

# MARSH



MARSH MERCER KROLL  
GUY CARPENTER OLIVER WYMAN



## PENSION TRUSTEE LIABILITY INSURANCE

March 2009

**Teri Solomon**  
**Finpro**



marsh.com/terisolo



Why am I doing this again???



# AN OVERVIEW

- A HISTORY LESSON.
- WHAT INSURANCE IS REQUIRED AND HOW MUCH?
- WHAT IS COVERED AND WHAT IS NOT?
- SOME CLAIMS EXAMPLES.
- SOME FINAL COMMENTS.

# A HISTORY LESSON

- Very little clarity on what insurances Retirement Funds are required to have, other than the mention of Fidelity Guarantee insurance in S30(2)(u) of the Act.
- No assistance from the FSB or the Registrar's office. They asked us for help...
- An historical problem dating back to 1996 and the IRF/FSB Guidelines
  - Recognition of the following risks:
    - Fidelity (Theft/Fraud by officers of the Fund)
    - Computer crime
    - Errors and omissions (loss caused to the Fund itself)
    - Trustees personal liability (No protection in the Act despite PF130)

# STILL NO CLARITY ON THE LIMITS OF INDEMNITY

- Sufficiency of cover therefore remains the trustees decision – all the Auditor need do is confirm the insurance is in place.
- Some suggestions include:
  - 2X the largest death benefit
  - A % of assets ( 2% Plus 10% of Contributions)
  - A minimum of R1 000 000 per fund
  - Perhaps the right thing....PF130 is too wide to rely on a formula and each Fund is different.

# THE LIMIT OF INDEMNITY

- **We recommend the Trustees take into account:**
  - The size of the Fund – Umbrella Funds can buy single policies but consider higher limits.
  - The Risk Profile.
  - Who the Service Providers are and their SLA's
  - The Number and Calibre of Trustees
  - The Rules of the Fund re Indemnity provisions
  - The Risk Management policies/procedures
  - Compliance with PF130
  - The Cost
  - Remember the limit is an annual aggregate limit and includes DEFENCE COSTS

# THE FIDUCIARY POLICY IN MORE DETAIL

- **Insured:** The Fund, Trustees, Committee Members and the Principal officer
- **Date:** 12 months from inception
- **Retroactive Date:** 5 years from inception
- **Automatic Reinstatement:** Should be standard
- **Deductible:** Generally NIL
- **Premium:** As per agreed rates – **REMEMBER CHEAPER IS NOT ALWAYS BETTER**



# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ WHO IS COVERED?

- **The Insured** is defined as *“the Fund as declared”, and the “Trustees, Committee Members and Principal Officer of the Fund.”*

## ■ The Fiduciary risk is perhaps the most onerous.....

- Trustees duties and responsibilities to **all stakeholders** of the Fund.
- Increased focus on Corporate Governance with PF130.
  - The duty to act in good faith, with unfettered discretion and **no conflicts of interest.**
  - The duty to act with transparency.
  - The duty of Trustees to ensure they have the skills to “do the job” and the FSB’s relentless focus on Trustee Training.

Remember the liability is **PERSONAL...**

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ WHAT IS COVERED?

**(DEFINED EVENT 1) Negligence** which includes:

- *“claims against the Fund/Officer resulting from a **Wrongful Act** committed by an Officer”*
- A **Wrongful Act** is defined as *“breach of duty, trust, neglect, error, mis-statement, misleading statement, omission, libel/slander, unintentional breach of confidentiality”*

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ WHAT IS COVERED?

- **An Officer** is defined as “*a past or present Committee Member, individual, manager, Trustee, Administrator, Third party service Provider, Principal officer, Treasurer, Clerk, Employee or Agent of the Employer Company of the Fund (where applicable).*”
- The definition of **Loss** includes “*awards, damages and legal defence costs*”

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ WHAT IS COVERED?

### **DEFINED EVENT 2 - Fraud, Dishonesty which includes:**

- *“Loss of monies belonging to the Insured or for which they are responsible which is stolen by an officer, and*
- *“any direct financial loss sustained by the insured as a result of the fraud or dishonesty of an Officer”*

### **DEFINED EVENT 3 - Computer crime which includes:**

- *Loss resulting from a fraudulent or dishonest*
  - *Entry of data or change data elements within a computer system utilised by the insured and committed by an officer”*

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ THE EXTENSIONS

### **COST OF RECOVERY EXTENSION**

- In the event of a claim under Defined events 2 and 3 exceeding the limit of indemnity, the insurers will pay an additional amount of up to 3% of the sum insured for the recovery of the loss from the officer concerned.

