

# Fire Engineers & PI Insurance

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# Agenda

- The insurance market
- Fire safety claims case studies – Lacrosse
- Lacrosse insurance implications
- Managing PI cover
- Emerging risks for Fire Engineers

What's happening in the PI  
Insurance market?

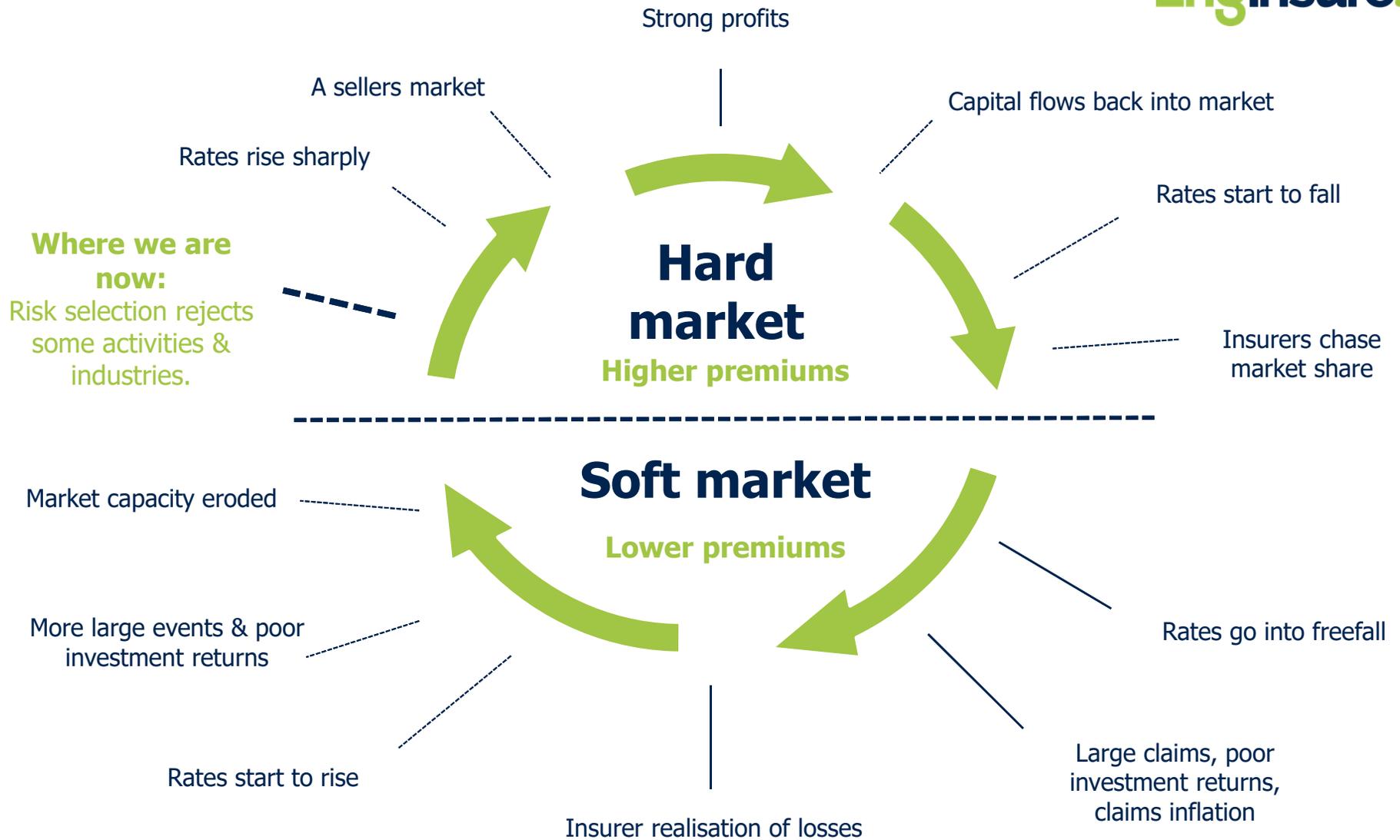
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# PI Insurance market trends

## Why are insurance premiums increasing?

- Claims frequency / major global losses
- Reinsurance costs escalating
- Non-compliant building materials / property defects
- Hardening market – reducing capacity & below target profitability





# PI Insurance market trends



Choice and capacity  
in the London  
insurance market  
has decreased by

**40%**

# Case example: Lacrosse fire.

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# Lacrosse fire

## The cause

- Jean Francois Gubitta failed to extinguish his cigarette butt.
- When the fire crew arrived 6 minutes after activation of a fire alarm, the fire was travelling rapidly up the external wall cladding and spreading fast.
- Six minutes later the fire reached the roof.
- The rapid spread of fire was said in evidence and accepted to be the direct result of the combustion behaviour of the "Alucobest" aluminium cladding.

# Lacrosse fire

## The response

- Strata policy indemnified owners of the building / units for fire damage.
- Indemnified owners for loss of rent.
- Insurance **did not indemnify for undamaged cladding** which was ordered to be replaced.
- Legal action was entered into by the 'Insured'(insurer) to recover costs against the builder.

# Lacrosse fire

## Apportioning the liability

Fire engineer – 39%.

Building surveyor – 33%.

Architect – 25%.

Mr Gubitta – 3% (not enforced)

### What jumps out here is:

1. the fire engineer having a higher level of liability than the surveyor in this case
2. the builder as Head D&C contractor holding no liability, and
3. the high level of liability of the architect.

