

PROFESSIONAL & EXECUTIVE LIABILITY

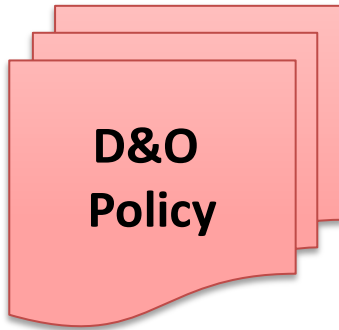
30 July 2014

Gibraltar Insurance Institute

Tom Stephenson

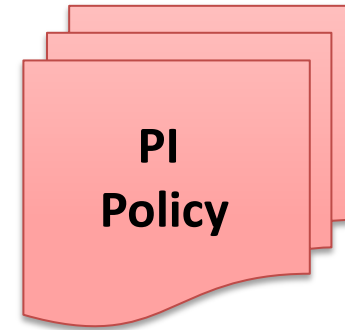


PI v. D&O



Executive Risk

Liabilities which arise in the management of a company



Professional Risk

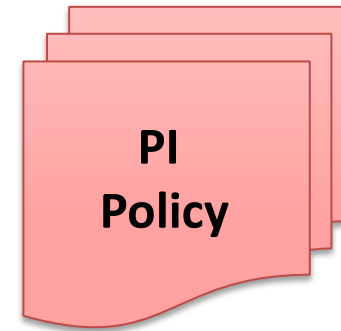
Liabilities which arise as a result of mistakes made when providing a service to a client

PI v. D&O



Executive Risk

Shareholders, employees,
creditors, regulators,
police/CPS, customers, other
directors etc.



Professional Risk

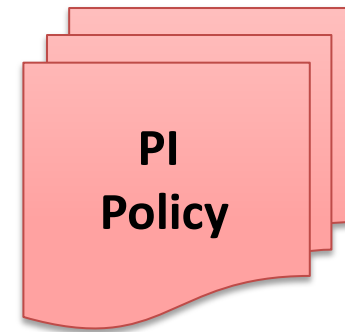
Clients, customers or
service users

PI and D&O – Combined Policies



Executive Risk

+



Professional Risk

DIRECTORS & OFFICERS (D&O)

