

How the right broker can save you from a £m claim

How Paul Evans at Butler Evans helped to quash a potential £5m Professional Indemnity claim against a Design & Construction company.

The problem

A Midlands-based construction company and power engineering consultants, became caught up in a large, drawn-out insurance claim relating to delays and overruns in a complex contract to install electrical connectivity for the onshore side of a major offshore windfarm project. These delays led to a claim for £5m for “loss of profit”, made by the principle contractor against The client. Faced with this claim, The client turned to their existing insurance broker they had used when taking out their policy who just passed them through to their Insurer for advice. The Insurer’s initial response was that they were not covered for this type of claim and that “you are on your own”.

Their broker did little to try to change their insurer’s mind, and it soon became apparent that their broker had little understanding of the detail of the exclusions of the policy and had originally sold the policy just on price, not drawing attention to the potential weaknesses of the cover, particularly given the complexity of contracts that the client typically works on. So, every business’s nightmare – finding that your business insurance doesn’t appear to be worth the paper it’s written on and that you’re staring at a multi-million-pound claim which would finish your company.

The proposed solution

Paul Evans was given the opportunity to look at this potentially catastrophic situation. Paul took a cool, calm, rational look at all the facts of the case and talked to the client.

“The first thing I did was to act as a mediator”, says Paul, “diffusing a situation where the client was all set to mount a legal challenge against their insurance company. With the resources at the disposal of a large insurance company, this will always be an unfair fight and invariably just lead to a protracted, difficult battle.”

Having restored dialogue and a level of cooperation from the insurance company, Paul painstakingly looked at all aspects of the claim and the details of the client’s insurance policy. He established that the policy DID cover certain aspects of the claim and started to build a case around that. Paul used his expert knowledge of the wording of policies and of custom & practice within the insurance industry to establish that “consequential losses”, a phrase covered in the policy, DOES cover “loss of profit”, the key area being claimed against the client. The client’s broker had completely missed this point and had therefore failed to support the client in their claim. On this basis, Paul could now work with the insurance company to get them to fight the claim.

The implementation and outcome

Through careful negotiation, facilitated by Paul, the insurance company came around to supporting the client in defending the claim. They accepted that “loss of profit” was indivisible from the rest of the claim and was therefore within the scope of the policy cover.

The team at the insurance company then put together a comprehensive defence of the claim and agreed to cover the majority of the legal costs incurred in the case, a large six-figure sum. The principle contractor has tacitly accepted that the case is not winnable and has now left the client in peace.

Since then, Paul and Butler Evans are now the ongoing broker of choice for the client. A new Professional Indemnity insurance programme has been set up with a different insurer, providing more appropriate Design and Construction insurance cover. Paul is providing regular advice and support to the client on all risk management and insurance matters.

Learning from the experience

There are several points to be noted from this bruising case:

1. If, in the face of a tough-looking claim against you your current broker doesn’t support you, seek a second opinion!
2. If your business insurance cover has been chosen purely on price, then the balance of correct cover versus value for money may not be appropriate.
3. A negotiated settlement can be preferable to a legal fight, particularly as insurance companies have far greater resources than you do.
4. A good insurance broker should be able to act as a mediator, bringing all parties into dialogue to reach a solution.
5. The devil is in the detail – and only a broker with the right level of knowledge and experience of policy cover and wording in your sector will be able to uncover the vital detail that will make the difference in any claim.

“If you recognise any of these points in relation to your own business insurance or if this case study reflects a situation you are currently facing, then get in touch with me, Paul Evans, for a no-obligation chat. Email me at enquiries@butlerevans.co.uk or call me on 0845 431 0448.”

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