

***NZI Liability:***  
***Case studies***  
***for correct***  
***client cover.***



# ***NZI Liability***

## ***Smarter, bolder solutions***

This booklet contains examples of some real life liability claims scenarios. These scenarios illustrate the importance of putting the appropriate liability insurance solution in place for your client.

NZI Liability is here to help. Talk to us about your clients' liability needs and we will work with you to put the appropriate solutions in place and help prevent your clients from being under – insured.

## **Scenario one**

### **General Liability cover but no Statutory Liability cover**

The insured, Terrific Transport, was a transport operator with a large yard, which included a diesel storage tank. One night the diesel storage tank broke a coupling resulting in a leak of some 20,000 litres of diesel into an adjacent stream. The stream supplied water to a nearby township. The town was forced to close its water supply and to truck in water until the contamination had been cleared up.

The insured held a General Liability policy which responded to the various claims arising from the contamination event, including the District Council's initial clean up costs of \$135,000, and a further claim for \$988,000 by the Council for provision of emergency water supplies, water sampling, provision of portable showers and toilets for residents affected, decontamination of settlement ponds, and various smaller claims by affected local businesses.

Unfortunately the insured did not hold Statutory Liability cover for the resulting prosecutions: by the District Council under the Resource Management Act for unlawful discharge of a contaminant; by MBIE under the Substances and New Organisms Act for failure to maintain a stationary container system; and under the Health and Safety in Employment Act for failure to notify Worksafe of a relevant event as soon as possible. The Court ordered a total fine of \$300,000. In addition, legal defence costs of \$125,000 in relation to the three prosecutions were incurred.

#### **Comment**

A General Liability insurance policy provides indemnity to the insured for claims against the insured by third parties, arising from bodily injury or property damage.

A Statutory Liability policy provides indemnity to the insured for claims against the insured for unintentional breaches of many New Zealand statutes.

Had Terrific Transport bought a Statutory Liability policy, its legal costs and fines resulting from the prosecutions would have been covered.

## Scenario two

### General Liability cover but no Professional Indemnity cover

Here are a few examples where failure to act on the insured party's behalf resulted in the insured facing liability:

#### Example A

Purrfect Pet Minders agreed with Sally Softy to mind her pet cat for seven days while she was away in Sydney on holiday. The contract involved visiting Sally's house daily to check that her cat was okay and to provide food and water. Purrfect Pet Minders forgot to do so and the cat was locked inside the house with no food or water for a week. By the time that Sally got home, the cat had suffered acute renal failure resulting in veterinary bills of over \$2,500. The General Liability claim was declined on the basis that the insured had failed to provide the service required.

#### Example B

Supreme Security had an alarm monitoring contract with Wonderful Warehousing to provide 24 hour security services for their storage business. One night, an automated alarm activation call was received by Supreme Security advising that the burglar alarm at Wonderful Warehousing had gone off. However, Supreme Security thought it was a false alarm and failed to act on the alarm activation or to send a security agent to investigate. Goods totalling \$17,000 were stolen from the warehouse and Wonderful Warehousing held Supreme Security liable for this loss. Again, the General Liability claim was declined on the basis of the failure to provide the service contracted for.

#### Example C

Careful Call Centre operated a call centre providing 24 hour services to a range of customers. One morning, the call centre operator received a call from a dairy farmer advising that his vat of whole milk had been accidentally contaminated with colostrum and requested that the Magic Milk tanker skip collection from his farm until the problem was sorted. The Careful Call Centre operator failed to process the call in accordance with the required procedure resulting in the pre-scheduled pick up by the Magic Milk tanker going ahead. Magic Milk claimed a loss of \$280,000 for the 1,274 tonnes of milk that were lost as a result of the milk being collected and processed into a silo before the problem was discovered. The insured's claim for indemnity under the General Liability policy was declined.

#### Comment

The General Liability policy is triggered where there is *"an event that results in property damage neither expected nor intended by the insured"*. However this policy doesn't respond where the insured has simply failed to do what they were contracted to. There is exclusion for claims arising from the *"failure to render service by the insuree"*.

The policy trigger under the Professional Indemnity policy is *"legal liability arising from any claim for compensation arising out of the professional business"*. So a Professional Indemnity policy would have responded to all these situations above.