Executive liability landscape



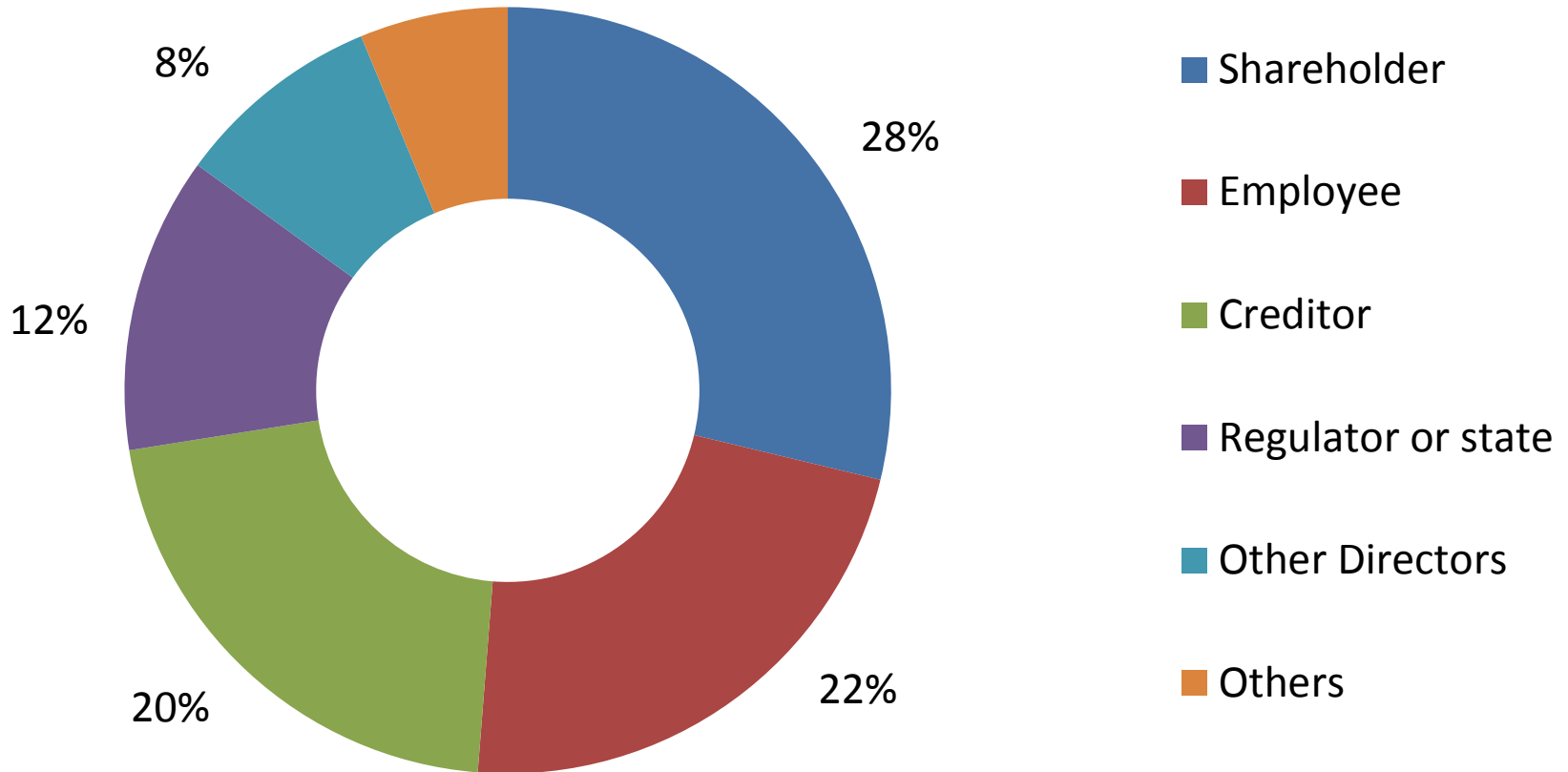
COMPETITION
COMMISSION

Financial Services
Commission



- Individual responsibility
- Economic conditions
- Legislative changes
- Regulatory enforcement

Source of claims



Based on claims made during the period 2009 to 2011 for a leading UK D&O insurer.

3 common myths...

**Directors have
limited liability**

**Senior management
without “Director”
title cannot be held
liable**

**The company
can indemnify
directors**

What is D&O?

- Protects the individual directors (and managers) of a company
- ***Alleged*** wrongful acts
- Defence costs, settlements and awards
- All risks
- 'Claims made'
- Worldwide (or worldwide ex-USA)

What is excluded?

- Proven fraud or dishonest conduct
- Pending or prior litigation
- Fines and penalties
- US Insured v. Insured
- Errors & Omissions

D&O Extensions

**Emergency
Costs**

**Outside
Directorships**

**Discovery
Period
&
Retired
Directors**

**New
Subsidiaries**

**Employment
Practices**

**Regulatory
Investigation
Costs**

What to look for...

- Ring fenced NED cover
- Retired director cover
- Auto-cover for new subsidiaries
- No blanket North America exclusion
- No retro date
- No major shareholder exclusion
- Extras –
whistleblowing
hotline, PR expenses