# Lacrosse fire

## Judge's reasoning behind apportioning of liability

In placing all the liability on the subcontractors, the judgment read that:

*"...given their level of qualifications and the nature of their responsibilities, it would be fair to expect fire engineers, building surveyors and architects (in that order) to have a better grasp than building practitioners of fire risks and the application to the BCA of those risks..."*

# Lacrosse fire

## Judge's reasoning behind apportioning of liability

As well as breaches of contract, the Court held that the conduct of the builder, surveyor and fire engineer were also misleading and deceptive under the Australian Consumer Law.

The developer was not joined to proceedings due to it having novated all contracts to the builder.

# Cladding - Lacrosse fire

## Underwriting Implications – fire engineers

### Previously

- Fire engineers have a limited role in construction projects with 'materials risk' going to surveyors

# Cladding - Lacrosse fire

## Underwriting Implications – fire engineers

### *A re-think after Lacrosse*

- Lacrosse ruling gives significant responsibility to fire engineers who provide full assessments, to **proactively investigate and provide an assessment on the whole building for fire hazards, including construction materials** – not just areas identified by surveyors as presenting a high fire risk.
- **Fire engineers must be product experts** in construction materials when it comes to fire risk – they **cannot relinquish that responsibility to surveyors or architects**.
- The high apportionment of liability to the Lacrosse fire engineer, was based on their failure to warn the builder, the surveyor and architect, that cladding was non-compliant, and propose an alternate solution.
- Do you provide **full fire engineering assessments**? If yes, this work is categorised by underwriters as **high risk**.

# Lacrosse fire

## Underwriting Implications – Surveyors

- Surveyors have an implied 'design responsibility' to confirm the architect's design will satisfy the BCA.
- Cannot rely on industry practices as a basis for not carrying out thorough research in the approval process.
- Lacrosse judgement makes specific reference to the fact that surveyors need to be product experts - if they approve a product, they need to know what's in it.
- One of the surveyors used as an expert witness described surveyors as generalists – "we know a little bit about a lot, but we don't know a lot about anything in particular".

*A profession describing itself as being non-specific in its expertise, but can be exposed to litigation on the technical details of products and materials, is a tough risk from an underwriters perspective.*

# Managing PI.

# Protecting your indemnity if facing cover exclusions

Notify the insurer or your broker, of any known circumstances that may give rise to a claim, **prior to the expiry of your current policy.**

## Notifying your insurer of known matters

- Some insurers may consider the cladding issue as a “known” matter relating to buildings already constructed.
- Local government investigations (Victoria & NSW) have identified many of these buildings already
- Exclusions are coming in at renewal of existing policies - to ensure that (as much as possible) fire engineers have retrospective protection, we recommend:
  - notifying your current insurer that you may have exposure, and
  - to be as specific as possible in naming the properties where this exposure may apply

If any specific claim arises in the future, your claim notification is already in place.

# **Adopt the Society of Fire Safety Practice Guide**

## **Facade/External Wall Fire Safety Design updated in March, 2019**

- Risk Management/product awareness - what steps can you demonstrate (other than above) that could provide an insurer some reassurance that you have minimal exposure going forward?
- The only other real protection is having limitation of liability provisions (and perhaps a capped maximum limit) in contracts.

# Protecting your indemnity if facing cover exclusions

## Scope of exclusions varies significantly:

- some are limited to combustible cladding on high rise buildings
- others relate to non-compliant building products generally

Consider your exposures here, as well as the current statutory requirements.

If possible, seek to **secure a policy without an exclusion of this type**, if unavoidable, seek to **obtain a policy with the least onerous exclusion** in terms of your business.

Emerging risks.

# Cyber risk

## A significant risk for all businesses

- Cyber security risk is a high ranking risk faced by businesses today. Its unremitting and continues to increase
- Every organisation relies on digital in some way – to communicate..... to transact..... to compete.....
- Cyber risk affects all organisations, regardless of industry sector or size
- Data breaches and cyber events are **not an IT security problem**. They are a **business problem**
- There is no such thing as an impenetrable system
- Compromise is expensive - It can include financial losses, damage to reputation, loss of intellectual property and serious disruption to business

## Cyber attacks by numbers...

- **25 hours or more** — the amount of downtime 25% of businesses hit by cyber attacks suffer.
- **63%** - confirmed data breaches involved leveraging weak, stolen or default passwords and usernames.
- **87%** of SME's believe their business is safe from cyberattacks because they use anti virus software alone
- **60%** of small businesses who experience a significant cyber breach go out of business within the following six months
- **5800** scams with losses exceeding \$7.2 million in 2018, a 53 per cent increase compared to 2017
- **Small businesses with fewer than 20 staff were most likely to be targeted.** Accounted for more than 75 per cent of attacks
- **ONE** — the number of staff members that hackers need to dupe to gain access to your business' data

<https://www.smartcompany.com.au/business-advice/need-know-australias-three-common-cyber-threats/>

# Notifiable Data Breaches (NDB) Scheme

Mandatory notification is here

## Data Breach

- Unauthorised access to, or unauthorised disclosure of, personal information about one or more individuals (affected individuals), or
- where personal information of affected individuals is lost in circumstances that may give rise to unauthorised access or unauthorised disclosure.

## Who does it apply to?

Aust. Government agencies	Businesses with turnover > \$3m	Not for profit organisations
Health service providers	Child care	Education
Business that sell or purchase personal information	Organisations that handle health data	Business & individuals who handle personal information

## Notification requirements

- Must conduct assessment
  - Alert OAIC\* within 30 days
  - Notify affected individuals
- Fines & Penalties**
- Failure to comply can result in penalties
    - \$360,000 individuals
    - \$1.8m for organisations

Questions?

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