

**MORE
THAN**

**Your edge
special edition**

heads up

Times are changing and so are Liability risks





Hello, and welcome to this special edition of *More Than*, dedicated to the recent **Your Edge Liability Symposium**.

Held earlier this month at the SkyCity Convention Centre, this signature Lumley event attracted over 470 brokers making it one of the best attended insurance events in the country! It was great to see so many of you there, and I trust you gained a greater understanding of liability issues and emerging trends which can assist you in providing your clients with the most up-to-date advice.

For us, the event was about sharing our expertise in the Liability segment, and further fostering our Broker relationships. At Lumley we're committed to developing expertise not only in our own business, but offering you opportunities to develop your own capability and knowledge in this important area.

Building capability has been a constant thread throughout the Lumley story over the last year. Our business has achieved a remarkable turnaround, climbing back from disappointing results the year before, to return to underwriting profit. While we appreciate we still have a way to go to deliver a satisfactory level of return and achieve the highest standards of service, it is a great step in the right direction.

And while our result demonstrates our financial improvement, there has also been a lot of activity carried out which has not always been visible from the outside, to build capability within our business. Lumley is investing heavily in better systems and processes (and has recently been given approval from Wesfarmers to replace our legacy system with a state of the art insurance policy system) and ensuring we retain and attract specialist people to deliver their expertise throughout the business – all of which supports our position as a sustainable long-term partner.

In this special edition of *More Than* we look at some of the recurring themes throughout the symposium, and highlight some of the emerging risks in Liability. We delve deeper into the complex world of technology exposure, and examine the marked shift in society towards a more litigious environment, and what this means for your SME clients. Enjoy.

John Lyon Chief Executive Officer



Managing the “known unknowns”

Heinrich Eder of Munich Reinsurance provided an assessment of identifiable emerging risks, drawing inspiration from the words of Donald Rumsfeld when he was the US Secretary of Defence:

“There are known knowns, there are things we know that we know. There are known unknowns, that is to say there are things that we now know we don't know. But there are also unknown unknowns. There are things we do not know we don't know.”

Emerging risk are the known unknowns, and as one of these is pandemics, Heinrich came to the podium wearing a facemask. **Indeed, pandemics were one of 18 emerging risks that his presentation listed.**

He said that the not so obvious pandemic exposures included such areas as personal accident (travel insurance) and D&O liability. With regards to D&O, he posed the loss scenario of a new pandemic flu strain spreading through a company where there are no (or poor) contingency plans for such an event, and the share price was declining because of operational difficulties.

He asked: “Does this provide grounds for a shareholder or employee to sue the management of the company?”

Another emerging risk Heinrich identified was nanotechnology; material and particles on a molecular or atomic scale already in daily use in consumer products. In this context, he highlighted the insurance industry's \$120 billion exposure to asbestos because of mesothelioma disease which was unknown when the product was released

for use. As an example, he questioned whether we yet knew of the implications of the use of carbon nanotubes, saying there were potential public and product liability exposures, and also emerging exposures arising from an uncertain legal and political environment.

The third example of an emerging risk was educational malpractice, where cases began appearing in 1970.

In July this year, there was the case of a woman suing her New York College for \$70,000 in tuition fees and \$2,000 for emotional stress, alleging the college did not adequately assist her in securing gainful employment. Claims alleging educational malpractice have appeared in the Australian market, although they remain largely untested in courts.

Whose fault is it that Johnny can't read? The legal costs may be substantial in defending opportunistic claims.





Recession increases risk of employment claims

Employment Law specialist Margaret Robins, from Workplace Law, highlighted the rise in employment risks. Mediations were up 26% in two years, and employers were more likely than ever to be on the receiving end of an employment dispute.

As jobs become harder to come by, Margaret says more employees are motivated to challenge dismissal, although 80% of disputes are resolved at, or before, mediation.

The typical legal costs to the employer to defend a dispute at mediation is between \$2,500 and \$7,500, compared with between \$10,000 and \$30,000 in the Employment Relation Authority (ERA), and \$10,000 to \$50,000 for the Employment Court.

However if an employer is successfully sued, compensation for standard cases is reimbursement of actual loss up to three months income, and compensation for hurt feelings of less than \$10,000. In 2008, 80% of the awards for distress were \$8,000 or less. Less than 1% were more than \$15,000, and the highest was \$25,000.

