

IS BUSINESS FACING A LIABILITY CRISIS?

TUESDAY, 20 MAY 2008

Lord Levene, Lloyd's Chairman

Good morning and a very warm welcome to our 360 Live Debate.

Ladies and gentlemen: we live in an increasingly incomprehensible world. One where a Connecticut secretary suffering from the winter blues sues her ex-employers for 33 million dollars because they wouldn't give her a desk by the window.¹ Only in the US, right?

Unfortunately not. This is also a world where a Canadian woman successfully sued her drug dealer for negligence and for twenty-five thousand pounds after what he sold put her in a coma.²

Perhaps most worryingly, it is a world where - in the UK - a junk mail distributor claims that a homeowner's letterbox snapped shut, damaging her finger. She subsequently contacted a personal injury and loss solicitor who wrote to the homeowner and submitted a claim.³

But behind the amusing stories and the stereotypes, liability is becoming a serious business for companies. In our annual survey of Lloyd's underwriters at the start of the year, the majority agreed that compensation culture is now a serious issue.⁴

So is business facing a liability crisis? As the world's leading specialist insurance market, understanding risk lies at the heart of what we do at Lloyd's. Working with the Economist intelligence Unit, Lloyd's published a comprehensive study last week on how the leaders of modern organisations perceive and respond to corporate liability risk. While we may not yet be at crisis point, the results show that global business leaders are worried – and that litigation and liability risk is impacting company operations and strategy.

First, most business leaders say that the burden of litigation – and the threat of litigation – is becoming problematic.

¹ New York Daily News, 26 May 2007.

² BBC, 'Canadian drug victim sues dealer', 10 January 2008.

³ Daily Mail, 'Homeowner sued after woman delivering junk mail claims she injured her hand in letterbox', 21 February, 2008.

⁴ Lloyd's Annual Underwriter Survey, January 2008

Indeed, dealing with liability risk now consumes a worryingly high 13 percent of board time – and a level of company resources which many business leaders are uncomfortable with.

The overall trend is towards more action from a broader range of stakeholders and you don't have to look far for examples. Dresdner was sued by an employee in New York for 1.4 billion dollars in a sex discrimination case two years ago, while directors in the UK are trying to get to grips with new legislation such as the Corporate Manslaughter Act.

Last year Glaxo-Smithkline faced a 30 million pound damages claim in the UK when customers claimed the antidepressant they were using was addictive. At the same time, product recall notices now seem like a weekly occurrence and their total number in Europe alone grew by 50 per cent last year.

Meanwhile, groups of angry investors calling for management heads are becoming commonplace and shareholder activism is forecast to rise again this year. Yahoo has been in the news recently as lawsuits from shareholders multiply after the management refused to entertain a merger offer from Microsoft.

The fact that 15 percent of companies have seen lawsuits brought by regulatory authorities is perhaps also indicative of change in the strategies of enforcement authorities – who are increasingly willing to initiate criminal actions. Here in the UK, the FSA has made known that it has more than doubled the number of criminal prosecutors pursuing insider dealing and other illegal market activity.

Action by special interest groups is also on the rise, and has been experienced by one in ten companies in our research. US courts, for example, are often a popular destination for lawsuits from environmental groups, even if the supposed incident happens in another country.

Second, business leaders in Europe fear that our continent is increasingly in the grip of a compensation culture which was previously seen to be confined to the US.

There are two main concerns. First, that as globalisation takes hold, companies outside the US are growing more willing to litigate generally. Second, that US courts are becoming more willing to rule on cases that might have once been considered extraterritorial.

The message from our research is that European businesses in particular need to plan and prepare for the prospect of increased litigation.

Third, the findings confirm something which I have suspected for some time: litigation and the fear of it is driving up prices and strangling innovation.

Our research reveals that more than one in three companies has increased the prices of products and services in the past three years as a direct result of increased litigation risk and the associated costs. Even more expect to have to do so in the next three years. Litigation is now effectively a hidden cost for the consumer and this is a trend which we can expect to accelerate.

But perhaps most worrying of all, a third of companies report having become more bureaucratic and more risk averse, as a direct result of liability issues.

In particular, many businesses may be avoiding opportunities in new products and markets which they would have otherwise embraced.

Success in business requires companies to innovate and to ensure that they have the agility and rapid decision-making required to seize opportunities as soon as they arise. The looming threat of litigation, however, can drastically restrict the ability of companies to develop these capabilities.

Put simply, fear of future litigation appears to put constraints on the ambitions and growth prospects of many businesses around the world – something that, in aggregate, could have a devastating economic impact.

At Lloyd's, we know that taking risks is part and parcel of doing business. But we believe that there may be wide-ranging benefits for boards in thinking differently about the liabilities their companies face. We do not pretend to have all the answers, but we hope that our discussion today might go some way to encouraging this process. For our part, Lloyd's remains equipped and ready to help companies to take on and manage their changing risks.

We are honoured to have an absolutely first class panel of speakers to lead our debate today and we are most grateful for making time in your busy schedules to prepare for our event and to be with us. I will now hand over to our conference Chair to open the proceedings.

Clive Anderson is a former barrister turned stand-up comedian and television presenter. Perhaps most famous as the host of the Channel Four's *Whose Line is it Anyway*, he has more recently presented for both BBC Radio Two and Radio Four. Clive has had the Bee Gees walk out on him, a glass of water poured over him by Richard Branson, and famously asked Jeffrey Archer "Is there no beginning to your talents?"

Besides being a presenter, Clive is an accomplished writer and has written articles for *The Times* and *The Observer* among others. His television writing credits include *Not the Nine O'Clock News*, *Alas Smith and Jones* and *Around Midnight*.

Given Clive's reputation for razor sharp wit, you will notice that I have deliberately avoided any attempt at jokes whatsoever in my opening remarks. Clive, welcome and we look forward to you leading a lively debate this morning.