



# NEWSLETTER 9.2

**'OUR NAME IS YOUR PROTECTION'**

- The Insurance Market
- Terms of Trade - Insuring Vendor Product and Protecting your Debtors Ledger
- Journey On - A New Roadside Assist Option
- Claims - Change in Court Processes
- Internet Liability



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## The Insurance Market

With comment made regularly in the media, it will be no surprise for you that premiums across all insurers and on all product lines have increased on last year.

Homeowners will have noticed substantial increases on both house and contents and even more so for those with rental properties. The only real way to limit the pain is by examining your excess levels.

We have also been advised that effective 1 November there will be another round of increases with the various domestic insurers, ranging on various products from a 7.5% to 15% increase.

## Terms of Trade

Firstly, I must take this opportunity to point out that the seminars held by EMA (Employers & Manufacturers Association) relating to various business issues are well worth the time and money spent. I have recently attended an EMA seminar on Terms of Trade and found it most valuable from an insurance and general business perspective.

We also have the good fortune to work with Stewart Germann of the Stewart Germann Law Office and thus we can obtain information from his various newsletters to incorporate within our own. Stewart's latest newsletter also made mention of the all important issue of Terms of Trade.

It is very evident that many businesses do not have Terms of Trade in existence and often when we ask a new client for a copy of their Terms of Trade there is a blank look. I am not sure if it's from the point "Why should my insurance broker be asking for this?" or "Ooops, we have never had one and how do I answer this question?"

Let's look at it from the positive perspective which is "Why should an insurance professional be asking me that?" Well apart from the legal aspect and sorting out the buyer and vendor liability issues it defines for us where the risk starts and finishes and over what time period the risk applies. It also guides brokers in regard to the sums insured that should be put in place for the Material Damage and Business Interruption policies. There are also the risks relating to Inland Transit or imports/exports insurance and then of course Trade Credit cover.

Are you scared yet? You should be because you may find that if you manufacture a product and you use outside sourced materials that your sums insured are inadequate.

## Material Damage

This covers all the assets that you own and have in your possession and maybe if the policy is worded correctly, other customers' products. Now here is the pincher ...**if you have stock of raw materials, do those materials actually belong to you or do they still belong to the company that sold them to you?**

Look at the **Terms of Trade** and refer to the Sale of Goods Act. The vendor maintains ownership of those products until they have been paid for but the risk is yours to insure against damage until you actually own them.

Now The Ramalpa Clause is going to be your first cry for defence but this has been tested a number of times and you must wonder why it is still used because apparently you need to be able to identify the product as the vendors but if it has already been incorporated into another product then this identification process becomes very difficult.

Thus for all of you that have vendors' products in your premises that you have not yet paid for do you have enough insurance cover in place to pay for them in the event of a fire or some other peril damaging the product? Now you are probably thinking "my Public Liability Policy will cover me". Yes, but **only in the event that you are found negligent** and then there will be delays due to the claims process and don't forget you can only activate this policy if the **insurer agrees that you are negligent**. Chances are that you were not.

So now we have dealt with the vendor's product in your premises. But what happens when it is being consumed and put into another component to make your product? You have altered the vendor's product. It is being changed. We therefore need to cover **stock – work in progress** because it has gained in value. Then of course you have Finished Stock and you still may not have paid the vendor because the Terms of Trade state you don't have to pay until the 60<sup>th</sup> day of the issuance of the invoice by the vendor.

You're probably thinking "that's not a problem, we pay our invoices on the 20th of the following month". That's funny. Statistics show that the average New Zealand business is now taking 45 days to pay their accounts. We are using every one else's money and have done so for years. And now it has all caught up with us with the current credit crunch.

Now we come to the second part. In some Terms of Trade there are words such as '**Consequential Loss**'. Hopefully you will have a Business Interruption Policy which will cover many different aspects of your business turnover. But if the product which still belongs to the vendor has been damaged and cannot be used then the vendor is also going to lose his profit and if his product is damaged he will have the right to sue for damages especially if it's not covered under the Material Damage Policy. Also if there is a supporting contract dependent upon supply then there will be financial casualties. Does your Business Interruption take account of this?

