

The Chartered Institute of Loss Adjusters



Welcome

While you are waiting for the session to start please prepare your learning environment.



Headset instead of speakerphone



Everything connected? Plugged in? Working?



Turn off Mobile Phone



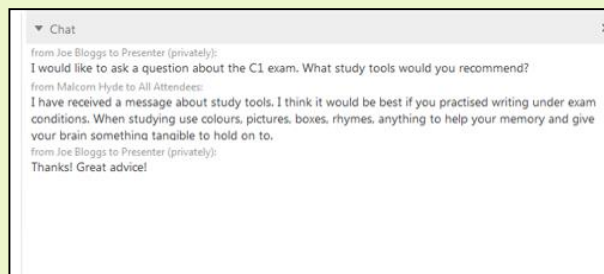
Notify colleagues that you will be in a training session



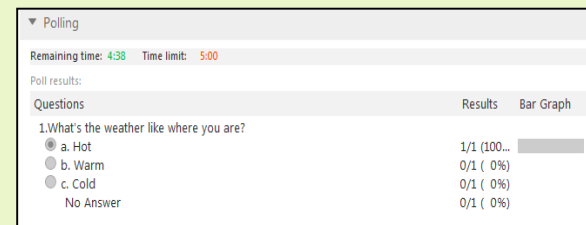
Ignore distractions or signals for attention

You may also wish to try out some of the WebEx Interaction Tools

Chat



Polling



Click the grey chat and polling icons on the top right hand side. They will appear blue once the interactive tool has been selected

The tool panels will appear on the right hand side of your screen by default



*The Chartered Institute
of Loss Adjusters*



Product Liability & Financial Loss



Speaker:

*Andrew Robinson ACII FCILA, Global Head of Product Liability
& Recall, MCL Global*



CIL A Webinar

Speaker



*Andrew Robinson ACII FCILA
Global Head of Product Liability & Recall
MCL Global*



Creating a successful learning environment



Headset instead of speakerphone



Everything connected?
Plugged in? Working?



Turn off Mobile Phone

Participate



Notify colleagues that you will be in a training session



Ignore distractions or signals for attention

Selecting an interactive tool

1. Click the grey interactive icons on the top right-hand side.



3. Click the arrows to expand each interactive tool. (**Please note:** *Polling will appear once the first poll has taken place*)

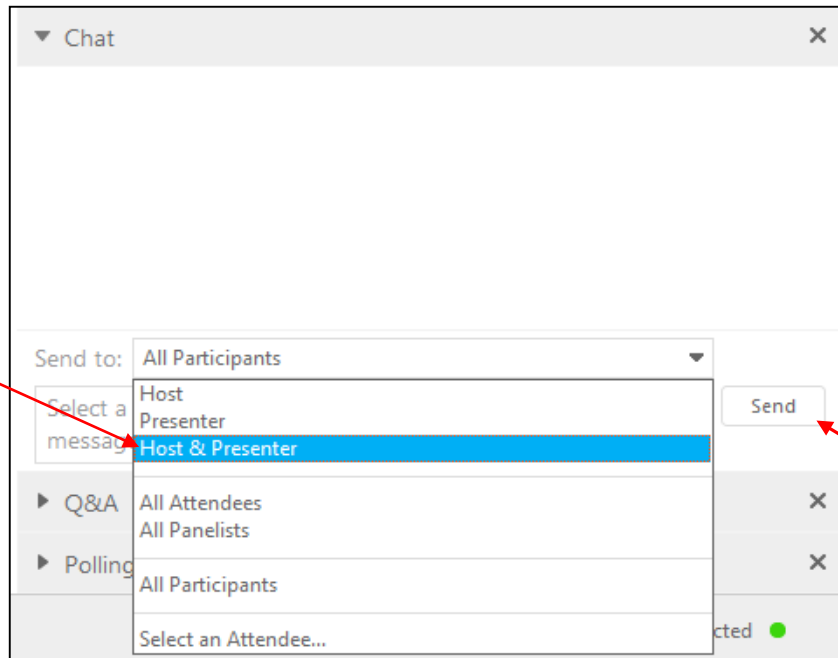
2. Interactive tools will appear blue once selected

