

**Civil Liability Working Party**  
**Thursday 22 October 2009, 16.00 – 18.00**  
**Venue: GBF Rechtsanwälte, Hegibachstrasse 47, CH-8032, Zurich**  
**Chairman: Osvaldo Contreras-Strauch**

**AGENDA**

1. Welcome
2. Appointment of Sheila Dziobon, University of Plymouth, as Vice Chairman of the group.
3. Reminder of previous discussions and analysis undertaken by members of the Working Party:
  - i. Nature and Coverage of Civil Liability Insurance
    - a) Generally arising from non-contractual acts or omissions although it is recognised that certain liabilities arise as a result of contractual obligations;
  - ii. When is liability triggered? It has been discussed that this may be one or more of the following events:
    - a) When the act or omission occurs?
    - b) When its potentially damaging nature is revealed?
    - c) When the third party realises that he/she has suffered harm?
    - d) When a complaint is made to the party causing the damage?
    - e) When a claim is filed against the party causing the damage?
    - f) When a judge orders the party causing the damage to pay compensation to the victim.
  - iii. When can a damaged third party bring a direct action against the insurer of the liability?
4. Review of some of the materials available to the CL WP on compulsory insurances submitted by members. These will include the following:
  - a) Not all the compulsory insurances are liability insurances
  - b) An attempt to make a classification of the coverage of liability insurance that exists in South American and Europe comparatively.  
See following extracts to start the discussions (some reports were in a format I could not access and some reports arrived with me too late for incorporation I am afraid).
5. Moving towards an International Review on Liability Insurance publication, a bilingual, bi-annual publication arising from discussions and of public interest. Suggestions on finding an interested sponsor/press.
6. Exploring the possibility of launching courses on liability from the perspective of insurance at leading institutions.

## **MANDATORY (COMPULSORY) INSURANCE:**

From the lists supplied it can be seen that motor insurance: public transport insurance: aviation insurance: shipping insurance: is required in most countries.

There are transport, marine, new technologies, motor, and consumer protection working parties it is assumed that they will be looking at those areas.

There are common areas remaining which might be of interest to the Civil Liability Working Party and areas which might present opportunities for discussion under point 4 of our Agenda. These include (but are not limited to) employers' liability; health and medical care liability; professional services liability. Other liabilities are listed in some countries, e.g. harm arising from tourism (but perhaps the inclusion of travel agents as a professional service provider covers this?).

### **A) EMPLOYERS LIABILITY**

#### **SOUTH AMERICA**

(Apologies to Mexico as I have not been able to include them as I received their 89 page report which was obviously in Spanish too late to deal with)

No compulsory insurance in this field listed in the following countries which give rise to the question:

**Bolivia, Brazil, Chile, Ecuador, El Salvadore, There is no compulsory insurance in El Salvadore, Paraguay**

There are many questions which could be asked about occupational injury and disease in these countries which might be of interest to the WP.

#### **Uruguay**

Compulsory insurance covering accidents at work and occupational diseases. Employers - public, private or mixed - should take out insurance to cover the occupational accidents and occupational diseases of workers with exceptions for State employees. State Insurance Bank. Law No. 16.074 of 10 October 1989.

Invalidity and death scheme. Uruguayan system is based on a mixed system of distribution and compulsory individual capitalization. Law No. 16.713 of 3 September 1995.

Puerto de Montevideo companies employing Montevideo port workers must procure insurance covering risks of sickness, invalidity and care of their employees.

#### **EUROPE**

##### **Belgium**

Yes

##### **France**

No mention of a general law covering all employees, further information?

**Italy**

Yes: Labour insurance: by virtue of an endless stream of labour laws, any employee needs to be covered by the employer with an insurance covering occupational injuries & illnesses (and of course death). In addition to that, any employer is obliged to pay part of the salary of each employee to the State for pension contributions (this is intended as a form of social insurance)

**Portugal**

Comprehensive coverage which includes both employed and self-employed persons.

**Spain:**

On the list there are certain workers who have to be insured but no mention of general compulsory insurance connected to employers. Mentions persons are; Non-crew of the ship staff; Staff working with State; Staff serving in health institutions of social security; People who work in airports.

**Sweden:** None listed

**UK**

Yes: Employers' Liability (Compulsory Insurance) Act 1969 (for current law see Employers' Liability (Compulsory Insurance) Regulations 1998, SI 1998/2573. See also Third Parties (Rights against Insurers) Act 1930 giving employees the right to recover directly from the insurer in the event of employer insolvency.

**B) HEALTH & MEDICAL LIABILITY****SOUTH AMERICA**

There is no mention of compulsory insurance for medical staff in hospitals or other places in the countries reviewed.

