

ALLIED INSURANCE GROUP

Welcome to the first newsletter from the Allied Insurance Group, of which we are proud to be a member. Allied Insurance Group was formed in early 2006 and is owned equally by 23 independent insurance brokers throughout New Zealand.

Whilst we still own our individual businesses, collectively we have greater buying power. One of the major reasons we formed Allied was, as a large group we could obtain advantages from Insurance Companies for the benefit of our clients. This was not only in pricing but also in the cover we could obtain and the service levels provided by the Insurers.

Other benefits for us, and ultimately you, are that we can call on the experience of the other 22 members, share best practice so that we are as efficient as possible and ensure with any legislative requirements that not only do we meet these but are well above any standard required.

This newsletter will be produced quarterly and will feature items of interest not only concerning insurance but also issues affecting businesses today.

INSIDE ARTICLES

- Email Dangers
- Farmers Beware
- Insurance Council Warns: Many Building Owners are Under-insured
- Beware of insurance obligations contained in commercial contracts

ANOTHER HIDDEN TAX

The New Zealand Fire Service is undergoing a campaign to be recognised not only as a fire management service but as a fully emergency based service, including all rescue and civil defence services. The Fire and Rescue Service is focused on the provision of services to the community and as such its funding should be considered no differently from that of the Police whereby funding is not by a property tax but, quite rightly, by the community via a general tax.

Currently all those who insure their property incur a Fire Service Levy based on indemnity value or set parameters. This causes substantial inequity with responsible property owners having the foresight and initiative to insure and appropriately maintain their property subsidising those who effectively choose to either under-insure, self-insure (such as large corporate companies and Government Departments) or indeed not insure at all.

The proposed insurance tax touted by the Government whereby a levy is calculated on the replacement value of the property can only culminate in a situation whereby the business community, already under competitive and cost pressures, and those who maintain and upgrade their property, are negatively and unfairly impacted.

Funding from general taxation would be equitable as it incurs all of those to whom the Fire and Rescue Service is designed to reach. The funding regime proposed by the Government can not eventuate in an even distribution of the cost involved in having the Fire and Rescue Service available to all those within our communities.

We strongly recommend that you take the opportunity to discuss any concerns you may have with respect to this matter with your local Minister of Parliament.



EMAIL DANGERS

Recently many of our members attended an Insurance Industry seminar on the dangers of using email as a business tool to communicate with our clientele and other third parties. An email can be used to form a contract as long as the integrity of the information is maintained. Integrity is defined under the Electronic Transactions Act as being complete or unaltered apart from any immaterial change.

Research suggests that after the initial face to face meeting approximately 85% of all written communication (and our ongoing relationship) with clientele is facilitated via electronic mail.

The seminar explored several issues that arise on a daily basis. Some of these are detailed below:

Taking Emails at Face Value

We receive and act upon instructions every hour of every day from our clients. For some professions this is more dangerous than others. A solicitor creating trust funds and moving funds only to find that the wife is divorcing the husband and the solicitor has moved all the assets based on emailed instructions presumed to have been from the husband.

Many have argued that this is no different than any other type of fraud. The point to consider here is that it is much easier to perpetuate via email, it involves little thought or planning and whilst people will check up on forged signatures they invariably take all emails at face value.

No Formal Protocol for Dealing with Emails

Most firms have an Email Appropriate Use Policy as either a stand alone policy or forming part of each employee's employment contract. Most of these did not actually deal with how they are going to use email as a business tool, or established an understanding with clientele and suppliers on how email could be used to conduct business with them.

Out of Office Situations

Most firms have formal protocols for physical mail that mean in the event that something was urgent or the addressee was out of the office that it was attended to in a timely and professional manner. This was not the case when it came to dealing with emails yet approximately 85% of our communication is done using emails.

Staff who use email as a communication tool with our clientele need to actively deal with out of office situations.

What Now?

If you are not sure if your business is at risk in some way then we suggest you talk to your legal advisers.



FARMERS BEWARE

Recently, the Government announced the On-farm Adverse Events Recovery Framework, which outlines how they will respond to the rural community whenever there is a severe adverse weather event or natural disaster. The framework came about after a decision was made by the Government to offer fewer cash handouts after weather disasters in rural areas.



The key outcome for farmers is that they need to ensure they have comprehensive insurance protection for their farm. After a large-scale adverse weather event, the Government will not provide any cash assistance for assets that are insurable.

