Emerald Isle PII Crisis;

who will be next?. . .

Hot on the heels of the UK PII catastrophe which resulted in two to three percent of legal firms left unable to get any insurance at all for 2010, the PII cover for Ireland's 2,200 legal firms is now suffering a similar fate.

This is predominantly due to the collapses of investment markets in which many insurers had interests and the property boom in which many solicitors were heavily involved. Add to this the huge increase in the number of negligence claims relating to property transactions that ensued, often due to failures to comply with undertakings; and a market in which the income of small legal firms might be reduced by 40 to 50 per cent compared with two years ago, *Et Viola!* the Irish legal profession's biggest crisis in years was born.

If, as predicted, the same thing happens in Ireland, it has been suggested that 70 or 80 smaller firms could be forced out of business with the premium for a sole practitioner predicted to triple from around €8,000 to €20 - €24,000 (AUD $37,400 approx).

As with many countries, in Ireland, sole practitioners and small firms are the ones who service the majority of "Joe Public" and so if many go to the wall, the public's access to lawyers would be greatly reduced.

PII insurance is compulsory for solicitors in Ireland and the minimum sum insured is set by the Law Society of Ireland. Following a number of crisis meetings and in an attempt to ease the burden, the Society has reduced the minimum sum insured from €2.5 million to €1.5 million (AUD $2.336 m approx) per case; excluded cover in the case of fraudulent misrepresentation or non-disclosure, and removed cover for certain undertakings to financial institutions in commercial conveyancing in an effort to reduce premiums. Solicitors requiring additional cover to say restore the original €2.5 million face hefty additional premiums to cover the excess.

There is also a major issue in that practitioners are bound to have an insurance "run-off" for seven years; so even if they cease to practice they still have to pay the insurance. This problem does not exist with larger firms, as when a partner leaves the firm, its PII policy continues. The need for insurance "run-off" means that Irish solicitors are likely to be trapped into continuing in practice, whether they can afford to or not.

Another crucial change is the suspension of the Assigned Risk Pool, which operated as a safety net for solicitors who were having difficulty getting insurance due to a poor claims history. Firms could continue to trade and work their way back to a level where they were again insurable.

As the majority of small-to-medium firms are insured through the Solicitors Mutual Defence Fund, which has almost two-thirds of the market, this raises further issues. SMDF too has its problems to contend with, having lost 97 per cent of the €8.4m they invested in one particular investment bond which is now the subject of litigation.

There is widespread concern that

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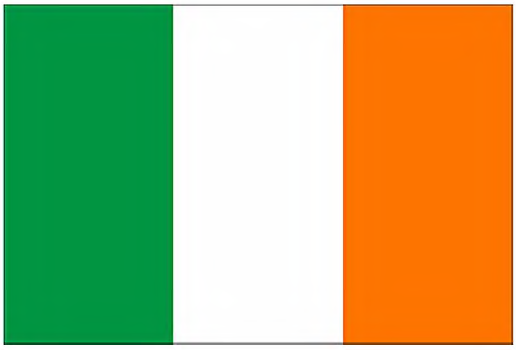


the fund's insurers will refuse to provide cover for almost 1,000 sole practitioners with a bad claims history, who comprise about 45 per cent of solicitors' firms. Underwriters have been paying out more than €2.50 for every €1 received in premiums, and the situation has continued to worsen.

With the insurance market having turned hard, insurance companies are likely to become much more cautious in terms of general risk. Having made losses like everybody else in the current global economic downturn, they will be looking far more closely at the increasing number of claims.

The plethora of claims relating to commercial and private conveyancing that is coming home to roost against Irish legal firms is just one factor in their PII crux. Another key factor is the continuing worldwide crisis in the insurance industry.

Insurers have lost hundreds of billions of dollars on their investments, which are the main driver of insurance company profits.

The wipeout of insurance company reserves because of the collapse of the value of their investments is affecting insurers all over the globe. In September 2008, AIG for example, was on the verge of collapse and was only saved by the intervention of the US Federal Reserve and the American taxpayer.

As Irish solicitors follow the British in scrambling for new PII cover and the problems within the international insurance market continue, and, it may be wise to ask the question "who will be next to face huge hikes in premiums?" Watch this space!

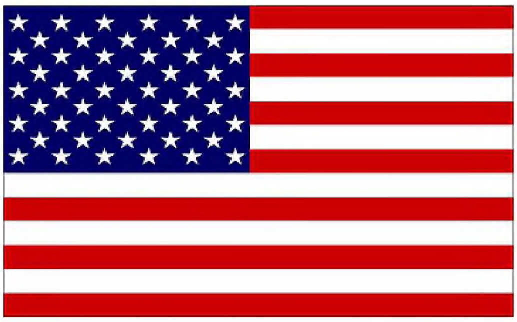
Postscript

The compulsory PII scheme for Northern Territory practitioners is mercifully different to that of Ireland. As it goes through the underwriter negotiation process, the PII Committee is looking to get the best possible outcome for Territory practioners in a difficult market with some potentialy adverse claims trends. The Committee believes that the "good years" also need to be taken into account.

Meanwhile, firms should continue to regard risk management as a priority.

Facebook Status

used as a legal alibi in the USA



In downtown New York one morning last year, a Mr Rodney Bradford was arrested on suspicion of involvement in a robbery that has taken place the previous day.

The lawyer argued his client's innocence, on account of him being in his parents' house on Nassau Street in Brooklyn at the time of the robbery, updating his Facebook profile.

Facebook, following being subpoenaed to provide evidence to back up this claim, released details of the IP address of the computer used to access Mr Bradford's Facebook account. True to the lawyers word, that computer was at Nassau Street, Brooklyn, New York and so the charges were dropped and Mr Bradford's good name was upheld.