If you not only have an issue for under-insurance on the Material Damage Policy and Business Interruption Covers you will now probably be seated on the edge of your chair for the next surprise. As mentioned, all New Zealand businesses are subject to the Sale of Goods Act. The risk becomes yours as soon as you remove it from the vendor's premises. So have you got the item covered whilst in transit from the vendor's premises to yours? (Because the vendor won't).

If you order product for a major production run for a launch of a new product into the market and the important component is damaged are you going to ask for another consignment when you haven't even paid for the last one? There will have to be some clever talking between the parties because your supplier is probably already up to his armpits in debt. The best option would be to insure for the transit and get the insurer to pay the money to the supplier then at least everyone can be kept happy.

When considering the benefit of strong Terms of Trade and also the prophetic words of legal expert, Stewart Germann, it is always better for the company doing the selling to use **their** Terms of Trade as this sets the parameters of the value of the product and the manner in which the vendor wants to do business. In fact it also sets the value of the product to the vendor as some Terms of Trade will also stipulate the warranty of the product. Therefore, if in the Terms it states there is a 5 year warranty this means the product is of high quality. If, however, you do not place a warranty time on your Terms of Trade you may just be looking at a possible period of time for a customer to claim against the business of up to 10 years.

Terms of Trade are central to the operation of any business as it tells customers the value of your business and the **value that you put on your products**. The Terms of Trade also set in place the period of time within which you require **payment** for your product or services. If you don't tell customers when you want payment then there is no real contractual obligation for the customer to pay you and they can take whatever time they wish. It is for this reason that the Terms of Trade are important for **Trade Credit** insurance as the insurer will need to see what debt collection processes you have in place. The stronger the Terms of Trade and terms of credit the better the risk for the insurer and this should be a reflection in the rate offered.

**We highly recommend that if you do not already have Terms of Trade that you take the time to put this document in place to protect your debtors ledger and provide as many safeguards for your business as you possibly can. This is the perfect time to add in those all important clauses such as making it clear that defaulting debtors will be responsible for paying your debt collection costs.**

## Postal Problem

Along with the general public at large we have only just become aware that over the last 3 months large numbers of items forwarded to our clients using NZ Post have 'gone astray'. Unfortunately we are unaware of the details of the items missing and can only apologise for any inconvenience caused. If you believe that you may not have received documents from us, please advise so that we can re-send.

## Journey On - A New Roadside Assist Option

We bring to your attention a supplementary cover we are able to offer our clients. 'Journey On' is similar to the AA Breakdown cover (although is registered against the vehicle rather than the individual) and has a number of enhanced benefits. We are recommending the Enhanced Option and to purchase directly is \$89.96 (including GST), however, **if bought through Barley Insurances Ltd there is a \$10 discount, reducing it to \$79.95.**

To purchase just go to [www.journey.co.nz](http://www.journey.co.nz), select 'Purchase', enter 'BIL10' and click on 'Continue with Promo Code', then select 2<sup>nd</sup> Option 'Enhanced' and follow the instructions.

If you do not have a computer to complete the purchase of this cover please contact us and we will organise the cover on your behalf. As advised on their website the benefits are:

**Journey On ENHANCED** provides the Everything you need to get up and running again PLUS Medical, Legal Advice Lines, Concierge Service and Hotel Accommodation or Rental Vehicle if you are more than 100km away from home and can't be mobilised:

- Jump Start if your battery is flat
- **Flat Tyre replacement with your spare**
- Emergency Fuel if you have run out
- Minor Roadside Repairs, such as replacement fuses, temporary repair to hoses
- **Emergency Windscreen Assistance repair and replacement**
- Key replacement, locksmith service or key courier service
- Driver Assistance with directions
- Urgent Message relay
- Emergency Towing to the nearest place of safety if your vehicle can not be mobilised.
- Accident Co-ordination, advice on what to do and the arrangement of towage to the nearest place of safety. (In this instance towage costs are not provided for, however most insurance policies provide reimbursement for accident towage and cleanup)
- **Medical Advice line for medical advice to you and your immediate family members**
- Legal Advice line relating to matters involving ownership or use of your vehicle including accident related matters
- **4WD trip tracking and advice on 4WD tracks available**
- Towed item assistance. In the event of a breakdown of the towing vehicle - we'll also organise that the towed item gets back to the nearest place of safety
- Concierge Service and Assistance, providing:
  - Golf Course recommendations and reservations
  - Hotel, Motel and accommodation advice and location
  - Dining information and reservations
  - Flower and Gift delivery
  - Special Event and Show bookings
  - Rental Car referrals and bookings
  - Parts and Service locator service to help you find the nearest tyre, service, repair workshop.

