Clinical Trials Liability Insurance

A detailed review of cover and impact

Crawford®

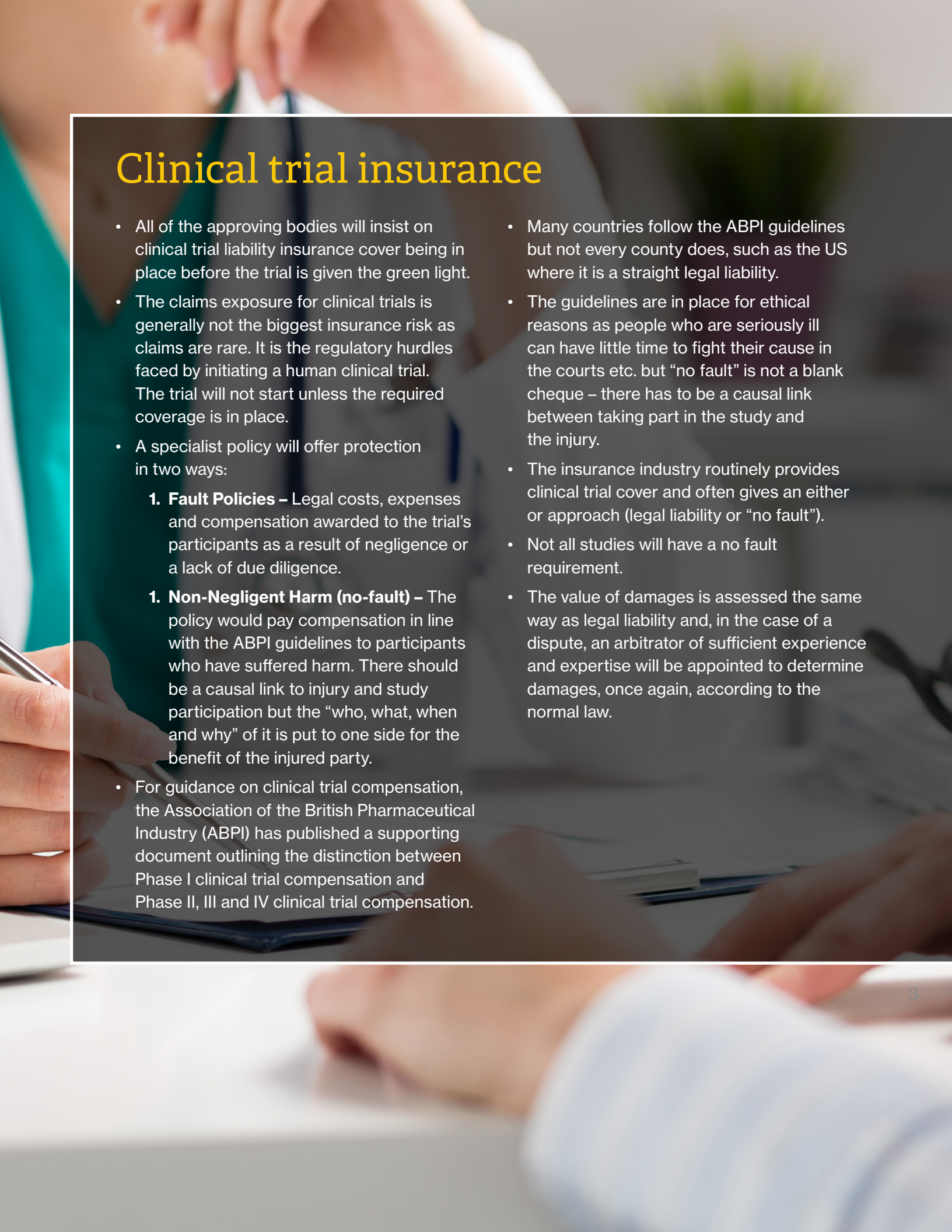
Clinical trial liability insurance is designed to provide financial protection for those sponsoring and conducting clinical trials as well as to provide suitable compensation to the volunteers should they suffer harm as a result.