Questions for the WP?

**Ecuador**

For providers of public services (water and electricity). (Clean water being a health issue and perhaps a climate change question).

**EUROPE**

**Belgium:** An extensive list including:

- health care professionals, medics, biomedical research.

**France:** An extensive list including:

- The elderly at home by individuals, home nursing assistants, nursing, education centres;
- Blood transfusion centres
- Institutions receiving children and adults with special needs
- Pharmacies

- Medical and pharmaceutical personnel of public hospitals
- Hospital practitioners
- Biomedical research
- Dentists
- Medics

### **Portugal**

Yes. Including private clinics and dental clinics, blood donors, donors of tissue or organs etc.

### **Italy**

We do not have any form of compulsory insurance for professional negligence (but I think private hospitals need to provide for patient insurance). The reason for this is that, for instance, when it comes to medical doctors their mistakes are covered by a form of objective responsibility which arises on the State part and which covers all civil servants (in Italy MDs are civil servants). This is enshrined in the Italian Constitution (Article 28).

### **Spain**

Yes: to include radiopharmaceuticals administrations, people with disabilities assistance centres, health centres, blood donors, biomedical research, clinical trial of animals, clinical trials, clinical trials of medicinal products, agencies related to medical devices, concerning medical devices agencies, frozen oocytes etc.

### **Sweden**

Yes: Patient injury insurance but nothing else listed

### **UK**

- The NHS indemnifies patients suffering harm caused by negligence in all their facilities
- Presume that private hospitals/doctors/dentists need to be insured and this might increase in the future
- Clinical trials – Medicines for Human Use (Clinical Trials) Regulations 2004 (SI 2004:1031) as amended by SI 2006:1928 and SI 2006: 2984. The Regulations transpose the provisions of the European Clinical Trials Directive (EC2001/20) into UK law
- Chiropractors Act 1994 – and other professionals in the health field regulated by a professional body

## **C) PROFESSIONALS**

From the lists reviewed it would seem that being able to set up in business offering a professional service e.g. investment advice, lawyers, travel agents, estate agents, is often regulated by the state which directly, or indirectly, requires the business to be insured. Questions?

## **SOUTH AMERICA**

**CHILE:**

- 251 58 Art DFL (d) provides that the insurance brokers have an obligation to "constitute a guarantee" This policy is a guarantee, but in effect insurance
- Article 62 (b) DFL insurance required in the event of insolvency
- 18.045 In its article 30, stock market law requires brokers to offer a guarantee which amounts to an insurance
- Customs agents and those awaiting an environment report

**EUROPE**

**Belgium:** Estate Agents, architects, insurance business,

**France**

- Architects
- Construction industry
- Technical controllers asbestos,
- Expert surveyors,
- Persons making State regulated loans for the construction workplaces
- The real estate professionals
- Civil estate companies (CIS) utilizing savings.
- Accountants and chartered accountants,
- Operators of nuclear facilities,

**Italy**

In the pipeline for the future there is the idea to make home insurance compulsory (this is due to the recent earth quakes in Abruzzo), as well as to oblige financial consultants to be covered by insurance.

(Sport insurance: this is something recent (Law n. 152 of 1-7-2008). Under this law, all the non-professional sport associations recognised by the Italian Olympic Committee are obliged to insure their non-professional athletes for sport injuries.)

**Portugal**

- Auditors
- Consultants for investments in securities
- Professional sports players: law 8/2003, 12/5

**Spain**

- Lawyers
- Actuaries plans and pension funds
- Travel agents
- Football agents
- Industrial property agents
- Agents of industrial property (API)

- Real estate agents
- Rural agents

**Sweden**

- Estate agents
- Motor racing events
- Construction

**UK**

Professional organisations (solicitors, barristers, accountants, insurance brokers) insist upon professional indemnity insurance for members. This is required, not by statute, but by the rules of the profession and is, in effect, compulsory. E.g. Estate Agents Act 1979 and Financial Services and Markets Act 2000.

**OTHER INSURANCE WHICH MAY BE AFFECTED BY CLIMATE CHANGE (or at least linked to reducing carbon emissions and avoiding environmental damage taken from the lists supplied)**

- Activities with risk to the environment
- Production and/or waste management activities
- Management and production of toxic waste
- Environmental quality
- Environment
- Building quality control
- Building in the areas of concrete
- Building in the areas of soil mechanics
- Buildings and solar
- Steel structural elements
- Activities in connection with the oil industry
- Buildings in area which may suffer earthquakes
- First party insurance linked to houses
- Provision of clean water