



Emerging Liability – Re: active or proactive?

Liability insurers have a fiduciary duty to act on an informed view of emerging liability exposures in their business plans and operations. Business decisions must be at least justifiable, but better yet, be proportionate and provide a commercial advantage. Waiting until a “toothpaste causes cancer” story comes along is one response to what is a highly competitive market, but is there a more sustainable approach?

Systematic, expert research picks out the first signs of change. By understanding ‘how it works’ new liability loss mechanisms can be identified. At Re: Liability (Oxford) Ltd, we specialise in informing the UK liability industry through a service called “*Radar Plus*”.

- The aims are to identify new areas of concern and reassess known exposures as new information emerges.

Our background in science and technology combined with the ability to set this information into a legal and insurance context is what sets us apart. Subject areas range from nanotechnology to ergonomics, climate change, viral disease, and diet.

Trends in science and technology are usually evident long before manifestation of harm or material change to liability exposure. Potential impacts are quantifiable and timescales can be estimated even at a very early stage; long before the Claimant lobby has made a move.

We are delighted to report that this expert service now includes access to quantitative modelling techniques that show where new trends will have the biggest effect. The new tool is known as the Emerging Liability Risks Scoring Tool (**ELR⁵ST**). It should lead to increased accuracy of responses to new information and allows time for planning where vulnerabilities have been identified.

ELR⁵ST provides answers to “what if” and “so what” questions. The combination of *Radar Plus* and *ELR⁵ST* supports marketing, underwriting and claims policy. Every insurer is unique, but by making this information available to all subscribers, the effects of extremes of awareness can be reduced.

Radar Plus

Radar Plus regularly reports on:

1. Changes to known exposures:

These influence reserving, claims strategy, mitigation...

2. New exposures:

These influence risk selection, pricing, risk improvement, market strategy...

Clearly, the scope includes both causation and claims-made liability policies.



Radar Plus reports are based on objective evidence wherever possible. Data sources include learned science journals, generalist science publications, official sources, publically funded research programmes, statements made by campaign groups such as unions and Claimant lawyers, discussions with experts, and so on. By understanding how losses can be triggered, new influences on liability exposure can be identified even if the researcher who published the work has no idea of the link. A certain degree of expertise is needed to sift this information, but is important not to put assumptions or ‘decided positions’ or ‘aspirations’ in place of verifiable knowledge and rational possibilities.

Speculation has its place but we have to prefer verifiable evidence as the basis of reports to our UK based insurance customers. For example, a number of speculative causal mechanisms have been proposed to link emfs with disease; but a rational assessment of these so far finds only inconsistent circumstantial support. It is likely that research work will continue. Meanwhile it would be misleading to proclaim that a ‘date of knowledge’ has been established; whether that is for working practices, products or services.

Conventional wisdom also has its down side. Who now would reject concern over vibration white finger? In 1954 it was officially summed up as “trivial”. A more even-handed assessment would have concluded that some people would suffer cumulative harm to the point where they would not be able to work. Conventional wisdom delayed the development of effective control measures and job loss attributed to VWF reached significant levels by the mid 1970s. Even so, most claims for this injury are and always have been relatively minor. Failure to grip the issues has led to hundreds of thousands of claims in the UK alone.

A topical example is that of Pleural Plaques; one result of exposure to asbestos dust. Inconsistencies between science, legal principle and compensation practice were brought into focus in 1999 in a report to insurers on Public Liability triggers. The *Radar Plus* service then focussed on adding to the body of evidence, beginning in 2001. It is now widely known that Pleural Plaques are usually completely benign and, the probability of severe disease in a person with plaques is not reliably different from that of the person who worked next to them but who happens not to have plaques. The political impact is yet to conclude but the House of Lords in October 2007 re-established a logical consistency between evidence and the law.

It is important not to overemphasise probability and objective assessment though. Risk managers must be alert to the development of plausibility-based claims, such as those linking welding fume to Parkinson’s disease. Most jurisdictions would throw such cases out but in some circumstances, plausibility is more influential than probability. In the UK, chronic stress provides an example where popular perceptions have led to significant claims activity, much of which proves to be baseless when challenged. By evaluating the objective influences on exposure, such perceptual issues can be tackled with greater confidence.

Radar Plus is a subscription service for UK liability insurers. A similar service is available more generally.



ELRST

History has shown that waiting until all the evidence is certain is not the right approach. In practice, retrospective, cumulative and new losses are included in coverage right now. Future-testing is an important part of the liability risk management process. With the development of the Emerging Liability Risks Scoring Tool this has now become a practicable proposition. ELRST allows scenario testing to be made in a systematic semi-quantitative way. In this way the key drivers for liability exposure in each scenario can be identified.

Calculations are made at a jurisdiction level, individual insurers then assess how this picture could relate to their background and plans for the future.

ELRST also allows correlated losses to be assessed. The most obvious correlation mechanism is when multiple third parties are exposed to the same hazard, or potential hazard. Lifestyle examples would include mobile communications, food, detergent, transport, indoor air, alcohol, desktop computers, toothpaste, and so on. By combining scenarios in the calculation, an overall potential impact can be estimated even where different policy types are linked. Causation may be established as a result of workplace exposure, but have a huge impact on products liability for example.

Other correlation mechanisms are less immediately obvious. One of these is referred to as 'being correlated by pathogenetic mechanism'. An emerging example is that poor sleep quality predisposes to diabetes; and sleep quality can be influenced by duty holders. The concept of pathogenetic correlations probably isn't new, but the explicit evaluation of these mechanisms is probably relatively recent. By understanding 'how it works', important links between apparently unrelated science and technology can be identified. This is why it is important to ensure ELRST is used by people who understand pathogenetic correlations, question the obvious and test the reliability of information sources.

ELRST is currently available only to *Radar Plus* subscribers.

Outcomes so far

Not surprisingly, the *Radar Plus* project has identified many of the same emerging risks as those that are currently in vogue and perhaps more usefully, some which are not.

In our view, it is important not to talk up new risks but more could usefully be said about:

- ❖ osteoarthritis of the knee...
is there a relevant breach of duty?
- ❖ the politics of sickness absence...
how to manage people with mental ill-health at work
- ❖ alcohol...
as a potential cause of breast cancer,
- ❖ virtual reality...



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as a trading environment,

- ❖ sleep quality...
linked to type II diabetes,
- ❖ climate change...
liability for climate change itself faces a number of evidential difficulties
- ❖ nanotechnology...
this is often more clearly linked to outcomes other than mesothelioma
- ❖ heart disease...
not just stress and burgers! There are potential links to less obvious aspects
of work,
- ❖ cloned food...
sources of unpredictability

and so on...toxic toothpaste is not on the list, yet.

Some of these emerging risks would require new thinking from risk managers, but most would be met by incremental changes to current practice.

Rate of change is an important factor. *Radar Plus* subscribers have been kept informed on these issues as and when they change.

There is a searchable database of over 2000 reports.

Emerging liability issues remain in focus until there is reasonable certainty concerning mechanisms, degree of potential exposure, prevention, rehabilitation, and, viable defences. Sometimes a change will highlight new opportunities for business.

No system can be 100% accurate or informative but we believe our approach to the science and our ability to model potential impacts offers advantages. Results and findings are presented for discussion at quarterly meetings of *Radar Plus* subscribers.

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Re: Liability (Oxford) Ltd was established in 2002 following the sale of the Loss Prevention Council.

The *Radar Plus* service was developed from a project initiated by the ABI.