



Brokerwise™

Brought to you by: **Fitton Insurance (Brokers) Australia Pty Ltd**

A Policy Can Protect



**“HAULAGE
COMPANY FINED
\$130K AFTER
WORKER CRUSHED
TO DEATH”**

**“CRANE OPERATOR
FINED \$8,000 FOR
NEAR MISS”**

**“MANUFACTURER
FACING \$840K FINES
FOR ALLEGED
EPA BREACH”**

Headlines like these are all too common on a daily basis in newspapers around Australia. All are real examples of fines issued to companies and all fines levied could have been covered under an insurance policy.

Statutory Liability Insurance, also known as a Pecuniary Fines and Penalties Policy, is designed to protect companies and individuals against Liability for statutory fines and penalties resulting from unintentional breaches of legislation such as OH&S, Workcover, Industrial Relations and Environmental Law.

Injuries on worksites are not the only events that draw the heavy hand of the law. Take the example of a small importer and retailer who failed to affix the correct safety labels to their product - penalty, a \$15,000 fine.

The size of the fine penalty is not limited to the low thousands either. For example, a breach of State Environmental Protection laws can carry a fine of \$1,000,000.

There are several ways to get the Pecuniary Fines and Penalties cover, (1) under a Statutory Liability Policy, (2) as a subsection of a Management Liability Policy or (3) as an extension under some Directors and Officers Policies. The Limit of Cover helps determine the premium and a relatively small investment can provide you and your business with cover up to \$250,000.

Talk to your CQIB broker about insurance cover to protect against fines and penalties because a workplace accident is traumatic enough without the addition of a hefty fine which just might destroy your business. ■

More Car Hire Pitfalls

CORPORATE TRAVEL POLICY HOLDERS MAY BE AFFECTED

In the last edition of Brokerwise, we highlighted the fact that most car hire providers, when pressed, assert that the ‘additional cover’ they provide in exchange for payment of an extra fee is not ‘insurance’ and as such is not subject to the legislative protections afforded under the Insurance Contracts Act. This may result in the hirer being left with a sizeable liability in the event of a hired vehicle or its accessories being damaged.

A further complication can stem from this anomaly in the products

offered by car hire providers.

Most Corporate Travel Policies offer rental vehicle collision damage and theft excess cover, i.e. the policy will reimburse the Insured for any excess or deductible payable under a comprehensive motor insurance policy in respect of loss by theft, collision or damage to a rental vehicle which the Insured becomes legally liable to pay. These same Corporate Travel Policies normally contain a Condition that ‘the Insured Person must comply with all requirements of the motor vehicle rental company under the hiring agreement and of the insurer under such insurance’.

The problem arises however, in the

interpretation of ‘a comprehensive motor insurance policy’. The question of whether the ‘cover’ provided by car hire companies constitutes a contract of insurance has rarely been litigated in Australia, but if the Corporate Travel insurer contends that the product offered by the car hire providers is not ‘a comprehensive motor insurance policy’, they may reject a claim for reimbursement of the amount the hirer is obliged to contribute to the vehicle damage.

If you are in any doubt about how your Corporate Travel Policy will respond in the event of a claim of this nature, contact your insurance broker for advice. ■

Standard Flood Definitions

As everyone will be only too aware there were a number of severe floods in Queensland, New South Wales and Victoria in 2010 and 2011. On the back of those floods the Federal Government,



after consultations with representatives of consumer groups, the insurance industry and legal profession, has taken steps towards adopting a standard flood definition. They introduced the Insurance Contracts Amendments Bill which stipulates that for prescribed contracts entered into after the transition date, being the date specified by the Regulations when the new definition will come into effect, they will have a standard definition of flood applicable to them.

The draft Regulations currently being considered propose a definition of flood as follows:

"The covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- A. A lake, river, creek or natural watercourse (whether or not it has been altered or modified).***
- B. A reservoir, canal or dam."***

The move to implement a standard flood definition has generally been welcomed by insurers, and is in fact something that insurers have been advocating for some time.

