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## IN OTHER NEWS

### Space the Final Frontier



Did you read last week that the Ministry of Business, Innovation and Employment (MBIE) has taken on a new function of being New Zealand's "lead space agency"?

The funding was announced in the Budget - the Government has set aside \$15 million over the next four years to fund MBIE as the nation's "lead space agency". (Cue the Star Trek sound track).

Apparently the funding will enable MBIE to respond to the opportunities for economic growth in the emergency space sector.

The media's stated: *Those advantages include the investment brought by US-based company RocketLab, which is currently in the middle of a 10-day window to launch their first test rocket from the Mahia Peninsula between Gisborne and Napier. The company's founder Peter Beck hails from Invercargill. The funding will provide \$3.75m a year to cover operational*

## Public Liability Insurance Part Two



house whilst brazing a copper pipe in a wall.

In the last issue of the Fellow Practitioner we outlined an event where an employer was faced with and insurance company declining a Public Liability claim after an employee accidentally set fire to a

The Federation wants everyone to be aware of the pit falls of Public Liability insurance so you as employees and employers don't endure the two years of stress our employer faced after his claim was declined.

The employer we speak of had what is termed a Broadform Liability policy. It formed part of a Business insurance package. Broadform is a generic term for a liability insurance policy originating in the United States. Most specialist liability insurers in New Zealand provide coverage on this basis.

Most policies appear to allow the insured to choose what coverage they require by way of modules such as:

- Material Damage
- Business Interruption
- Commercial Motor
- Broadform Liability
- Employers Liability
- Statutory Liability
- Machinery Breakdown
- Personal Income
- Employee Fraud

As with most insurance our employer was faced with an adhesion contract which is a standard form contract (sometimes referred to as a take-it-or-leave-it contract) between two parties, where the terms and conditions of the contract are set by one of the parties, and the other party has little or no ability to negotiate more favourable terms and is thus placed in a "take it or leave it" position.

Due to the independence in the coverage of each module there is the ability for each module to be renewed at different times of the year. Additional coverage can be added and deleted from the Business Plan without affecting the coverage from existing modules.

The initial policy entered into met the needs of our employer and as

costs.

So tied up in the digital age that people are forgetting about the hands on skills and knowledge.

In our opinion they could have invested the \$15 million in our industry and created some real jobs to help increase productivity in our sector. But this is typical of the Government - there are lots of half baked ideas on the go and none of them are achieving what they are meant to.

Look at the Industry Training Organisation scheme. Millions of dollars wasted on a middle line of bureaucracy that simply pays organisations to administer assessments. They are experts in wasting money which could be used for training. That \$15 Million would have gone a long way to getting the review of the Plumbers Gasfitters and Drainlayers Act 2006 completed or started (who knows what stage it is at).

It also could have completed the review of occupational licensing which MBIE is doing on behalf of the Minister of Building and Construction. Dr Nick Smith. This is the review where it seems the Minister wants an occupational regulatory system that removes the right to practice.

The type of system where if the registration was removed as the result of an investigative and disciplinary process the right to practise (except under direct supervision) would be lost.

We know he has been

it was an adhesion contract it appeared to be standardized with only one restrictive condition being *992 Electronic time/date Exclusion*.

An exclusion is a term or condition that must be adhered to if coverage is to be provided. Both parties must be aware of it and what it means.

The Fair Insurance Code 2016 states it's the Insurance Company's responsibility to give a clear summary of the key features of the policy and will explain responsibilities and what may happen if the insured does not meet them. This is done when the insurance is bought, during the term of the insurance and when insurance is renewed.

The employer saw the Broadform Liability policy as existing to protect and to indemnify himself against accidents that may occur in the general course of his business. That coverage extended to his employees. The only condition was *992 Electronic time/date Exclusion* but yet when a claim was made and declined, clause PLB510 was used.

PLB510 is a condition under the Broadform Liability cover, "*Fire risk work away PLB510*", which provides cover for work, at premises other than the employers, involving open flame.

The conditions that our employer would have had to have followed to be covered for a claim include:

*The area of the work will be cleared of combustible material for a safe distance from or beneath the place where such work is being carried out. A safe distance will be not less than six meters when welding cutting operations are carried out. Where such precautions are impracticable such material will be covered with fireproof blankets or similar protective equipment. Combustible parts of premises will be similarly protected; and*

*A fire extinguisher of a type and capacity suitable for the combustible material and the premises will be kept immediately adjacent to the area of work and available for immediate use.*

Failure to comply with one of these conditions enabled the insurance company to decline the claim, which they did. The Broadform Liability cover is also subject to a condition "*Duty of Care*" which provides that the person insured must take reasonable precautions to prevent damage to property.

All our employer's staff have a responsibility to honestly, diligently and to the utmost of their ability, carry out and perform the duties, responsibilities and work required of them and to carry out such duties, responsibilities and work in a careful, proper and legal manner and in accordance with any policies determined and any directions or instructions given to them by or on behalf of the employer.

As the insured our employer would be expectant that the policy would cover any situation where staff failed in their duties and contractual obligations where the insured has taken all reasonable steps.

deeply involved in getting Engineers regulated and good on him, but there is no need to drag our industry into the same muck hole.

Perhaps MBIE is the right organisation from the Government's point of view to be the "lead space agency" so that more issues can get "lost in space" (even the Lost in Space movie and TV series had an evil Dr Smith).