## **Scenario three**

### **Employers Liability cover but no Employment Disputes Liability cover**

The insured, Magnificent Manufacturing, had a feeling that it had some form of employment-related insurance cover but did not really know the details of this. So, when the insured received a lawyer's letter they contacted their broker. The letter stated that a former employee, Ted, had resigned from his position as a laser operator but in fact the resignation had been brought about by the bullying and harassing behaviour of Ted's manager. The letter formally raised a personal grievance against Magnificent Manufacturing for Ted's unjustifiable constructive dismissal, and sought compensation of \$14,000, together with costs.

Magnificent Manufacturing did not hold an Employment Disputes Liability policy, so the insured had to engage a competent employment lawyer to deal with the personal grievance claim. The personal grievance claim ultimately settled for \$8,500 prior to mediation. The insured ended up paying legal costs of \$13,500 in relation to the defence of the personal grievance claim.

#### **Comment**

An Employers Liability policy covers personal injury claims for employees which fall outside the ACC regime (for example, stress-related claims).

An Employment Disputes Liability policy responds to personal grievance claims brought against the insured for such issues as harassment, discrimination, unfair dismissal etc, and would have responded to Magnificent Manufacturing's situation.

## **Scenario four**

### **Professional Indemnity cover but no Fidelity cover**

The insured, Awesome Appliances, sold and serviced small appliances. They had both Professional Indemnity and General Liability policies and thought this fully covered their risk as the broker had not offered any other liability solutions.

Yet when they terminated the employment of their administration manager, they found that she had been taking extra wages, salary payments and allowances over a 10 year period. She had also used company cheques to pay suppliers for work performed at her own home, and to purchase assets for her personal use. These transactions were incorrectly recorded in the accounting system, and false documents were created to support the additional salary payments. A total of \$215,000 was misappropriated by the employee over the 10 year period.

#### **Comment**

Because there was no loss of third party property (only the insured's own funds) neither the Professional Indemnity nor General Liability policy had any application. However if the insured had held Fidelity insurance cover, the loss would have been met by insurance.

Note – the definition of 'assets' under a fidelity policy normally extends to include both monetary and stock/products.

## Scenario five

### **Technology Liability cover but not Directors and Officers cover**

Spectacular Systems were a small IT service provider whose day to day activities were covered by a Technology Liability policy. The insured's broker had explained that this policy provided both Errors and Omissions cover similar to coverage under a Professional Indemnity policy, and Personal Injury and Property damage cover similar to a General Liability policy. As the Technology Liability policy was specifically tailored to the provision of technology products and technology services the insured thought that no other cover was needed.

Spectacular Systems received a letter from a lawyer engaged by Mr F, who held 740,000 shares in the company. The letter alleged that the previous year the company had acquired 250,000 shares from a former director and then had cancelled the shares. No cash was exchanged for the purchase of shares, but the purchase price was set off against loans due by the director to the company. The lawyer alleged that there had been a breach of section 78 of the Companies Act 1993 because there had been a failure to disclose the financial assistance in the purchase of the shares.

The lawyer also alleged that there was a breach of the requirements of sections 59 to 65 of the Act. This included that:

- ▶ the board did not make an offer to all shareholders to acquire their shares on the terms afforded to the former director;
- ▶ all shareholders did not consent in writing to the acquisition of shares;
- ▶ the directors did not certify that the acquisition of the shares was of benefit to the remaining shareholders or that the terms of the offer were fair and reasonable to the remaining shareholders; and
- ▶ the company would satisfy the solvency test after the acquisition.

Mr F's lawyer said that he was holding the directors of the company personally liable for any loss he might suffer as a result of the breaches of the Companies Act. Spectacular Systems' board incurred substantial legal costs defending the allegations made by Mr F totalling \$68,000.

#### **Comment**

A Directors' and Officers' policy provides cover to directors and managers of a company for any litigation against them regarding how they have managed the company or its affairs. The majority of claims come from shareholders however claims can also come from competitors or regulatory authorities.

Had Spectacular Systems' board purchased a Directors' & Officers' policy they would have had cover for the legal costs they spent defending the allegation, as well as the expertise of the insurer's panel lawyers, if required.



