



KEY ISSUES TO CONSIDER EARLY IN 2014

How not to compromise health and safety practices whilst reaching for the stars!

New Zealand has a reputation for developing new and exciting products and services. We love pushing the boundaries and whilst it's important we utilise our 'kiwi energy' we need to be sure we are not compromising operating standards and putting ourselves at risk.

With changes afoot at ACC and the government mid-way through a review of the Health and Safety in Employment Act, there is no better time to dust off your own company procedures and policies and undertake a 'spring clean'. Having a robust system in place that has the right people in the right roles with the right level of knowledge and experience is a must.

Creating safety awareness in the workplace, managing fleets of vehicles and recruiting employees safely are the many ways JLT encourage their clients to develop strong operating procedures and systems without the need for compromise.

Did you know that as a Director, you can be held personally liable for not only your own mistakes but also the mistakes and errors of others?

Regardless of company size, all directors and officers are subject to the same rules and regulations and face more risk than ever. Greater media awareness coupled with several high profile cases of late, most notably Bridgecorp and Pike River, means having the right cover in place to protect against allegations of mismanagement is of great importance.

D&O liability cover protects the personal assets of directors and officers from the consequences or claims which may arise from decisions and actions made within the course of performing their duties and responsibilities.

So who should be covered under a D&O policy?

Claims can manifest from varying areas such as shareholders, debt holders, industry regulators, the IRD or simply your employees and D&O policies are insured on a 'claims made' basis. A 'claims made' basis simply means that the D&O policy will pay out under the policy in place at the time the claim was notified, rather than the policy in place at the time the error was made.

It is important to protect past and present directors to ensure that decisions and actions made by not only those in management positions now but also past Directors are protected for any liability during the time they were able to make decisions.

When considering D&O cover, JLT recommend companies first undertake a review of why they are buying this insurance and the circumstances in which they anticipate claims may arise, to ensure the insurance is relevant to their needs.

As the insurance industry has evolved post catastrophe, insurance loss modelling and aggregation of risk has become critical to insurers.

It is vital to be able to filter what is high risk and what is perceived high risk and being able to present this risk data to the insurance market.

Understanding the risks associated with your business and the shortfalls can be invaluable when it comes to your insurances and how the market perceives the risk. JLT has had success in a wide variety of areas in negotiating favourable terms for our clients, particularly post earthquakes.

For example, Wellington is generally considered high risk from a natural disaster perspective; however if a building is has been constructed to the latest building code, is on sound ground and has

the latest in fire safety standards, then when presented correctly to insurers this can assist in obtaining cover at the right outcome.

We are all too familiar with the changing landscape of insurance as a result of the earthquakes in Canterbury.

The New Building Standard (NBS) will have implications to property owners if buildings do not meet 34% of the new criteria. If a building is deemed earthquake prone, you must advise your insurer immediately and insurance cover will almost certainly change. Failing to do so could lead to your insurer limiting their exposure, increasing excesses for natural disaster cover, increased premiums and/or you may find that you will be required to provide much more detailed geotechnical information which could be costly to obtain.

Another area to be aware of are the Section 124 notices. These are being placed on buildings that are identified as earthquake prone and are deemed a material fact for insurance purposes. These must be disclosed to the insurer by the owner immediately as failure to do so could result in a claim being declined or no insurance cover provided at all.

This article provides general information in summary form. The contents do not constitute advice and should not be relied on as such. Specialist advice should be sought directly from JLT on particular matters. Please contact the author in the first instance.

Author: Deborah Fisher
Client Relationship Manager
Jardine Lloyd Thompson (JLT)
T: +64 (0)9 300 3763
M: +64 (0) 21 902 864
E:Deborah.fisher@jlt.co.nz
W: www.jlt.co.nz