The factors that increase risk and costs are such things as a claim of workplace bullying, claim for reinstatement, or a very senior or specialised employee whose prospects of new employment are small.

Margaret believes the awards to employees for compensation in standard cases are not outrageous, and employers are better to settle at mediation than go to a hearing. The costs of awards are so low that even if successful, an employer will be left substantially out of pocket after a standard ERA hearing.

To download all 'Your Edge' speaker presentations go to:

www.lumley.co.nz/youredge/speakers

Paranoia is healthy, particularly in times of economic stress

Directors and Officers trends and developments

New Zealand has changed. And if the larger corporates can fund the liability problems in this more litigious environment, New Zealand's small and medium enterprises (SMEs) certainly cannot.

This was the recurring theme delivered to over 470 brokers by industry experts at Your Edge 2009.

There has been a marked shift in social behaviour reflected in greater demand for accountability, less tolerance, deeper acrimony and a growing appetite for class actions. These behaviours are evident in businesses, consumers, employees and even agencies of government, and there are implications for all forms of public and professional liability.

While we may have been through the most extraordinary financial rupture worldwide, Philippa Fee of Jones Fee says that local factors have played a major part in driving the culture change in the attitude of New Zealand society to litigation. We are no longer litigation shy.

Philippa notes that although our banking system had fared much better than most in the world, our recession was proceeded by the decimation of the financial sector, with 30 failed finance companies accounting for billions of dollars of investors' funds lost. Alongside this there has been a massive increase in receiverships and liquidations. In fact, they've doubled in two years.

There have been political, social and legal consequences. For example, there are new legal templates such as "no-win, no-fee" legal services in employment disputes, and the emergence of collective action groups and representative actions.

This was the backdrop to Philippa's presentation on D&O insurance, and she counseled that when it comes to liability, paranoia is healthy, particularly in times of economic stress.

While liability has to arise from a "wrongful act," this is now frequently being broadly defined to include errors or omissions, and breach of duty in the capacity as director or officer.

"There has also been an expansion of cover so that it is common for policies to also cover employees (as well as directors/officers), liabilities to employees, and defence costs associated with attendance at official investigations and enquiries, as well as successful defence of criminal prosecutions, such as health & safety prosecutions and pollution claims."

She asserts that if anyone should have D&O insurance, it should be a SME. **"With SMEs, directors and officers are frequently also the owners, so their personal wealth is at the mercy of the company's fortunes. And the greater the risk of corporate failure, the greater the need for D&O cover."**

Regulators do not differentiate between large and small companies, and with the risks associated with activities like capital-raising, SMEs may be more exposed due to their lack of professional advice and informality. In the case of Health & Safety, prosecutions are now routinely filed against directors, as regulators are wanting to increase the deterrent effect of a prosecution.

We're all technology businesses!

If you're thinking Technology Liability is the domain of the so-called "knowledge workers" in the IT and Communication sector, think again.

As legal technology specialist Guy Burgess told Your Edge 2009, information technology is now mission critical for most businesses which means they cannot get on without it, therefore most face a risk. On this basis, almost every business is a technology business.

His advice to brokers was: **Don't assume your client has little or no technology exposure; if a company is involved in IT, you need to understand all aspects of what it does, consider the key technology-specific risks and don't forget the data – this should be protected as a top priority.**

Guy identified seven key technology risks for businesses generally, and gave special focus to three of them: **Spam, Copyright and Website liability.**

Spam legislation, the Unsolicited Electronic Messages Act 2007, applies to all businesses and organisations sending commercial email and text messages. There must be a procedure for opting out of any commercial messages.

In terms of Copyright, he explained the new "safe harbour" protection for businesses in cases where a third party uses your website or network to infringe copyright. While this may cover a business in the case of an employee uploading, storing or sending infringing material, it was important to have internal processes for handling complaints.

His advice on website liability was to have a disclaimer, even a simple one like: **"This is general information only, not advice. Seek independent advice before relying on any information."** But even Guy's disclaimer came with a disclaimer!

A case was cited where a trade association's website implied members were financially sound and covered by a warranty scheme. This was incorrect, and on the same site there was a contractor member not covered by the guarantee, whose poor work led to a claim against the association. The lesson: **have an appropriate disclaimer on your website, keep content up to date, and ensure web content is not misleading.**

An emerging risk for technology firms is Data Loss due to negligence, accident or malicious behaviour. This is heightened by the ability to store data on small portable devices. Losing your briefcase a few years ago may have meant the loss of a few paper files, but losing a memory stick or laptop could have very significant impact due to the amount of data stored on it.