However, the *Insurance Council of Australia* (ICA) has expressed some concerns regarding potential confusion caused by including natural watercourses whilst not including man-made watercourses. The explanatory statement to the Regulations specifically identifies that the definition does not encompass the release of water from man-made watercourses, stating that it is expected that insurers will cover losses from the release of water from man-made watercourses as part of the cover they provide for storm damage. However, the ICA has pointed out that a canal can be a man-made watercourse. The ICA feels that this will introduce confusion for consumers and in some instances defeat the purpose of having a common definition

The ICA feels that this issue becomes an acute problem where flood is an opt-

out option and the insured has chosen to opt-out of the cover. It is felt that problems could arise if the stormwater channel was built to take water along the same or similar path as a creek or natural watercourse. The question then arises as to whether this would be an altered creek or altered natural watercourse, and thus captured by the definition of "flood".

The ICA has expressed the view that the interaction between the definition of flood in the Regulations and in the proposed amended legislation may result in insurers being required to provide complete flood cover as defined by the Regulations if any flood event referred to in the definition is captured under another water event such as storm. They feel this will discourage insurers from extending cover to other water events if flood is excluded in the policy. As an example, they have submitted that an insurer will not want to risk offering escape of water from a stormwater channel in their storm cover for, as the proposed definition currently stands, a stormwater channel may be a canal and if a canal then the insurer will be deemed to have offered complete flood cover as defined in the Regulations even though they have excluded it.

We await with interest the government's response to the Insurance Council of Australia's submissions before they finalise the proposed definition. ■

Buying Insurance

OFF THE PEG OR TAILORED TO FIT?

Although we often complain when the insurance bills arrive there is surely nothing more effective than insurance cover to protect you and yours against unpleasant events. However, purchasing the right insurance for your situation and circumstances is the key to peace of mind.

Having all the facts to allow an informed decision about the make-up of your insurance program is where it starts and the best way to get those facts is to engage the services of a General Insurance Broker. A broker will act on your behalf and provide you with personal advice based on your particular circumstances. He or she will also stand by you and represent your interests when the time comes to make a claim.

As well as guidance in selection of your policies, your broker will provide sum insured calculations, periods of indemnity recommendations and, depending on the size of your asset portfolio, utilise or refer you to other specialist services providers such as risk managers, valuers, contractual and legal advisers and even HR specialists.

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Of course, there are alternatives to the services of a broker. For example, if you decide to purchase insurance direct from an insurance company, more often than not you will not receive any advice at all. Or if it is given, it is very limited, of a general nature and significantly, restricted to the products offered by the insurer. Naturally, the insurer wants to sell you their product and they usually will not provide any information or comparisons on what other policies are available in the market. And of course, at claim time if you bought direct and don't have a broker, it's you against the insurance company. No one is on your side.

Sometimes the direct price can be very attractive but remember, you cannot get a good quality product for a low quality price – something has to give. Insurer direct products that come cheap may have the same sums insured but with

policy wordings that are significantly different but not mentioned. A possible money saver in the short term may end up costing more further down the track in delay and reduced compensation.

In Summary

The steamroller of change in the legal environment rolls on bringing volatility to the insurance and risk management industry. Standing between you and that steamroller is your insurance broker, a licensed and government approved specialist who is constantly undergoing training to add to their knowledge and keep ahead of this changing environment. The professional insurance broker offers a wider choice from multiple Insurers, scheme benefits and discounts as well as expert advice on levels and types of cover that are required. A broker also offers

qualified help when claims arise. With more than 120 Insurers in Australia offering different policy covers, an insurance broker is best placed to help you protect your business interests and personal assets. ■



A two million dollar lesson

ACCC VS TPG

Internet service provider TPG's multimedia advertising campaign which commenced late 2010 promised 'Unlimited ADSL 2+' for just \$29.99 per month. The campaign ran for 14 months and somewhere in the ads were conditions about additional set up costs and a \$30 per month phone line rental. These 'extras' added significantly to the cost of the deal but the details about them were not displayed prominently enough according to the Australian Competition and Consumer Commission (ACCC).

The ACCC considered the ads were misleading and brought proceedings to stop the ads and impose penalties for TPG's alleged breach of the Competition and Consumer Act 2010.

In June 2012 the Federal Court found the case proved against TPG for misleading and deceptive advertising. In handing down its penalty decision of a \$2m fine the court also ordered that TPG publish corrective notices in newspapers and on

TPG websites; maintain a trade practices compliance program for 3 years and pay the ACCC's costs. The court also imposed injunctions restraining TPG from engaging in similar conduct in future with a dire warning that further breaches may result in jail sentences for individuals.