Clinical trials

- The purpose of a clinical trial is to establish whether or not a medical treatment, device or strategy is both effective and safe for use on humans.
- The clinical research should follow strict scientific standards in order to protect the trial participants as well as deliver reliable data.
- Starting out in the lab, then potentially moving on to testing on animals, ideas that show promise eventually make it to human clinical trials, where small groups will initially take part in order to measure the effects of the new medical treatment, device or strategy. Clinical trials are a part of all medical research programs.
- Without completing the necessary and proper clinical trials the appropriate approvals will not be granted.
- All clinical trials of medicines and studies on medical devices need to be approved first by a peer review and then the National Research Ethics Committee. The role of the committee is to ensure the clinical trial is well planned and meets all the necessary requirements, one of which being that the researchers have arranged for compensation to be paid if anything should go wrong.
- Any clinical trial in the UK also has to be authorised by an organisation called the Medicines and Healthcare products Regulatory Agency (MHRA).

When things go wrong

- Although claims are generally infrequent, when things do go wrong, the impact to human health can be great. A well reported case back in 2006 highlights the risks inherent in performing human clinical trials. The case of the 'Elephant Men' hit the national press when eight healthy young men took part in a clinical trial of an experimental leukemia drug known as TGN1412. Having been successfully tested on monkeys, what should have been a routine clinical trial soon escalated into one of the most infamous medical emergencies in recent British history.
- There are unfortunately numerous other examples of clinical trials not going quite as expected.
- From Thalidomide to more recent stem cell and gene therapy trials, the risks are ever present and the potential for huge damage to human health is obvious.
- Over time, knowledge, processes and controls improve and Clinical Trial claims continue to be rare, but should the worst happen, that cover has to be there.



Clinical trial insurance

- All of the approving bodies will insist on clinical trial liability insurance cover being in place before the trial is given the green light.
- The claims exposure for clinical trials is generally not the biggest insurance risk as claims are rare. It is the regulatory hurdles faced by initiating a human clinical trial. The trial will not start unless the required coverage is in place.
- A specialist policy will offer protection in two ways:
    1. **Fault Policies –** Legal costs, expenses and compensation awarded to the trial's participants as a result of negligence or a lack of due diligence.
    1. **Non-Negligent Harm (no-fault) –** The policy would pay compensation in line with the ABPI guidelines to participants who have suffered harm. There should be a causal link to injury and study participation but the "who, what, when and why" of it is put to one side for the benefit of the injured party.
- For guidance on clinical trial compensation, the Association of the British Pharmaceutical Industry (ABPI) has published a supporting document outlining the distinction between Phase I clinical trial compensation and Phase II, III and IV clinical trial compensation.
- Many countries follow the ABPI guidelines but not every county does, such as the US where it is a straight legal liability.
- The guidelines are in place for ethical reasons as people who are seriously ill can have little time to fight their cause in the courts etc. but "no fault" is not a blank cheque – there has to be a causal link between taking part in the study and the injury.
- The insurance industry routinely provides clinical trial cover and often gives an either or approach (legal liability or "no fault").
- Not all studies will have a no fault requirement.
- The value of damages is assessed the same way as legal liability and, in the case of a dispute, an arbitrator of sufficient experience and expertise will be appointed to determine damages, once again, according to the normal law.

What do we need to know?