### Lost in Space



It seems to us that more and more issues end up with the Ministry of Business, Innovation and Employment (MBIE) and more and more industries are reliant on them, but is this the best way of dealing with issues? They are their own black hole – stuff seems to go in never to be heard of again.

We all know that big is not always the best as it is too easy for issues to be lost or for other issues to take priority. We pay taxes the same as everyone else, yet issues affecting us directly are "lost in space" with MBIE.

They are the Ministry that are supposed to be advising the Minister of Building and Construction about all things plumbing, gasfitting and drainlaying. It doesn't seem to happen or if it does the industry isn't consulted and it is all top secret.

We are forced to wait for self proclaimed experts to advise the Minister but the Minister is not blameless here as he should be pushing for

In this case the staff are trained to NZS4781:1973 which is the Code of Practice for safety in welding and cutting. This training is part of their formalised apprenticeship training.

The insurance company had this to say regarding PLB510 and NZS4781:1973:

*"Second, PLB510 is worded differently from NZS4781 :1973; in the former, you need to have a "fire extinguisher" ; in the latter, "suitable fire extinguishing equipment". These don't mean the same thing. The dictionary definition of "fire extinguisher" means a bottle with propulsive gas. An electric jug containing water is not a bottle with propulsive gas"*

This is clearly stating that PLB510 is different to NZS4781:1973 and thus would place the requirements of condition PLB510 to be higher than standard NZS4781:1973. **This is vitally important for any holder of this policy to know.**

A letter from the insurance company concentrated on the two provisions of PLB510 and the absolute nature of them. The letter outlined that the employer could not rely on the training and knowledge of staff to meet the performance of the conditions.

The insurance Company stated in it' s letter:

*"You say that you effectively delegated any responsibility to meet the preconditions onto Mr. XXX who owed you certain duties in his employment contract which, if they had been discharged by Mr. XXX, would have meant that the fire would not have occurred. The pre conditions are an absolute obligation: they are either fulfilled and you can go on to prove your claim, or they are not and the claim fails. If you choose to delegate performance of the work required to meet the preconditions, then as long as that work is carried out by the delegate, the preconditions will be met.*

*However it is no answer to say that you should be deemed to have met the preconditions because you delegated the task of observing them to someone else. The preconditions are not qualified by words making your best efforts sufficient to meet them".*

This is effectively saying the employer has no coverage for the actions or inactions of an employee with regard to this condition unless the policy holder is present to ensure the condition is met. If delegation of the responsibility cannot be handed on to staff then this is not in the spirit of policy purchased.

The Insurance company concluded its letter by saying:

*"While we agree with your comment that you have the cover to indemnity your company against accidents, and that there should be cover for poor decisions by employees, the policy does not cover every mistake.*

*The policy expects that insured and their employees meet certain minimum requirements of conduct contained in PLB510 and the duty to take reasonable care. Other insurers in the market put the same*

information and solutions to help the industry.

One point that was raised at the meeting last week with the Social Services Select Committee was the possibility of two Plumbers Gasfitters and Drainlayers Boards. One Board to handle regulation of the industry and a second Board to cover governance of the industry. It was suggested that they share resources such as the chief executive and staff.

This is a very simple concept where the government appointed regulation Board is working with the industry appointed Industry Board. This means industry and government needs are met quickly and without the need for so called industry expert groups that are within MBIE.

This reduces taxpayer costs and means the industry actually has a say with regard to direction.

Everyone in the industry knows we are New Zealand's first line of defence of the public's health so we need to be able to assist industry participants through participation rather than through threats and punishment.

Don't get lost in space. Speak with your local Member of Parliament and push for change lead by our industry.

*requirements into their policies. For the reasons set out, none of the reasons and facts in your letter persuade us that the preconditions in PLB 510 were met, and we must confirm our declination of the claim"*

The above paragraphs from the insurance company's letter show a number of concerning points for an insured business. Firstly the business can't rely on the training and experience of the employee because an action or inaction can result in non coverage as it is claimed in this case.

Secondly that the wording of PLB510 is different to NZS4781:1973 and this places the requirements of condition PLB510 to be higher than standard NZS4781:1973. It also means the relevance of the industry standard is placed into question, requiring processes and procedures to be developed and implemented over and above those required by NZS4781:1973.

With regard to delegation of responsibility the insurance company have stated delegation of responsibility does not meet the absolute nature of clause PLB510. This creates a situation where there is effectively no coverage unless the policy holder is present to ensure PLB510 is adhered to as in this case the alleged negligence of a worker has resulted in no coverage. **This is another critical factor that a policy holder should be aware of.**

The presence of a fire extinguisher under PLB510 is really a bit of a joke. Under NZA4781:1073 which our apprentices are trained in it states "suitable fire extinguishing equipment".

So let's say we are brazing a pipe in a wall and we have five firemen present, fully kitted and each with a 75mm fire hose fully charged and we have a helicopter with a monsoon bucket ready to go, well guess what - we don't meet the requirements of PLB510 as we don't have a suitable fire extinguisher.

If this is the stance taken by the insurance companies then what stance will they take with regard to the training an employee has received? It would seem they will need to be trained in fire extinguisher identification to ensure they have a suitable type and that they are also formally trained in how to use the extinguisher in varying situations.

But all that said and done where does the employer stand with regard to duty of care if they can't rely on the delegation of duties to the employee? Does this mean the employer must be present on each hot works job?

**How does your insurance stack up now?**

**More to follow next issue.**

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