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INSURANCE TODAY

Summer 2010-2011

WEATHER CAUSES A CLIMATE OF CONCERN

Insurance brokers have become more concerned about the impact of climate change and they believe their clients have also become more concerned, according to an annual survey conducted by the National Insurance Brokers Association (NIBA) and Zurich Financial Services Australia.

This was influenced by the number of severe weather events experienced by both brokers and their clients in the last year.

Underlying the importance of understanding the impact of climate change is the fact that more than 25% of small to medium businesses which close down as a result of a weather-related incident never re-open.

The survey found that almost 80% of brokers believe it is their job to advise clients of the risks associated with climate change.

When it came to who brokers thought should take the lead in educating clients on risk management around climate change, brokers nominated governments (83%), insurers (55%) and themselves (47%).

Asked to gauge their knowledge about the issue, 60% felt they knew a considerable or moderate amount about concepts of climate change and global warming.

NIBA President, Steve Lardner, said that regardless of climate change seeming to be taking a lower profile in the political arena, there was no doubt brokers and their clients dramatically felt the impact of extreme weather conditions this year.

“Regardless of your personal position on global warming, climate change and weather cycles, many Australians have been on the receiving end of weather-related disasters this year.

“So, it’s not surprising the survey clearly indicates brokers are concerned and – rightly – believe they have a role to play in helping their clients understand climate risks,” said Mr Lardner.



BEWARE OF TOO MUCH CHRISTMAS CHEER

As companies put the finishing touches to plans for the staff Christmas party, employers need to be aware of the liabilities they could face if celebrations get out of hand.

Christmas parties are a great way to reward staff, clients and contractors for their hard work and support during the year, but employers could find themselves exposed to legal liability if something goes wrong.

For example, an organisation could find itself defending a claim against the company itself, its directors and senior executives, as in a recent high profile sexual harassment case.

The Australian Institute of Company Directors has expressed concern about the proliferation of legal action against company officers (see page 3).

However, companies could also find themselves the subject of a workers' compensation claim as a result of physical or psychological injury, or even an unfair dismissal claim if an employee believes he or she was wrongly sacked for poor behaviour as a result of consuming alcohol provided at the work Christmas party.

An employer can also be held either directly or indirectly (vicariously) liable for discriminatory acts by its employees, for example sexual harassment or racial vilification, provided that the employees committed the acts in the course and scope of their employment.

An employer is not only obliged to protect employees from being sexually harassed by co-workers but also by third parties such as clients, suppliers, and contractors, who all may be attending the annual celebrations.

An employer's obligation to provide employees with a safe place of work can, for example, extend to injuries caused by drunkenness at the office party.

Depending on different State laws, employers are also responsible for employees' safety if they travel directly from the annual celebrations to their homes.

We can advise you on your specific needs in relation to Directors and Officers Liability, Workers' Compensation and related classes. However, here's some general tips to help you avoid trouble.

Provide alternatives to alcohol

Make sure there is plenty of food and non-alcoholic beverages available.

Have a clear policy on work-related social events

This could include clear guidelines about standards of behaviour at a company event and the disciplinary sanctions that could result from breaches of the rules. They could also include advice about not drinking and driving and encouraging staff to have advance plans in place for getting home.

Make sure harassment and bullying policies are up to date

Staff should be in no doubt about what comments and behaviour are acceptable and which are not. There should be clear guidelines for raising a grievance and any complaints should be dealt with promptly.



JUMP IN CLAIMS MAKES THE RIGHT D&O COVER ESSENTIAL



The proliferation of legal action against company directors is stifling decision making and making people reluctant to serve on boards, a survey by the Australian Institute of Company Directors (AICD) has found.

The survey reinforces the need for companies to have adequate Directors and Officers Liability cover and to understand what they are covered for.

The AICD survey involved directors from a range of business sectors and included some of Australia's top 200 listed companies as well as small and medium enterprises and not-for-profit organisations.

More than 90% of those surveyed said that the personal liability of directors had an impact on optimal business decision-making or outcomes and 65% said it caused them or their board to take an overly cautious approach. The vast majority also said they were concerned about lost time and opportunity costs for companies defending actions brought as a result of automatic liability for directors under a wide range of legislation.

Board recruitment and retention was also affected, with almost a third saying they had declined an offer of a directorship due to the risk of personal liability and 22% said they had resigned from a position for that reason.