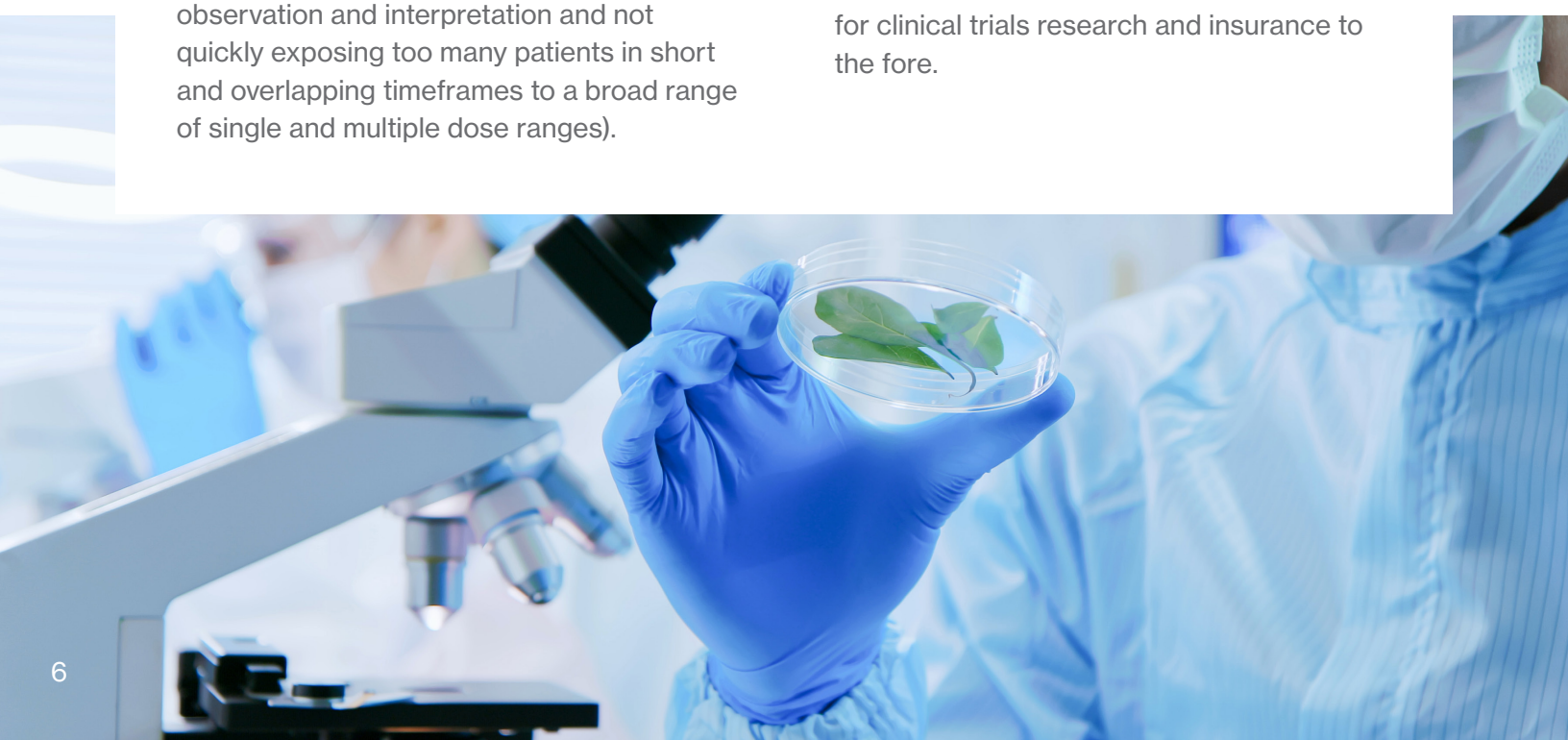
- Below is the information that insurers are likely to need in order to provide a quotation for clinical trial insurance. Detailed information may not be required in the early stages, such as prior to submitting the trial to an ethics committee. Insurers are able to give an indication based on a draft proposal with an estimate of study numbers.
    - The protocol and consent document including a note about the reason the study is taking place
    - The indemnity limit requirement
    - Whether there will be any other additional parties noted – it is quite common for entities such as the UCSD to want to be noted. They are also likely to want some kind of certificate, so full name and address etc. makes this quicker
    - The local of the trial and the number of people involved
    - The length of the trial
- The process of obtaining insurance for a clinical trial can be a challenging exercise for all parties involved, be they the company electing to conduct a trial or the insurance professionals involved in arranging or providing coverage.
- Firstly, there is the speed in which a client requires usually requires coverage. After many months of planning and organising the study to get to a stage where they are ready to submit to the independent ethics committee (EC), it can be a sudden realisation to a company engaging in clinical research that insurance is required.
- Clinical trials are not all in the UK. The majority are conducted on a global basis. Placing insurance for clinical trials, brokers often have to consider the following:
    1. The number of countries involved, each requiring an individual policy and certificate compliant with local regulations; and
    2. A need for absolute accuracy with no room for error, and it is clear that the insurance broker and carrier have been set quite a task to turn around a company's program within a matter of days.
    3. The trial's protocol documents. Every trial has a trial protocol which sets out the purpose of the trial and how it is being undertaken and it is these protocols which form the basis of the underwriting decision by Insurers. Factors such as inadequate information when submitting the trial to the insurance company can delay the process of approval and therefore coverage for the trial. This can stretch the capabilities of an insurer, particularly when it comes to first -time testing of products/interventions in humans.
    4. Sometimes there is no protocol or investigational brochure available, meaning the insurer has not received adequate information to proceed with.
    5. Even if there is a protocol, it may not provide sufficient information about preclinical data of an investigational product or procedure and instead refers to the investigational brochure. It is a challenging task for an insurer to measure the risk adequately without this document.