Once selected, the tool panels will appear on the right hand side of your screen by default

WebEx Interactive Tools

Chat

Selecting **'Host & Presenter'** from the drop-down menu ensures both **Andrew and Adeola can see your responses**



Don't forget to **click "send"**

Send private messages to the **Host & Presenter**

WebEx Interactive Tools

Polling

Time elapsed: 0:12 Time limit: 5:00

Poll Questions:

1. What's the weather like where you are?

A. Hot

B. Warm

C. Cold

Submit

Your answer may be recorded.

Connected

1. Select your answer

2. Don't forget to click "submit"

Remaining time: 4:33 Time limit: 5:00

Poll results:

Questions	Results	Bar Graph
1. What's the weather like where you are?		
<input type="radio"/> A. Hot	0/2 (0%)	<div style="width: 0%;"></div>
<input checked="" type="radio"/> B. Warm	1/2 (50%)	<div style="width: 50%;"></div>
<input type="radio"/> C. Cold	0/2 (0%)	<div style="width: 0%;"></div>
No Answer	1/2 (50%)	<div style="width: 50%;"></div>

Submit

The poll has ended.

Connected

3. The speaker will allow up to 1 minute for responses to come through

4. Results will automatically appear on the screen. It can take up to 20 seconds once the poll has stopped, depending on the number of responses

The Chartered Institute of Loss Adjusters



Please note this webinar will be **recorded**. However, we will only send a link out following review of the content and so ***we cannot guarantee that attendees will receive a copy***



TECHNICAL DIFFICULTIES



If you experience any technical difficulties during the webinar, please **contact Adeola**



The **quickest method** is to simply **send a message via chat** to the **HOST** (not the presenter).

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Product Liability & Financial Loss



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CIL A Webinar

The Scope of Today's Session

- What sets Product Liability Claims Apart
- Routes to Legal Liability, contract terms and statutory implied duties
- Policy coverage, conditions and exclusion & Financial Loss
- The Investigation Process



Poll

Have you previously investigated a product liability claim?

- Yes
- No



Poll

How many of this type of claim do you handle during the year?

- 0
- 1-5
- 5-10
- 10+



Product Liability – How does it arise?

As with any liability claim it can arise in 3 ways:

1. Common Law (usually negligence)
2. Contract
3. Statute



However most product liability claims involve:

1. Contract – The Terms & Conditions
2. Statute (or statutory implied duties)
 - a. Sale of Goods Act 1979
 - b. The Sale & Supply of Goods Act 1994
 - c. Consumer Protection Act 1987

Duty of Care – Negligence Liability

- Requires fault (i.e. negligent design or manufacture)
- Cannot claim for product itself
- Can claim for “damage to other property”, injury
- Contributory Negligence



Contract

- Most common route of claim
- No fault liability
- Liability extends to foreseeable consequences of a breach of contract
- Financial Loss is recoverable
- More onerous Duties





Sources of Contractual Obligations

Bespoke Contract

- Terms and Conditions
- Specification

Statutory Implied Terms

- Fitness for Purpose
- Satisfactory Quality
- Correspondence with Description



Consumer Protection Act 1987

- S2 (1) of the CPA states that: “...where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies [i.e. the producer] shall be liable for the damage.”
- A product is “defective” “if the safety of the product is not such as persons generally are entitled to expect...”



Who can sue & be sued under the CPA 1987?

S.5 of the CPA applies to injury but restricts damage to any loss or damage to property which is for private use, occupation or consumption.