In recent times the ACCC has taken a hard line and issued infringement notices against telecoms companies that fail to provide transparent pricing on broadband products. The issuing of infringement notices for breaches is relatively new for the ACCC and comes as a result of reforms to the Trade Practices Act (now called the Competition and Consumer Act). Already this year a number of hefty fines have been issued.

The judgement and penalty in this case contains a warning to all Australian businesses – be very clear about all costs of your advertised offer or face the consequences if a complaint action is successful.

To avoid upsetting prospective customers and the corporate watchdog, businesses generally need to recognise the importance of legal advice on what could be construed as risky advertising. Not only are targeted consumers a potential claimant of foul play, competitive businesses may also take offence if their business is harmed by misleading advertising and instigate direct action themselves whether or not the ACCC prepares to attack from another front. ■



Pay By The Month

PROTECTION THE PAINLESS WAY

Cash flow is the key to survival of any business. Without sufficient cash flow it becomes very difficult for even the most profitable business to avoid financial disaster, or at the very least achieve its true potential.

When economic times are challenging, business leaders should be seeking ways to improve their cash flow and preserve their working capital at every opportunity. One of the easiest ways to do this is by paying your business insurance by the month. Most forms of insurance can be paid via a monthly payment plan either direct with the insurer (if available) or a premium funding facility arranged by your insurance broker.

Paying direct with an insurer that offers monthly payments at 'no cost' may seem like the easiest option, however if you have multiple policies with different insurers, this can be cumbersome with multiple debits each month. The cover offered through an insurer's pay-by-the-month facility may also vary. Your broker can help you ensure you understand the right option for your business.

Premium funding companies lend you the amount required to pay your insurance premium and pay it on your behalf. You can even combine multiple premiums into the one loan. You then repay the premium funding company in monthly instalments over a period of typically 10 months.

The premium funding company charges a flat interest rate on the amount of the premium that is fixed for the term of the loan. The interest charge may be tax deductible as a business expense, however you should discuss this with your accountant first.

When obtaining quotes it is important for you to ask your broker about any additional service fees that may apply. Some companies will charge an application fee in return for a lower rate over the term of the loan. To ensure you are getting the best deal always compare the bottom line.

Finally, because the loan is secured by the insurance policy in most cases, no security is required. This ensures that applications are simple and processed quickly – usually within 24 hours.

Look closely at preserving your business cash flow. Talk to your CQIB insurance broker about premium funding. ■

Be sure. Before you insure!

Ask your Council of Queensland Insurance Broker about...

Commercial and Retail Insurance

- Business Property
- Business Interruption and Loss of Rent
- Liability, Money, Glass Breakage
- Burglary
- Machinery Breakdown
- Computer
- Goods in Transit
- Contractors Risk
- Motor
- Tax Audit

Liability

- Public Liability
- Products Liability
- Professional Indemnity
- Directors and Officers
- Employment Practices Liability

Private and Domestic Insurance

- Home and Contents
- Car, Caravan, Boat and Trailer
- Travel

Income Protection Insurance

- Long Term Disability
- Sickness and Accident

Life, Superannuation, Partnership

- Mortgage Protection
- Key Man
- Term Life
- Superannuation

The CQIB represents over 60 Queensland firms employing nearly 400 staff and placing in excess of \$500,000,000 in annual premiums. The CQIB charter is to maintain the level of professionalism of its members by the sharing of knowledge, information and ideas.



For more information visit
www.cqib.org.au

The articles in Brokerwise are provided as information only. They are not general or insurance broking or legal advice. It is important that you seek advice relevant to your particular circumstance.

Wise words

"You probably wouldn't worry about what people think of you if you could know how seldom they do."

— Olin Miller

"When I can't handle events, I let them handle themselves."

— Henry Ford

"There are people who are always anticipating trouble, and in this way they manage to enjoy many sorrows that never really happen to them."

— Nolan Bushnell

Fitton Insurance (Brokers) Australia Pty Ltd

ABN 90 010 987 489 AFSL No. 264671

13 Bowen Street
(PO Box 1515)
Toowoomba QLD 4350

Phone: 07 4638 4233

Fax: 07 4638 3369

Email: mail@fittonins.com.au

Web: www.fittonins.com.au