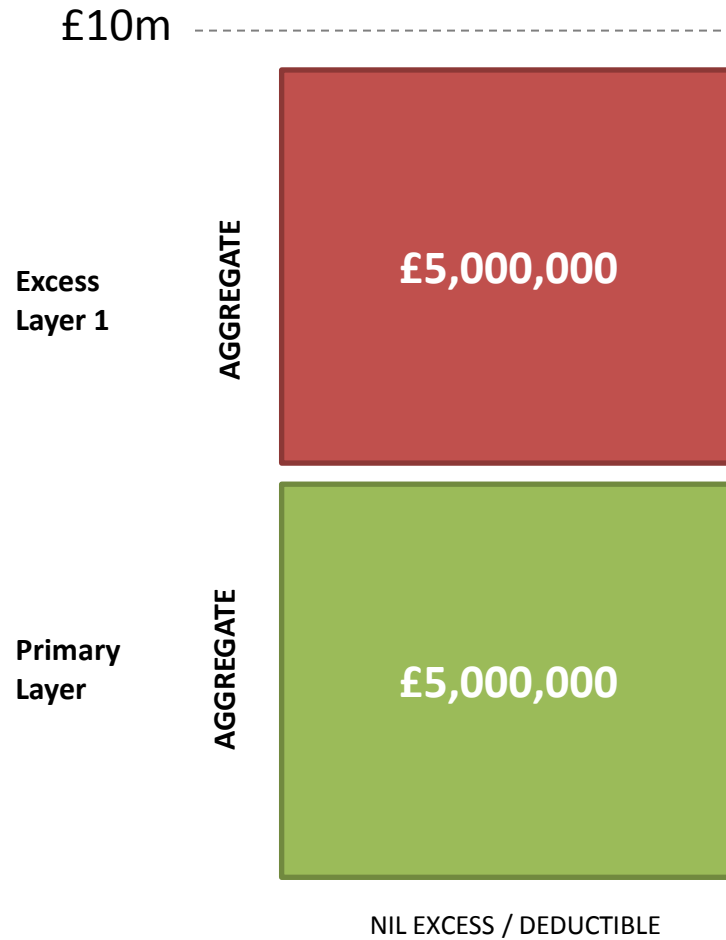
Structures and limits

Structures and limits

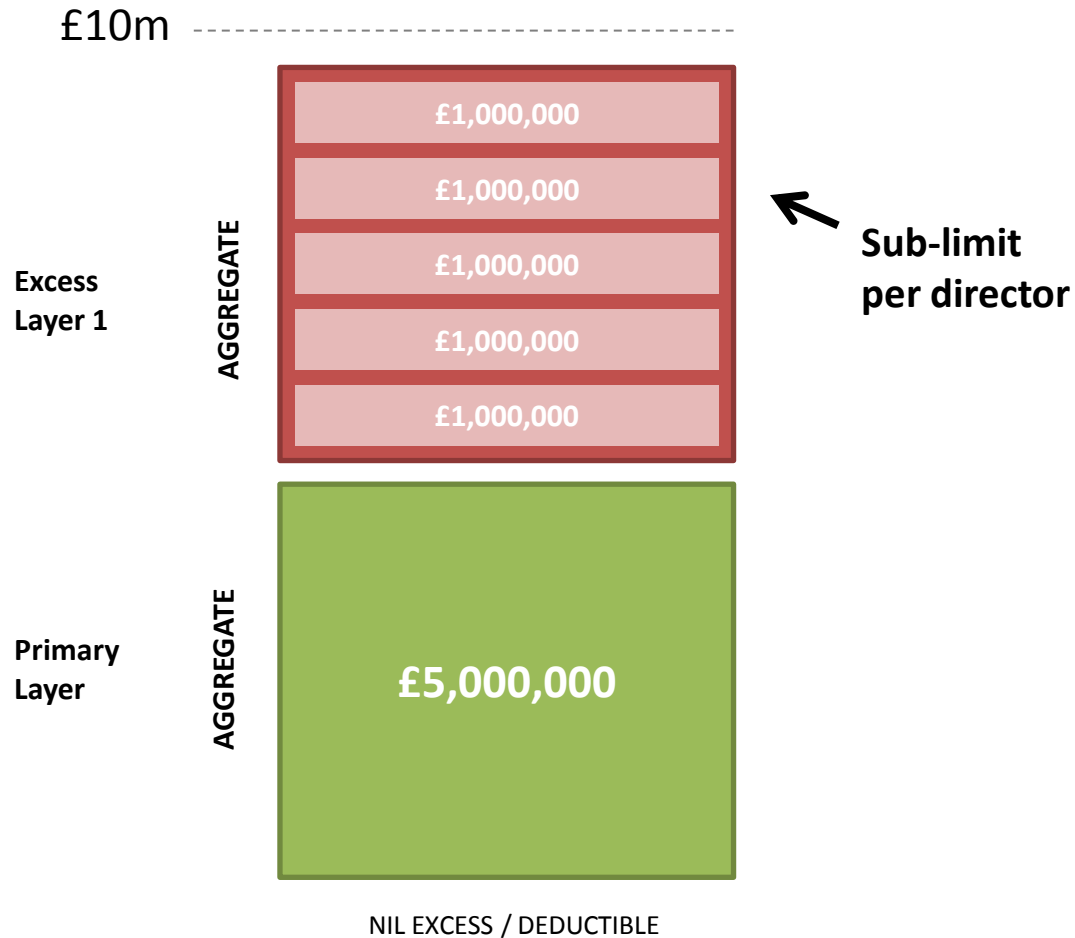


- ☑ Industry of the insured
- ☑ Case law and claims examples
- ☑ Size of the company
- ☑ Number of directors
- ☑ Wealth of directors

