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## **SEEDSMENS ERRORS AND OMISSIONS JULY 2012 BULLETIN**

In June, Iris Insurance Brokers was privileged to attend the ISF Congress in Rio de Janeiro. We appreciated the opportunity to meet with a wide range of delegates and to add to our own knowledge and experience with respect to the ISF Insurance Programme. Many thanks to all those who took the time to meet us at the Congress.

One thing we took home from the Congress was that there appears to be a trend for more, and increasingly severe, claims against seedsmen. At the same time, there appear to be seedsmen who do not carry Seedsmens E&O insurance, or if they do, they opt for a very basic coverage endorsed onto one of their other liability policies. Up to now these seed companies have felt that they know their clients well enough to resolve any product performance complaints before the claims end up in litigation.

While this has worked for some companies, there seem to be others who have found that they have not been able to satisfy claims against them quite so easily. In the last two years we have become aware of an increasing number of claims, both insured, and uninsured, that have resulted in arbitration demands, litigation or threats thereof.

The value of the seeds and in turn the crops are becoming so great that growers seem ever more ready to instruct their lawyers to claim damages if they perceive something has gone wrong with their crop. Production costs and commodity prices are rising and word is travelling about large settlements all of which is contributing to the pressure the seed companies are under to keep their customers happy.

We could be very specific here and identify certain kinds of seed as presenting the most claims currently, but in truth any one of the many kinds of vegetable seeds can result in a claim. For example, Underwriters have received claims ranging from the accidental use of the wrong male parent to the rushed filling of an order with the wrong variety. Such claims are relatively clear-cut, even if expensive. Not so clear cut are claims arising from the presence of disease in a growing crop, when the source of the disease is not readily apparent and where weather often plays a significant role.

Field crops (i.e., agricultural seed) too have their share of claims, from contamination from improperly functioning equipment resulting in mixed, not pure, varieties, to the sale of seeds that fail to germinate as expected. Similarly grass and turf seed varieties have been wrongly labelled and sold causing claims which on sports fields and golf courses can have very expensive consequences.

So how do insurers react to a seedsman with a claims record ? If the claim was un-insured, or insured with others, the Underwriters need to know the details of the circumstances and to know that risk management procedures are now in place to prevent repeat incidents. If the claim is part of a pattern of claims, or unusually severe, Underwriters will be looking for terms that do not compromise the ultimate viability of the programme. That might not be just an increased premium, but a deductible

designed to keep the insurance as a ‘sleep easy’ or ‘catastrophe’ protection.

If the policy is a renewal for Underwriters it should be remembered there is no penalty in reporting incidents that might become claims. Only if incidents become active might Underwriters react when quoting a renewal. Here too they will want to know, in the Insured’s words, what caused the allegations, what measures have been taken to prevent future claims, and what internal procedures are in place to report and investigate the claims when they come in, including timely notification to Underwriters.

The prudent seedsman buys GL/Products Liability Insurance and an ISF-recommended Seedsmens E&O policy when the claims record looks good before any trouble looms. Running a well-managed business may have produced predictable good results and no claims, but some of the very best companies have had claims made against them. It only takes one employee to be distracted at the wrong moment for disastrous consequences to follow, or it only takes a simple clerical error on the part of a reputable supplier or distributor to result in a seedsman being included or “named” in a claim by a client grower. There may be redress against the supplier or distributor, but it may not be so easy to recover if the supplier or distributor is overseas, or if the error should have been picked up by the seedsman. Clearly, a premium will make less of a dent in the corporate financials than a 6 or 7 figure claim.

Any seedsmen importing or exporting seed should seriously consider Seedsmens Errors and Omissions Insurance, however benign the domestic litigation climate may be where they are operating. Foreign clients may not be so easy to satisfy with replacement seeds as local domestic growers. Also, fighting such claims requires resources and experience, which are both provided by the Seedsmens E&O insurers.

One final thought. Many manufacturers and professionals (such as accountants, architects, lawyers, and consultants) are required to demonstrate to their clients their financial responsibility before a contract is accepted. Often this is done through providing trading financial information and the backing of an appropriate liability policy. We expect that parties engaged in the seed trade may start seeking similar assurances, and it is best to be in a position to provide that assurance when necessary.

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