If you've broken down more than 100km away from your home, Journey On Enhanced also provides:

- Emergency Taxi transport after the vehicle has been towed (Maximum \$30 incl GST)
- Hotel Accommodation (Maximum \$150 per night for up to 3 nights) OR
- Rental Vehicle (Maximum \$130 per day for up to 3 days)

### Conditions

- Limit of \$100 per call and 3 callouts per year unless noted.
- An emergency tow is to the nearest place of safety and is not subject to the \$100 limit

Like any assistance programmes there are limitations. Conditions are that your motor vehicle must be currently warranted and registered, in a sound state of repair, and must be on or near a public road accessible by a 2WD vehicle.

## Claims - Change in Court Processes

On 1st November 2009 a radical new system will be in place regarding District Court proceedings. The beginning of this process involves:

1. The plaintiff serves a notice of claim on the defendant setting out the details of the claim;
2. The defendant has 30 working days to respond by providing details of its defence;

3. The plaintiff then has 30 working days to serve a comprehensive information capsule which includes statements of evidence from all witnesses for the plaintiff and a list of all documents the plaintiff will rely on in proving its case;
4. The defendant then has 30 working days to provide its own capsule which also must contain the evidence of its witnesses and all documents it intends to rely upon.

This essentially means both parties have to fully prepare and present their case within a short time of the plaintiffs serving a notice of claim. It means defendants, which invariably will be the insurer, will need to move fast to ensure they are able to:

- identify witnesses;
- take statements from them;
- instruct expert witnesses;
- consider expert reports; and to
- identify and locate all necessary documents.

It is extremely important that service of a notice of a claim on you is immediately brought to our attention so we can ensure the best possible defence is put forward. Any delay in notifying a claim will prejudice the insurer's ability to defend the claim which may affect cover under the policy.

The process requires good communication between you and the insurers in order to properly protect both the client and the insurer's interests. **Therefore in the event of a claim of any sort please advise us as soon as possible so that we can get the process moving quickly.**

## Internet Liability

We recently attended a seminar where the speakers were from the legal fraternity and we were informed of an exposure which has crept up on all businesses that deal with the internet and have their own website. Historically we have considered that our liabilities relate purely to the business which is transacted in New Zealand. What we have forgotten is that with having a website this enables people from overseas to view that site and make contact with us, so we are in fact dealing with the international market. This of course provides ample opportunity for those parties overseas to seek recourse against our company from an innocent mistake that we may make in the information that we have included in our website.

We consider that the indemnity limits offered and the cover being provided represent a good investment. As an indication, if you have 1-10 employees, the premium for \$500,000 indemnity limit is \$600 + GST. A \$100,000 limit is \$300 + GST. The premium rises according to the number of employees (ie for employees numbering 41-50 with a \$500,000 indemnity limit the premium is \$800 + GST).

Please note that if you already have Professional Indemnity the policy will not have this internet liability extension included. However, even if you don't require a full Professional Indemnity policy, but you do have a website, we strongly advise that you consider the Internet Liability cover. The policy includes cover for **unintentional**:

- Transmission of virus.
- Defamation.
- Infringement of Intellectual Property.
- Breach of copyright or unauthorised use of names.
- Breach of confidentiality or misuse of information.
- Belittling of a product or work.
- Unauthorised use of any advertising idea, material, slogan or style.

Excludes:

- Chat rooms, electronic bulletin boards and open forum debates.
- Indecent or prohibited material (eg pornography).
- Fraudulent, dishonest or malicious acts by employees.
- Harrassment or discrimination.
- Professional advice or service.

Please call John Barley if you are interested in obtaining further information.