Administering the program

- When we consider insurance provisions on clinical trials, given their global nature, we must consider the administration of the clinical trial program.
- As with Crawford, Insurers rely on their network of offices to co-ordinate the program.
- Also, the Insured will also face many administrative and operational challenges of their own when managing the many interfaces internally and externally, such as, for example, various research and development, legal/ compliance and manufacturing functions, study managers, regulators, ethics committees, internal committees, investigators and contract research organisations (CROs) and other third party service providers.
- A central approach to coordinate the information necessary to obtain insurance is often not in place and individual study managers are often not aware of the requirements of their country. Insurers are coming under increasing pressure to find more centralised solutions for clinical trials provision and claims.
- As Crawford recently demonstrated, we have the ability to provide this centralised solution for customers, whilst having the global technical footprint to support customers on a local basis.

Technical factors to consider when assessing risks

- The range of clinical trial risks is extensive and every single trial and its protocol document is unique.
- Besides the testing of drugs or medical devices by commercial sponsors, there are many investigator-initiated trials that may investigate a commercial product and / or compare non-product-based therapeutic interventions or look at other areas of research.
- Important factors when assessing a clinical trial risk are: the scope of inclusion and exclusion criteria – what Underwriters are being asked to indemnify? ; completeness accuracy and readability of the informed consent form; medical and scientific quality and performance of the investigators and trial sites; and early -phase risk management in human or dose finding trials, (i.e. not exposing too many patients at the same time, careful selection and staggered increase of dosing ranges, allowing time for clinical observation and interpretation and not quickly exposing too many patients in short and overlapping timeframes to a broad range of single and multiple dose ranges).
- These risk factors are quite difficult and sometimes even impossible to be easily captured/measured by an insurer, but they are clear in that they expect us, as their adjuster/TPA, to understand them and be live to them.
- However, they can at times be major drivers of clinical trial risk, as is evident from past high-profile clinical trial losses.
- That which we understand is that overly simplistic risk assessment systems, which only consider the trial phase and the number of patients, ignore the large spectrum of risks and are unlikely to produce risk-adequate pricing. Individual losses in the hundreds of thousands range can heavily impact profitability of clinical trial books – especially smaller ones.
- That which we know is that there are complex and challenging upcoming new trial risks involving gene therapy or cell therapy. Covid-19 has thrown the issue of the need for clinical trials research and insurance to the fore.



Industry growth and improvement

- Trials are usually placed on as part of a multinational program for a multicentre clinical trial.
- Policies are admitted locally – there is not one policy for all the global locations, even for one trial.
- There are many insurance carriers out there who have the expertise to manage this global requirement and are rising to the challenge of providing consistent risk solutions to streamline the process and meet companies' needs.
- More and more insurance carriers are writing HCT (Human clinical trials) cover, with recent years seeing an increase in companies providing a product for this type of insurance.
- As companies start to look further afield with their studies, reaching into previously unchartered territories such as China, India and the African continent, the global reach of the insurance company is central to offer a product fully able to attend to companies' needs.
- With the global clinical trials market expected to reach USD65.2bn by 2025, it is likely that insurance companies will develop their product offerings further, leading to more risk appetite and the incentive to invest in technology such as platforms that can provide a one-stop-shop solution for certain types of studies. Harmonisation of the insurance needs of the global reach of these trials will be the insurance key going forward.

For more information on our expertise and advice, please contact:

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