There has been a substantial increase in data loss incidents world-wide. A 2009 survey of New Zealand and Australian firms has shown that 58% of businesses have lost data. Liabilities for data loss include breach of contract, negligence, breach of confidence, breach of privacy and significant consequential damages.



Giving you the edge

Message from Rob Scott, Managing Director, Wesfarmers Insurance

The Your Edge event was a great opportunity to bring together people with a common interest in the industry, and Lumley has again demonstrated their commitment to the market by hosting the second of these specialist Liability Symposiums.

Lumley is committed to Liability Insurance

Lumley has identified liability as a key strategic area of focus, and Wesfarmers Insurance fully support their endeavours to become the leading technical resource and business partner in this portfolio.

Having further strengthened the Liability portfolio in the past few years, Lumley continue to seek ways to leverage their expertise and specialist positioning in an effort to provide the best liability insurance solutions for your clients.

Liability is not for the faint hearted and at Wesfarmers, we recognise that Lumley's success will come from the experience and expertise of their people and strong technical capabilities. The same applies to you, as brokers, in the way you service your clients. In this regard we would like you to view Lumley as a technical resource and a partner to help you meet your clients' needs.

We realise that insurance is a people business and that great people combined with great systems can deliver excellent outcomes to clients and shareholders. To that end, we will continue to invest in great people and great systems.

The positive turnaround in Lumley over the past year is a testament to this and underlies why Wesfarmers is committed to insurance. We regularly review our businesses for improvements, and have been making the changes necessary to ensure that we are well positioned for the future. Lumley has been a key part of this transformation.

We understand that Lumley's journey is not yet complete and we recognise that we must continue to improve our products and service and remain focused on delivering value to brokers.

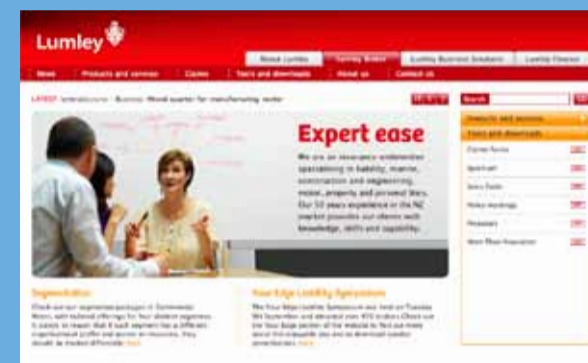
Thank you for your continued support.

Rob Scott

In house

New look for Lumley online In August we launched our refreshed website, offering improved design and better navigation to help you quickly find the information you're looking for.

The new website features a 'Quick Links' section so you can easily access the tools and downloads most frequently used, and hosts a new 'Find A Broker' function which directs potential customers in your local area straight to you! **Check it out at www.lumley.co.nz/broker**



Claims capability As many of you will know Lumley has been steadily building internal capability to ensure we remain a successful and sustainable long-term business partner.

One of the key areas we have focused on is claims, and the introduction of the Lumley ClaimCenter system earlier this year was a key milestone in improving the claims processes in Commercial Motor and Personal Lines. We are about to roll this system out to all other remaining lines of business, further improving our claims processes and service delivery.

To support the growth of our claims capabilities, Lumley has appointed Roger Scholes to assist our teams in the



commercial claims area. Roger has a wealth of experience in managing large and technically-complex claims and his expertise will add significant strength to Lumley's claims management capability.

System improvements Lumley has recently been given approval by our parent company Wesfarmers, to invest in a replacement Policy Administration System.

Work is already well underway on this key business project. The approach taken to the roll out of the new system will be similar to that for Lumley ClaimCenter, with Personal Lines and Commercial Motor being in the first phase of implementation.

Among other improvements, the new system will offer more streamlined processes and greater efficiencies in the underwriting and management of policies.

Lumley's new Approved Repairer Network has now launched Phase 1 in Auckland, Hamilton and Christchurch. The network is for all light motor claims, and offers your customers the opportunity to utilise the expertise and skills of a select group of expert motor repairers.

A list of Approved Quality Repairer Network Members is available on the Lumley website www.lumley.co.nz/broker. If you have any questions, please contact your Lumley Account Manager.

Seen & heard at Your Edge 09



www.lumley.co.nz/broker