More than 73% of respondents believed there was a medium to high risk of directors being found personally liable for business decisions made in good faith.

We can help you to ensure you have the right cover for your company, but here are some general some tips on what to look for when considering your D&O policy.

D&O policies usually have three components: Side A, B & C. Side A covers the directors and officers for claims made against them which the company may not indemnify them for, for

example if the company is in liquidation. Side B covers the company for claims made against the directors and officers which it may indemnify them for, and Side C provides cover if the company itself also has a claim made against it, for example by shareholders.

Have you considered a stand-alone policy for directors in case action against the company erodes the amount of cover subsequently available to directors and officers?

This would provide a separate layer of cover dedicated to directors and officers.

Have you considered separate Employment Practices Liability (EPL) insurance?

A recent high profile sexual harassment claim against a large company and its board has underlined the fact that while D&O policies cover EPL claims against directors and officers, they generally do not cover such claims against companies. Not only would such cover respond to claims against the company, but it would also provide additional capacity for directors and officers, and preserve the level of cover under the D&O policy for other types of claims.

Do the directors and officers and the company have statutory liability insurance for fines and penalties?

Directors and officers and their companies can be prosecuted and fined for unintentional breaches of certain laws, e.g. occupational health and safety and environmental laws. As D&O insurance would not respond to such prosecutions against a company in any event, and as D&O insurance policies would not cover directors or officers for such fines (because of their bodily injury/property damage and/or environmental exclusions), directors and officers and their companies should consider statutory liability insurance which covers fines and penalties for such unintentional breaches.

This increase in the number of legal actions has also come to the notice of the financial regulator, the Australian Prudential Regulation Authority, which said in its most recent annual report that it is actively monitoring the insurance industry's claims experience in Professional Indemnity and Directors and Officers insurance.

"Litigation funders have become active in this area and the media has reported high levels of claims in these classes of business, arising out of corporate failures and from investment advisors giving poor advice," APRA said.

BUSINESS WARNED TO BE ALERT FOR FRAUD

The Global Financial Crisis has helped to boost the levels of fraud against Australian businesses, according to the latest report by accounting firm KPMG.

Its annual fraud and misconduct survey found that the average loss from a business that had been a victim of fraud doubled from \$1.5 million to \$3 million in the last two years.

Gary Gill of KPMG Forensic, said the organisations surveyed believed that only one third of frauds are actually detected. "The real fraud price tag for Australia is substantially more, likely in the billions," he said.

While external attackers were mostly responsible for frauds committed against financial institutions, insiders were the main offenders in all other business sectors. In fact 65 percent of major frauds are committed by people inside the company.

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"The survey results should be wake up for every Australian business as fraud is on the rise, with much of it, particularly insider fraud, preventable. Ultimately a breakdown in internal controls is enabling employees to make off with the funds," Mr Gill said.

Mr Gill said there had been a marked increase in frauds involving the abuse of internet-based electronic funds transfer (EFT) facilities, with most of these frauds attributable to poor controls over access to EFT.

Another favourite is the 'switch and switch back', where an employee switches their personal bank account details with that of a vendor, prior to processing an invoice payment. Without controls such as electronic monitoring to detect an account that has been tampered with, it is often impossible to see that the information has changed once the fraudster switches the details back again.

"The survey shows that the typical fraudster is a 38 year old male employee, who has been there five years, often stealing more than his annual income. He knows his way around your systems and the loopholes in your controls, and in many respects he is your 'average' employee whom nobody would ever suspect.

"The warning signs can often be mistaken for a conscientious employee, such as staying back late in the evenings, working on weekends and not taking holidays," Mr Gill said.

The report says whistleblowers are responsible for uncovering around 20% of frauds, while fraud warning signs or 'red flags' were overlooked in 38% of major frauds.

"It's essential for companies to have a strong 'whistleblower' program. In order to really make this work for your organisation and the employees you're asking to be your eyes and ears, this should include a whistleblower protection policy and an anonymous external reporting facility," Mr Gill warned.

"Fraud is incredibly costly, sometimes deadly to business. Once your money has gone it's extremely difficult to recover, so prevention and early detection is key to managing the risk of fraud in your business," he said.

Insurance to cover fraudulent acts against your company is available. Talk to us about the options.