S2(2) provides for the claim against the Producer: defined as :-

- manufacturer
- the importer into the EU
- those who hold themselves out as producers (own brander)



Limitation at Common Law



- Limitation Act 1980/Latent Damage Act 1986
- Right of Action accrues when the breach of duty occurred/injury or damage occurred
- Injury/Damage must have arisen, however, as otherwise we have an economic loss issue
- Limitation is a simple 3 years for injury
- 6 years for property damage

Limitation under Contract

- Limitation Act 1980/Latent Damage Act 1986
- Right of Action accrues when the contract is breached
- Injury/Damage must have arisen, however, as otherwise we have a product only issue
- Limitation is a simple 3 years for injury
- 6 years for property damage



Limitation under CPA 1987

Personal injury claims must be brought within three years of the date on which the cause of action accrued, or (if later) the date of the knowledge

Damage to property - Such a claim must be brought within three years from the date on which the cause of action accrued or the date of knowledge of the claimant

10-year long stop provision

The period of 10 years runs from “the relevant time”. In effect when the product was last supplied by someone who was a producer.



“Typical” Policy Wording

- The Operative Clause
- The Policy Conditions
- The Policy Exceptions
- The Definitions
- The Extensions to Cover



The Operative Clause

“We will indemnify the insured against legal liability to compensate in respect of accidental personal injury or damage to property which arises in connection with the business in which happens during the period of insurance and within the territorial limits”

- Legal liability
- Accidental
- Personal injury or damage to property
- In connection with the business
- During the period of insurance
- Within the territorial limits



How does it all fit together?

The Operative Clause (or insuring agreement)



The Conditions



The Endorsements



The Exclusions



Policy Definitions



- “**Occurrence**” is defined as – an act, event...or series consequent on or attributable to one source or original cause which during the period of insurance results in bodily injury or property damage.
- **Damage** - Physical loss, destruction or damage
- **Product supplied** - Anything which is manufactured, sold, supply, processed, altered, treated, repair, service, tested, installed, constructed, erected or transported by the insured are one behalf of the insured it is no longer in the insured’s custody or control

Policy Conditions

The Insuring Agreement applies subject to the policy terms and conditions and exclusions.

The most noteworthy conditions are the ***reasonable precautions*** and ***claims procedure*** conditions which are there to protect insurers from the Insured recklessly courting danger in relation to particular circumstances that could lead to a claim and to prevent insurers from suffering prejudice in relation to the conduct of the claim.



Policy Exceptions

There are two types of exceptions:-

1. Those losses covered by alternative insurance
2. Those losses that are uninsurable



Policy Exceptions



We will not provide indemnity in respect of:-

- Personal injury to any employee arising out of and in the course of employment with the insured
- Damage to property owned by the insured or in the insured's custody or control
- Damage to or the cost incurred by anyone in repairing, moving, replacing, reapplying, rectifying reinstating product supplied (other than product supplied under a separate contract)
- Recalling or making refunds in respect of product supplied

Policy Exceptions

We will not provide indemnity in respect of :-

- Advice, consultancy, design, formula, specification, certification or testing performed separately for a fee under a separate contract
- Liquidated damages, penalty clauses or fines
- Liability imposed on the insured solely by reason of the terms of any contract conditions or agreement in connection with product supplied



Financial Loss

Financial loss shall mean a pecuniary loss suffered by any party other than the Insured and not caused by personal injury or damage to property

Exceptions (apply to the public and product liability section of the policy in addition to the general exceptions)



Financial Loss



- Financial Loss is usually an extension to the standard policy cover
- It usually attracts a higher policy excess
- It relates to liability to third parties, but is not consequent upon injury or damage
- It is usual to still exclude all costs associated with the removal and replacement of the Insured's product

The Investigation Process

- Follow the Product
- Be mindful of Commercial Pressures
- Traceability in key
- Cause
- Expert Evidence
- Preserve the Evidence



The Chartered Institute of Loss Adjusters



Please send questions
via **CHAT** and don't
forget to select '**HOST**
& '**PRESENTER**' from
the drop-down menu





CILA

This session has now **finished**.



After the session you will receive:

1. **A Survey Monkey feedback request.** Please complete and return.
2. Details of links and materials referred to in the webinar.

Thank you for your participation. **Best of luck!**

If you have any further questions, contact the Chartered Institute of Loss Adjusters at info@cila.co.uk



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