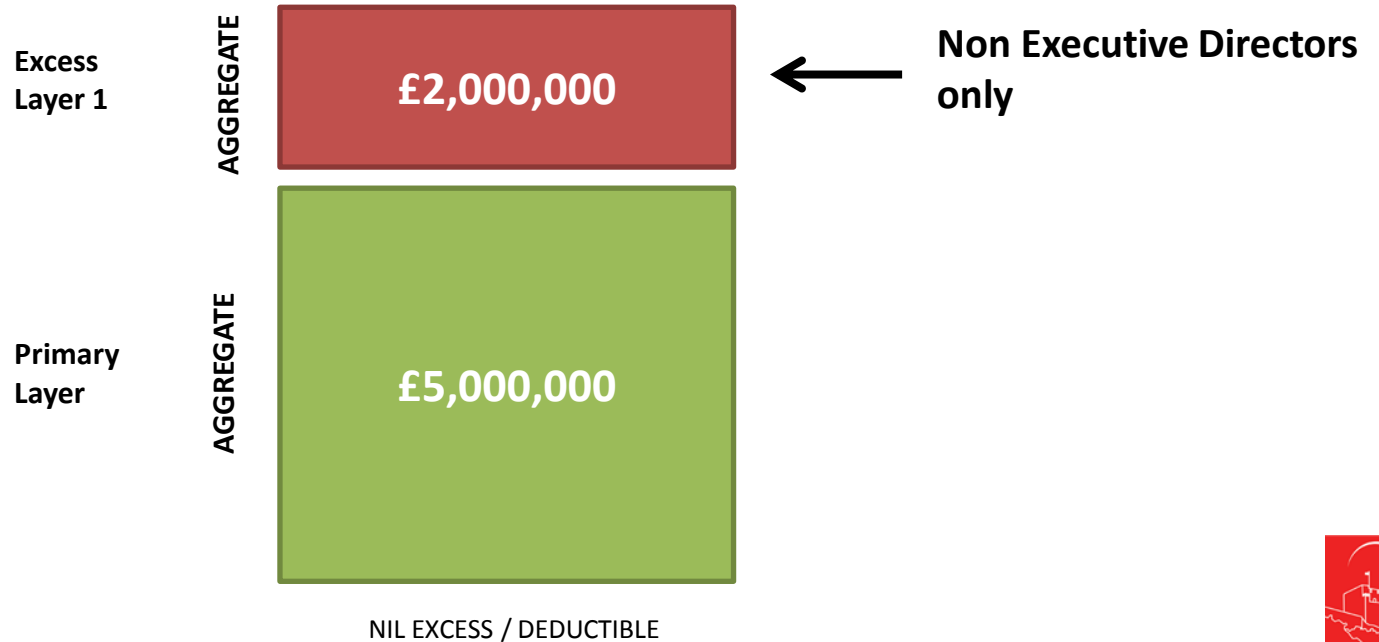
Structures and limits



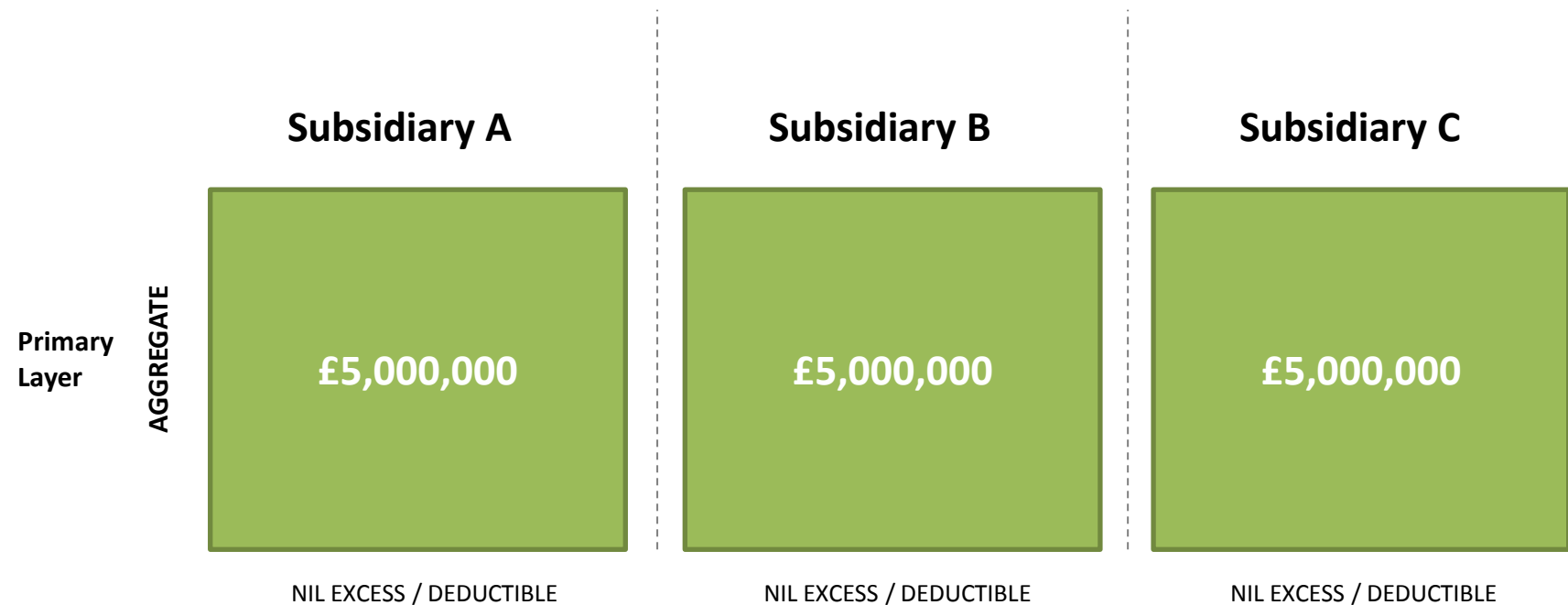
Structures and limits



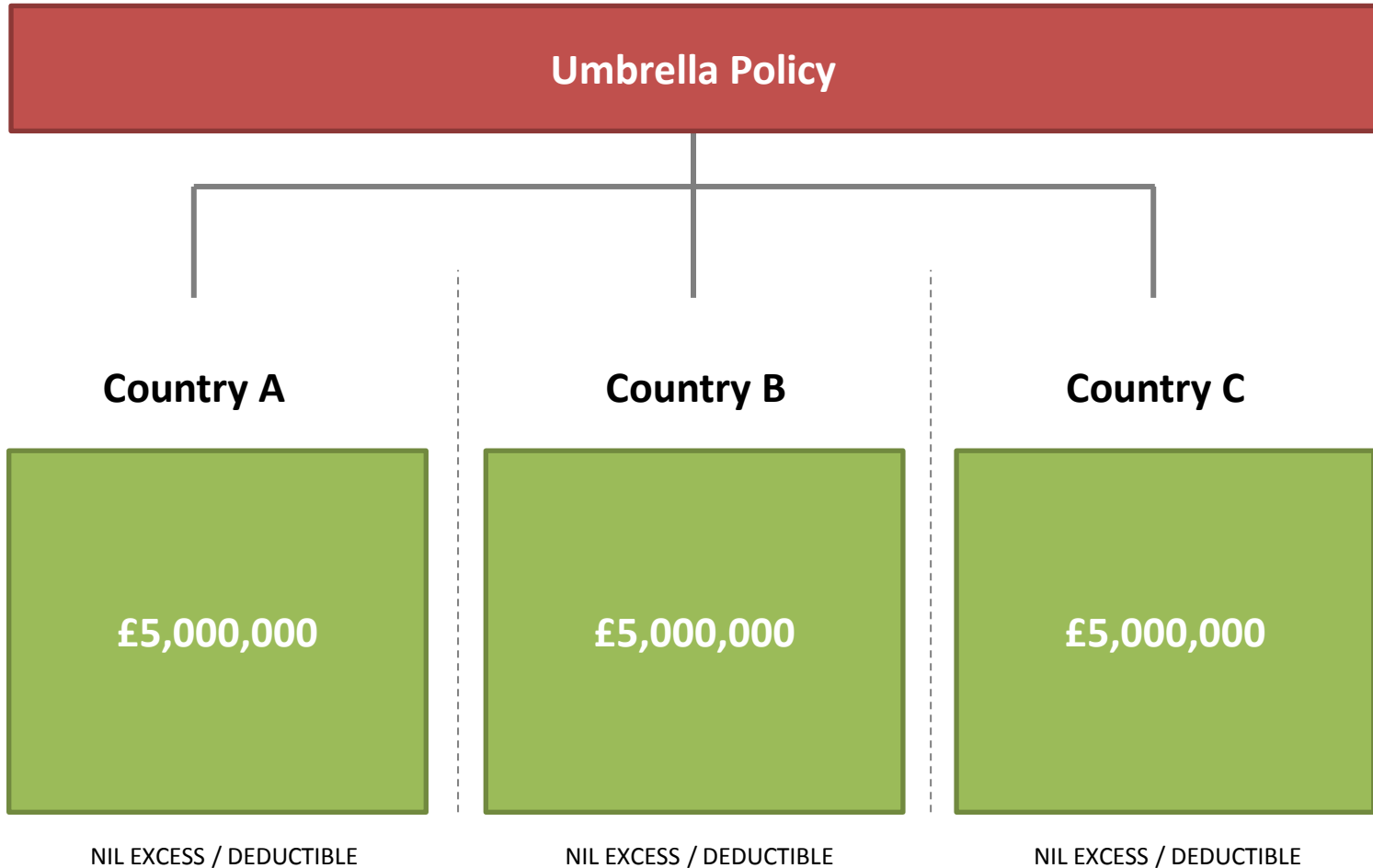
Structures and limits



Structures and limits



Structures and limits



Choosing the right insurer



- Wordings (e.g. tailored industry wordings)
- Claims expertise and experience
- Geographical ability
- Security

Preparing the submission



- Legal status
- Business activities
- Board experience (CVs)
- Corporate governance
- Geographic spread
- Financial strength
- Public listings

PROFESSIONAL INDEMNITY (PI)

What is PI?

- Covers claims against professionals for negligence
- Normally only clients or customers can claim
