
From: Piero D'Agostino [GRO]
Sent: Mon 29/07/2013 6:16:53 PM (UTC)
To: Susan Crichton [GRO] Parsons,
Andrew [GRO]
Cc: Matthews, Gavin [GRO]
Subject: RE: Proposed letter to JLT re: Horizon

Will do. Thanks Andy.

From: Susan Crichton
Sent: 29 July 2013 17:53
To: Parsons, Andrew; Piero D'Agostino
Cc: Matthews, Gavin
Subject: RE: Proposed letter to JLT re: Horizon

Thanks Andy, Piero can you take Charles through this.

Susan

From: Parsons, Andrew [GRO]
Sent: 29 July 2013 16:05
To: Susan Crichton; Piero D'Agostino
Cc: Matthews, Gavin
Subject: RE: Proposed letter to JLT re: Horizon

Susan, Piero

I've spoken to one of our insurance lawyers re the D&O cover.

Summary

- The policy is unlikely to provide cover against the types of claims that SPMRs might bring against POL's directors arising out of the Horizon situation.
- One area that would be covered is a derivative action by POL or BIS against POL's directors for breach of their directors' duties. As advised previously, on the information we have seen, we don't believe that POL's directors have breached their duties.
- There is therefore no strict requirement for POL to notify its insurer at the moment – though, if in doubt, best practice is to notify.
- The risk of notification is that it would look bad for POL if it ever became public knowledge that POL had notified its insurer.
- To reduce this risk, it is recommended that rather than sending a formal written notification, POL speaks to Chartis (renamed AIG) and verbally notifies them so as to not leave a paper trail. In our experience, AIG may be prepared to accept a verbal notification.
- POL should make expressly clear to AIG that the notification is subject to litigation privilege (this should help protect against disclosure under FOIA).

Policy

In essence the policy provides cover against:

- Written demands for compensation or formal proceedings (civil, criminal or regulatory) brought against the D&Os which allege "*wrongful acts*". "*Wrongful Acts*" is defined (3.56) to include breach of duty *qua* director, breach of s260(3) Companies Act, employment practice violations, Sarbanes Oxley violations, and securities claims.
- Securities claims (defined in 3.45 essentially as violations of securities rules/regulations and derivative actions by shareholders)

- Investigations (3.26) – formal investigation into the affairs of the company or the D&Os by a regulator or government body "*empowered by statute to investigate the affairs of...*" the company and D&Os.
- Derivative claims under P11 of Companies Act.

The policy does **not** provide cover for defamation claims against D&Os.

Extensions to Cover

There are also several extensions of cover, most of which do not add materially to breadth of cover, going more to the types of financial loss which can be recovered once the policy is triggered.

However, it is worth highlighting the Self Report Extension (2.14). Defined in 3.46 – 3.47, this is triggered by an internal enquiry by the company into the affairs of the company following a "*...formal written notification to an official body [regulators or government bodies empowered by statute as above]... informing them of an actual or suspected material breach of an insured person's legal or regulatory duties if and to the extent that such enquiry is requested by an official body.*" We do not think this has been triggered yet.

Notification Obligations

Under Clause 5.5, POL has to notify "*any claim*" as soon as practicable, but must be during the policy (or relevant discovery) period.

POL *may* also notify circumstances which are "*reasonably expected to give rise to a claim*". It is difficult to say with certainty what this means legally other than the fact that it is an objective test. However, the threshold for notifying something is likely to be a realistic possibility: something more than at least possible and less than more likely than not. The usual advice in these circumstances is, if in doubt, notify. The provision specifies what information the notice must contain, to whom and how it must be notified. Notice must be in writing, but we think that AIG would be prepared to waive that formality and allow POL verbally notify.

FOIA and privilege

Notification to an insurer is potentially subject to disclosure under FOIA. Please note FOIA applies to all information – verbal or written.

There is an exemption from disclosure under FOIA where information is privileged. Notification to an insurer, where there is a known claim, is usually subject to litigation privilege.