If a farmer does not have insurance on insurable assets such as fences, culverts and hay they are unfortunately likely to be left out of pocket. The Ministry of Agriculture and Forestry have a very good website that outlines the review, summarises the submissions and has a section on frequently asked questions. The link is www.maf.govt.nz/mafnet/rural-nz/assistance/adverse-events.

We strongly suggest that you review your insurance programme with your Allied broker to ensure that if an adverse weather event does affect your farm that the financial consequences are minimised.

INSURANCE COUNCIL WARNS:

MANY BUILDING OWNERS ARE UNDER-INSURED

In the last two years New Zealand has seen some significant increases in building and plant replacement costs due to rising labour, compliance and material costs.

The building boom has meant that the supply of labour struggled to meet demand, and therefore labour costs have increased. The cost of building consents have nearly doubled due to the tightening up of the Building Act following the leaky building problem, and materials such as steel & cement have risen in price, says John Lucas, Insurance Manager of the Insurance Council.

John Lucas says that many property owners have fallen into the habit of not obtaining annual insurance valuations, and therefore are relying on valuations that could be two or three years old. Property owners risk being under-insured, especially when building costs have increased 25% or more over the last two years, and their building replacement valuations are not current.

Specialist plant used in New Zealand's industry is at risk of being under-insured if new valuations are not obtained annually. Plant costs have increased due to rising oil and steel commodity prices. If there is a significant fall in the New Zealand dollar this year, this may add to the problem, says John Lucas.

Businesses that are under-insured run the risk of being caught short should a serious loss occur, which could have flow-on effects to the rest of New Zealand's economy.

The Insurance Council recommends that building and plant owners obtain updated insurance valuations every 12 months from a registered valuer.



BEWARE OF INSURANCE OBLIGATIONS CONTAINED IN COMMERCIAL CONTRACTS

They say a little knowledge can be a dangerous thing. That can certainly be true of parties, and their advisers, to commercial contracts when it comes to specifying insurance requirements.

Recently, we advised a party to a signed contract who was having difficulty complying with his insurance obligations under it. When we looked at the contract we could see why – essentially he had agreed to arrange insurance that was not available in the market place at all.

It is reasonably common in commercial contracts for one party to indemnify the other party for liability arising out of performing the contract. On this occasion, the contract went one step further and required the indemnifying party to arrange insurance to insure his obligations under that indemnity.

Those of you familiar with liability insurance will know that most, if not all, policies have a 'liability assumed by agreement' type of exclusion. This excludes cover where the insured voluntarily agrees to be liable when he would not otherwise be liable at law. In other words, the policy insures liability created by law, not liability voluntarily assumed over and above the law. A contractual indemnity is a classic example. It requires the indemnifying party to recompense the other party even though there has been no negligence or misconduct by the indemnifying party. Few, if any, liability policies will cover this, although the indemnifying party had agreed to arrange it!



Other examples of inappropriate insurance requirements relate to the taking out of liability insurance by one of the parties. Presumably the purpose of this is to ensure the party is worth suing. But often a public liability policy is specified when it should be a professional indemnity policy because of the nature of the work done, and vice versa.

Where a professional indemnity policy is appropriate, the fact that it is a claims-made policy is often overlooked. As the usual limitation period for commencing court proceedings is six years, the party required to take out the insurance should ideally have to keep taking it out for a further six years after the job is done. This is to ensure that a suitable policy is still in place that triggers cover if and when any subsequent proceedings are threatened or served on that party in relation to the job.

Some commercial contracts not only require the other party to take out some form of liability insurance but also require the first party to be 'noted' under it. This is nonsense. The noting by an insurer of another party's interest in the policy arises out of that party having an interest in the subject matter of that policy. The usual example is a financier who has lent money to the insured secured over his or her house. The house is insured by an insurance company. The noting by that insurance company of the financier's interest in the house amounts to an assignment of the proceeds of the policy to the financier. A liability policy, of course, does not insure property. The party seeking to have its interest noted does not have any security over the insured's property. So there is no interest in the policy for the insurance company to note.

Most of these problems are created by contract drafters who have a limited knowledge of insurance matters. This is where your insurance broker can add value for you. We recommend that if you intend entering into a contract that requires you to take out any kind of insurance, don't sign it until you have talked to your broker first. That way you may save yourself from agreeing to the impossible!

Article from Crossley Gates, Special Counsel of DLA Phillips Fox

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