### **UNIDENTIFIABLE OFFICER CLAUSE**

- No claim will be invalidated if the Insured cannot identify a specific “officer” whom caused the loss.

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ THE EXTENSIONS

### **CLAIMS PREPARATION COSTS**

- Costs required to be incurred in order to substantiate the value of any claim. Limited to 10% of the sum insured.

### **REINSTATEMENT OF DATA**

- Costs required to restore any electronic data – limited to 2% of the sum insured.

# THE FIDUCIARY POLICY IN MORE DETAIL

## ■ WHAT IS NOT COVERED?

- Actual or alleged bodily injury or death, or actual or alleged damage to physical property.
- Seepage, Pollution or Contamination of any kind
- Depreciation in value of any investment warranties (failure to effect a specific instruction is covered)
- Employment Related Wrongful Acts
- An Insured Officer's own fraud or dishonesty. Defence costs are still payable.
- Fines/Penalties

# TYPICAL CLAIMS SCENARIOS

- We are not that different to the rest of the World (Tillinghurst)
  - Mergers/terminations of Funds (S14 transfers).
  - Negligent Administration of Funds – Happening too often in SA
  - Lack of Disclosure to members – the number 1 risk in SA
  - Imprudent investments of assets and improper investment diversity
    - Reg 28
  - Conflicts of interest – PF130 now requires proper management thereof.
  - Breach of Fiduciary duty – Don't forget the common law.
  - Death Benefit payments.



# SOME IMPORTANT RISK MANAGEMENT ISSUES

- **DISCLOSURE OF CONFLICTS BY SERVICE PROVIDERS**  
(Especially if acting on their recommendations)
- **SEEK SECOND OPINIONS WHEN IN ANY DOUBT**
- **SLA WITH SERVICE PROVIDERS** (Insist on PI cover and be sure you are happy with the indemnity clauses)
- **RISK EVALUATION AT ALL LEVELS** – Separate Committee where warranted. Appoint external members if need be.
- Never Leave Sub Standard Performance/Service – waiting too long can have huge repercussions.
- **INVESTMENT POLICY** – Its not just a piece of paper. Is it “suitable for the membership profile of the Fund” – Annual review is critical
- **COMMUNICATE, COMMUNICATE COMMUNICATE.**

# THE MARSH FIDUCIARY LIABILITY FACILITY

<b>Underwriter</b>	:	Camargue Underwriting Managers
<b>Deductible</b>	:	Nil
<b>Rates</b>	:	Very competitive, calculated from Limit
<b>Retroactive cover</b>	:	5 years included automatically
<b>Other Markets</b>	:	AIG SA PI Admiral (Santam) London Market
<b>Underwriting considerations:</b>		Size of the fund (assets) Number and Calibre of trustees Administrators (self or external) Auditing procedures/compliance with PF130 Claims History

# SOME NB FINAL POINTS

- The Insurance is a Contract – with terms and conditions that must be adhered to.
- Make Sure the renewal of the policy is done timeously – every year - lapses in cover can have serious consequences.
- It's the Administrators job but the Trustees responsibility.
- NB to “enquire” from all Trustees before signing off Proposal Forms – its in your interests to do so.
- Hold Covered's are not the best solution. This time Insurers want to know Why.
- Premium Payment in accordance with the law. Onus is on the Fund to prove payment. 45 days in the policy wording...

# SOME IMPORTANT FINAL COMMENTS

- **Claims Notification – “As soon as practically possible” – always err on the side of caution and never delay.**
- **Request for additional Information is not the Insurers trying to be difficult. This is a “big” risk for them.**
- **A subjectivity is a condition precedent. Avoid them at all costs.**

FINALLY

If you are an Administrator....A PTL Audit may be on the cards???



If you are a Trustee.....stay Brave.

If you are a Principal Officer....PRAY.



**GOOD LUCK!!!!**



THANK YOU

DO YOU HAVE ANY QUESTIONS??



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