However, litigation privilege only applies where "litigation" is actually contemplated, not where there is just the risk of a hypothetical claim. In the context of claims against a director, we have arguably not yet reached the stage of contemplated litigation, rather we are just dealing in hypotheticals.

Nevertheless, we would rely on Alan Bates' comment that he is aware of SPMRs lining up claims against POL's directors as evidence of contemplated litigation.

As POL is in the nexus between live litigation and theoretical claims, we recommend verbal notification to AIG so to balance insurance protection against brand protection.

Kind regards
Andy

Andrew Parsons

Senior Associate

for and on behalf of Bond Dickinson LLP



Direct: GRO

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Fax:

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From: Susan Crichton: **GRO**
Sent: 29 July 2013 11:16
To: Piero D'Agostino; Parsons, Andrew
Subject: RE: Proposed letter to JLT re: Horizon

Where are we on this?

Thanks
Susan

From: Piero D'Agostino
Sent: 25 July 2013 14:29
To: 'andrew.parsons': **GRO**
Cc: Susan Crichton
Subject: RE: Proposed letter to JLT re: Horizon

Andy,
This is the D&O policy. Can you please check?

Piero

From: Susan Crichton
Sent: 24 July 2013 20:27
To: Piero D'Agostino
Cc: 'andrew.parsons': **GRO**
Subject: Re: Proposed letter to JLT re: Horizon

Thanks
Susan

From: Piero D'Agostino
Sent: Wednesday, July 24, 2013 07:07 PM
To: Susan Crichton
Cc: 'andrew.parsons': **GRO**
Subject: Re: Proposed letter to JLT re: Horizon

I should be able to get it in the morning.

From: Susan Crichton
Sent: Wednesday, July 24, 2013 06:59 PM
To: Piero D'Agostino
Cc: 'andrew.parsons': **GRO**
Subject: Fw: Proposed letter to JLT re: Horizon

Piero - do we have a copy of the insurance policy?

Thanks
Susan

From: Parsons, Andrew [GRO]
Sent: Wednesday, July 24, 2013 06:51 PM
To: Susan Crichton
Cc: Piero D'Agostino
Subject: Re: Proposed letter to JLT re: Horizon

Susan

The letter does nothing more than put POL's insurers on notice of the Horizon issues. It's very bland. My only hesitation is whether this is strictly necessary to do. From a PR perspective, it would look bad if this got into the public domain - sign of guilt / concern from the board.

I'd be happy to have one of our insurance lawyers look over the D&O policy to see if POL is required to notify the insurers. If not, then we might want to hold fire on this.

I would recommend tweaking the first paragraph. The current version suggests that there are problems with Horizon - when at present there are no systemic problems to report.

It should just say that the press have reported on "potential issues with Horizon" rather "financial discrepancies have occurred in Horizon". Apologies, the letter is a pdf so I can't make changes to the document itself.

Kind regards
Andy

Andrew Parsons
Senior Associate
Bond Dickinson LLP
Blackberry: [GRO]

----- Original message -----

From: Susan Crichton [GRO]
Date: 24/07/2013 09:17 (GMT+00:00)
To: "Parsons, Andrew" [GRO]
Cc: Piero D'Agostino <[GRO]>
Subject: Fw: Proposed letter to JLT re: Horizon

Andy could you take a look at this its a draft letter to go to our insurance broker re the horizon issue. I have not looked at it.

Thanks
Susan

From: Charles Colquhoun
Sent: Wednesday, July 24, 2013 07:23 AM
To: Chris M Day; Susan Crichton; Alwen Lyons; Piero D'Agostino
Subject: Proposed letter to JLT re: Horizon

Been discussing with Miller what we should tell JLT re: Horizon issues. We have worked up the attached

version - which hasn't been sent - any comments? I think we should send it this week so would welcome comments over next day or so.

Regards

Charles

Charles Colquhoun | Head of Corporate Finance

First Floor - Old Street Wing, 148 Old Street, LONDON, EC1V 9HQ



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