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## IN OTHER NEWS

### Should We Prepare For Battle?



The Federation had a lot of response to our article on “Should we prepare for battle”. Most responses were encouraging us to keep on doing what we are doing, but as one supporter said - “turn up the volume.”

Turning up the volume is probably a good way of putting it as we don’t want to be confrontational, but we do want behaviour changes and for those in positions that affect us to hear our messages and to help with the change needed.

We want to stay on the right track and fight for a better more productive industry that is regulated in a fair and equitable manner, unencumbered by having to “pay the piper.”

Over the next few weeks we are going to give our opinions and possible solutions to the problems that have plagued

## Public Liability Insurance The Final Episode.



would cover situations like the fire.

In the last issue of the Fellow Practitioner we finished off at the place where the employer was wondering how he had been so stupid to have missed a clause like the **PLB510 Fire Risk Work Away**, and the conditions his business would need to meet to have Public Liability cover. As the insured, the employer was expectant that his policy

After two appeals to the insurance company in line with their disputes process it was obvious the insurance company wasn’t going to budge on their stance and that the wording of clause PLB510 was absolute in that there was no cover if the clause wasn’t met. So in this case the claim was declined.

This left one point of contention – how did the clause go un-noticed? The employer requested a copy of his complete file from the insurance company but was shocked to find his insurance company didn’t keep old policies. It would appear that once the insurance company updated the policy the old was disposed of leaving only the new one - so there was no historical data. This obviously favours the insurance companies.

Their stance is that if you sign the new policy then what happened before doesn’t matter. But is this correct? The insurance company claimed that the renewal of the policy annually means that a new contract starts annually. Our employer searched through old personal files dating back to 2002 and found the original application form and policy documents. The policy document did not include clause PLB510 Fire Risk Work Away.

Nearly two years had passed since the fire, and the employer’s belief of honesty in the insurance industry was now non-existent. He had endured two years of stress and hundreds of hours fighting the insurance company only to find the clause he was being denied coverage under was not in his original policy. The insurance company had no records, as far as they were concerned the clause had always been in the policy.

Searching through yearly renewals, Clause PLB510 was found to have been included in the policy in 2005 when the employer purchased addition insurance to cover plant purchased. The new insurance was totally unrelated to the public liability cover.

Two very relevant documents were recovered. Firstly there was the Policy Renewal Letter for the period 20/3/2005 to 20/03/2006 at 4: pm. This document shows in part:

our industry of decades.

This will be a warts and all summary as we see it. Some people and organisations with personal interests in the industry may be offended, but nothing in the industry is changing so obviously what is being done now isn't working.

If legislation, or training, or apprenticeships aren't providing what it needed then we as an industry need to change them. The Government's job will be to assist us, not hinder us.

If you can identify a problem then let us know what the problem is and how you think it can be resolved. This isn't just for business owners - it's open to everyone, apprentices, tradespeople, wives, partners, admin workers in our industry - everyone!

It doesn't matter how small or big the issue is we want to know about it. We want to address issues like registration, training, costs, industry representation and the list goes on.

We will be looking at what is good for the industry not just selective groups of people. For example the industry simply don't have enough certifiers, therefore we don't have enough **supervisors** and many are putting themselves at great risk by either –

a) selling their certification status to others to meet supervision requirements, or

b) working without appropriate supervision.

Both of these scenarios could see you before the PGDB facing fines, censure, re-training, or at worst suspension or loss of licence. The Federation has a solution involving a slightly longer apprenticeship but then

### ***The Following Additional Clauses Apply.***

*992 Electronic time/date Exclusion. (No mention of PLB510 Fire Risk Work Away)*

The second document being a Policy Endorsement for the period 21/07/2005 to 20/03/2006 at 4: pm (Three Months after the renewal above). This was in fact new insurance for Material Damage for drain equipment which was all covered in the first page of the document but on the second page the amendment to the Public Liability insurance was snuck in.

