoccupied - even if they had been, they would have delegated responsibility to comply with the clause to the tenants,

under a "full repairs" lease. Quite clearly the insurance company, in such circumstances, were perfectly entitled to repudiate liability and refuse to pay the claim, on the grounds of a clear breach of warranty. It is not the insurance company's concern whether the Property Owner or the tenant complies with the warranty, it is simply a requirement of the policy that the warranty be complied with for policy liability to attach.

In all Property Owner policies which we offer to our clients, we try and ensure the inclusion of a *Non-Invalidation Clause*, a small clause which solves the problems identified above and which states that:

*"the policy will not be invalidated by any act or omission, or any alteration where the risk of damage is increased, unknown to or beyond the control of the Insured, provided the Insured immediately they become aware of, gives notice to the insurer and pays an appropriate premium if required".*

In the above example, insurers agreed with our representations that the policy should respond due to the Non-Invalidation Clause, and the claim was paid!

Another example of circumstances where the Non-Invalidation Clause could apply is where a tenant stores goods in a premises, without asking for permission from the Property Owner and hence the insurer.

If, for instance, in late October the tenant had decided to allow storage of fireworks in the premises, insurers could, if such led to a loss, repudiate liability on the grounds of non-disclosure of a material fact. The Non-Invalidation Clause would protect the Property Owner, provided the storage of fireworks, or an increase in the risk, was not known to them and insurers were informed as soon as they became aware of such.

The Non-Invalidation Clause, whilst little known, is certainly worth its weight in gold and does provide a wealth of additional protection to Property Owners.

*Another reason to insure your assets with Reich!*



# LIABILITY CLAIMS...

## WOOLF PROTOCOLS

In conjunction with the Access to Justice Act, the Woolf protocols came into force on the 26<sup>th</sup> of April 1999. They have completely changed the insurance litigation landscape, resulting in a surge in claims for compensation and the creation of the “compensation culture” often referred to by the media. This is not a myth, it is now a *fact* and means that you, our business clients, could be receiving far more liability claims now than before 1999.

When you receive a claim in the form of a “letter of liability” you have a strict responsibility to forward this

onto us immediately. In doing so you are complying with the terms and conditions of your policy and enabling your insurers to respond to the claimant and/or their solicitors within the prescribed **21 day** time limit that they have to do so. Failure to acknowledge the letter of claim within this time allows the claimant to simply issue full court proceedings against you, thereby immediately increasing costs significantly.

Whilst 21 days may not seem that long, it can make a world of difference to your claims experience.



## INDEMNITY

We are increasingly experiencing cases where insurers are refusing to indemnify (cover) a client for failing to notify them (via us) of an incident which later gives rise to a claim. Whilst we will, of course, seek to challenge any unfair decisions, a refusal to indemnify will have significant financial implications for our clients, which must be avoided at all costs.

Please bear in mind that:-

- 1.** It is a condition of your insurance policy that you must notify insurers of any incident that *may* give rise to a claim.
- 2.** An insurer will refuse an indemnity if they feel their position has been “prejudiced”. However they do have to prove that this has occurred. “Prejudiced” can mean that the claim has got significantly worse in terms of value, insurer’s investigations may be hampered by a lack of available documentation or witnesses, or costs have been incurred by a lack of action, (i.e. failure to supply court proceedings or a letter of claim to insurers immediately upon receipt).

*A refusal to indemnify means that you have to pay for the claim and associated costs!*

Some Do’s and Don’ts:-

- Do:** Advise us of any incident that you become aware of, no matter how trivial it may appear at the time.
- Do:** Forward to us immediately any correspondence you receive from either a potential claimant direct or (more likely) a letter of claim from an appointed solicitor. There are procedural penalties which can apply if this is not complied with (see Woolf Protocols article above). If in doubt, notify us!
- Don’t:** Sit on paperwork or enter into any correspondence yourself with the claimant or their solicitor.
- Don’t:** Believe the claim will go away if it is simply ignored!