- Must be a 'duty of care'
- Defence costs, damages and settlements
- 'Claims made'
- Covers individuals and the firm itself

Who buys it?



- Lawyers
- Accountants
- Architects
- Financial advisors
- Medical practitioners
- Miscellaneous trades
- Charities

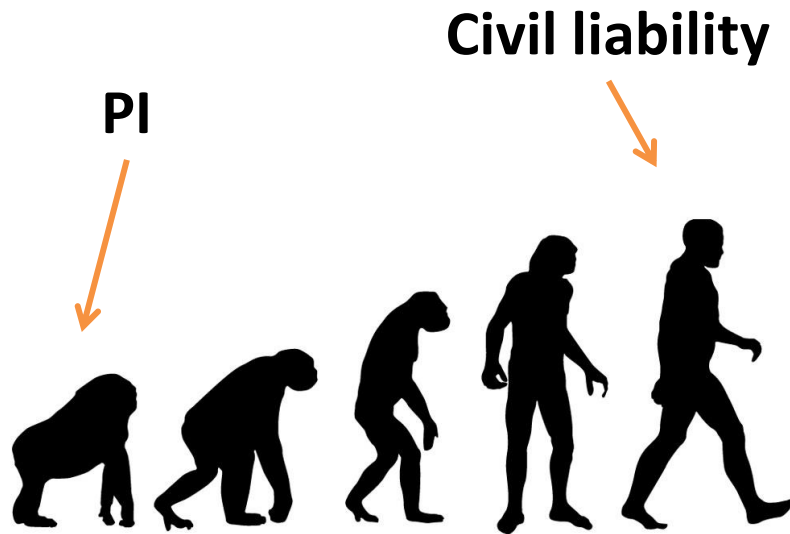
Watch the operative clause!

“negligent act, negligent error or negligent omission”

≠

“negligent act, error or omission”

From PI to Civil Liability



- Libel, slander and defamation
- Intellectual property
- Confidentiality
- Loss of documents
- Unintentional breach of contract
- ‘any civil liability’

Exclusions

- Employer's liability, products liability, motor liability property owners liability
- Bodily injury/property damage, except where caused by a breach of professional duty
- Contractual liability (can be amended)

Exclusions

- Insolvency/bankruptcy of insured
- Circumstances known at inception
- Fines and penalties
- Claims by financially associated parties

Structures and limits



- ☑ Industry of the insured
- ☑ Nature of advice
- ☑ Case law and claims examples
- ☑ Fee income
- ☑ Territories

Choosing the right insurer



- Wordings (e.g. tailored industry wordings)
- Claims expertise and experience
- Geographical ability
- Security

Preparing the submission



- Business activities
- Qualifications & experience of team
- Fee income
- Composition of clients
- Geographic spread
- Complaints and prior losses

Questions