The second page simply stated:

***BROADFORM LIABILITY, Reason for Alteration: Blackboard added/deleted,***

This document shows in part:

*The Following Additional Clauses Apply.*

*992 Electronic time/date Exclusion.*

*PLB510 Fire Risk Work Away.*

As can be seen the original policy did not include PLB510 Fire Risk Work Away. The second letter where additional insurance was requested for totally unrelated coverage included PLB510 on a second page. The reason for the alteration "Blackboard added/deleted".

Apparently "Blackboard" is a term used in the insurance industry to indicate a note made for future reference.

It is quite ironic that the insurance company believed the letter was succinct and important, but yet that the same letter states in part: "Your policy has been amended as you requested." This statement is false, but is still part of this so called succinct and important letter. The employer at no time requested clause PLB510, nor was it ever discussed with him.

The expectation of the employer with regard to the Broadform Liability Insurance was that as a business it would have protection against claims in respect of unexpected and unintended personal injury or damage for which it may be legally liable arising out of business activities, activities such welding.

The initial policy entered into met the needs of the employer and as it was an adhesion contract it appeared to be standardized with only one restrictive condition, being 992 Electronic time/date Exclusion. The addition of a second restrictive condition without fair and reasonable notification placed the employer at risk for over a decade and this risk would have continued had the fire not been the catalyst for the condition being identified.

Adhering to condition Fire Risk Work Away PLB510 could only be achieved by the employer if he was aware of the requirements of the clause.

The insurance company stated that while the requirements in the conditions in PLB510 are higher than industry standard NZS4781: 1973, it was not reasonable to expect them to bring this difference to the employers notice. The insurance company claimed their policies cover a multitude of insured in different industries subject to differing industry standards. It would be

full qualifications whereby you could work without supervision and sign off your own certification.

Our solution is one that will meet everyone's needs – it would produce competent tradespeople after 5 years, reduce the compliance costs in regards to additional examinations etc, reduce the supervision issues in the industry and assist the government in their aim to have more tradespeople.

We know that not everyone will agree with us – and if you don't we want to hear about that as well? What is it you don't agree with? It is only by healthy debate we get a full picture of what industry wants.

This is just one of the subjects we will explain in coming issues. What about Governance of the industry? We have no one that will stand up for the industry so what are we going to do about that? What are the benefits and costs?

A suggestion has already been made to the Social Services Select Committee so we will explain that more and give you our recommendation. Are our existing qualifications meeting our needs in a trouble free way or are the qualifications creating problems in other areas?

Is the industry getting value for money out of the Industry Training Organisation? What deep dark secrets do they have? What are we as an industry missing out on?

Does the industry have consistent training or do we have thousands of supervisors training apprentices in different ways. Are we trying to teach practical trades in a theoretical way at the cost of hands on skills?

disproportionately time consuming and expensive for the insurance company to be expected to fine tune their communications to this extent.

**This questions the impact of this clause on other policy holders throughout New Zealand.**

In the employers third and final appeal to the insurance company the above information was submitted but the insurance company still declined coverage and a letter of deadlock was issued. This letter meant there could be no further appeal to the insurance company and the next avenue was the Insurance and Financial Services Ombudsman (IFSO).

Be aware that the IFSO scheme has limits on the amount that can be disputed, and the insurance company sent the employer a letter outlining this, stating he could agree to partial coverage by the scheme. This still would have left around \$500,000 he would have been liable for over and above any settlement amount.

The employer submitted to the IFSO that in his opinion the monetary value was not applicable at that stage as the complaint was regarding condition PLB510 Fire Risk Work Away and how it appeared in the policy. He argued that the IFSO had jurisdiction.

The insurance company did not fight this point and the IFSO took jurisdiction. With regard to PLB510 Fire Risk Work Away, the employer submitted he would have expected more emphasis to be put on such an important issue with explanation as to what this change was and the impact of it, and that it should not have been added without agreement.

The employer submitted he would firstly not expect this to happen and if it was added in a fair and reasonable manner, would have expected more emphasis to be put on such an important issue with explanation as to what this change was, the impact of it, and any actions required by him to meet the absolute requirements of the condition particularly since the requirements of condition PLB510 were higher than those required by NZS4781:1973 which set industry standards.

The employer added his records would indicate the changes have been implemented without him being notified. Even if he was notified the importance of condition PLB510 has been understated and by varying the contract after it has been agreed, the insurance company have arguably created *a significant imbalance in the employer's rights and obligations*.

The expectation of the employer with regard to the Public Liability Insurance was that as a business it would have protection against claims in respect of unexpected and unintended personal injury or damage for which we may be legally liable arising out of our business activities, activities such as the fire that this claim relates to.

He submitted the initial policy entered into met his needs and as it was an adhesion contract it appeared to be standardized with only one restrictive condition, being *992 Electronic time/date Exclusion*. The addition of a second restrictive condition without fair and reasonable notification placed him at risk for over a decade and this risk would have continued if the current incident had not occurred.

Adhering to the PLB510 Clause could only be achieved by the employer if it was aware of the requirements of the clause. Even now knowing that the clause

Do our apprentices expect too much for nothing or are they undervalued and underappreciated? Is enough motivation supplied to the apprentices?

Are our industry groups providing what is needed by the industry? What influence do suppliers have on the direction of the industry and how can everyone work with and support them as they support the industry?

By now you should be getting the idea of what we want to do so feel free to send any subject matter ideas to [wal.gordon@xtra.co.nz](mailto:wal.gordon@xtra.co.nz).

Here is one you probably haven't thought about – what Government Ministry should our industry be under? Currently we are under the Minister of Building and Construction which has been nothing but conflict since we were moved from the Ministry of Health.

So the question is do we do more for the health and safety of the public or for construction? The Plumbers Gasfitters and Drainlayers Act 2006 would indicate we are for the health and safety of members of the public.

How can that purpose be advanced under Building and Construction when they don't even communicate with us. What protection does Building and Construction afford us as an industry? We remember asking what precautions tradespeople should be taking when there was avian flu?

Send us your issues and let's bring them all to light.

exists it was only located as part of a 90 page document much of which is not relevant to the coverage provided to the employer. He submitted a 90 page document is unnecessarily excessive and was yet to find clause 992 *Electronic time/date Exclusion* in that document.

The employer submitted he totally disagreed with the decision of the insurance company to decline the claim and the complaint was based on what the insurance company has referred to as the absolute nature of *PLB510 Fire Risk Work Away* and the inclusion of that condition in his policy.

The employer's business had reasonable expectations as to the nature and coverage of the policy sold to it, and the contract entered into. It relied on the utmost good faith of the insurance company on entering the contract and for the future coverage of the policy. The reasonable expectations were based on the adhesive nature of the insurance contract.

To avoid confusion other issues to do with the conduct of the investigation were not stated in the complaint but the employer did reserve the right to address these issues should the complaint progress further.

The employer also stated his concern about how many trades people nationwide were in a similar position and are unaware of the Public Liability cover they have as a result of relying on the training and expertise of their staff.

Due to the confidentiality clause of the IFSO's Scheme's Terms of Reference the complainant and the Insurance Company cannot be named nor can any information arising out of the consideration be used however, after careful consideration of all the available information the office of the Insurance and Financial Services Ombudsman believed the employers complaint should be upheld and the claim should be met.

Hung on the wall of the employers office is an invoice from the insurance company for the excess of \$500.00 (yes that does say five hundred dollars!), which was paid so the claim could be met. There has been no further correspondence from the insurance company to discuss or clarify any of the issues.

All we can advise is that you make sure you **understand all the terms and conditions imposed on you and that you read your insurance renewals every year and compare them to previous years.** If there are changes - question them and keep copies of your old policies as they may be needed in the future!

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