



EXPERTS AVA BENTLEY

HOW TO MAKE YOUR INSURER LOVE YOU

“Many professional indemnity and directors’ and officers’ insurance claims land on my desk which could have been prevented.”

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As an insurance litigator and former senior claims manager of a large Australian insurer, I have seen many professional indemnity and directors’ and officers’ insurance claims land on my desk which could have been prevented.

And I’ve shared the stress and sleepless nights of clients insured as we have worked through the allegations together and launched the process of collecting evidence to put together a defence.

On many occasions, while interviewing and discussing those claims with senior managers and executives, it has become apparent that some simple risk management techniques might have resulted in preventing those claims altogether, or at least put the companies in a better position to be able to respond to those claims or defend them.

Over the past 20 years or so in the insurance industry, I’ve lost count of the number of times I’ve heard the words, ‘With the benefit of hindsight, we would have done X’.

What those people were really saying was, ‘We should have taken the time to understand risk and taken steps to minimise claims’.

The importance of risk management

Why is managing risk important? Because claims can have a personal, financial and reputational impact on companies and personnel which is often not appreciated until a claim occurs.

For example, a director or officer might be personally named in a claim and have to defend it, or litigation could result in an adverse court judgment and/or negative publicity. Additionally, such claims increase the cost of insurance for your company.

Eight simple steps to managing risk

While risk management is a broad and complex discipline, following a few simple risk management techniques can make all the difference in preventing or defending claims.

- 1. File notes** — Employees and managers across the organisation should be instructed to take detailed file notes of all important conversations, telephone calls and conferences. These contemporaneous records are imperative in managing claims, disputes and litigation. Follow up those discussions with a letter or email to further bolster the content of those discussions or conferences.
- 2. Keep the originals** — The original files notes should be kept in a secure and easily accessible location.
- 3. Document management** — Strict protocols should be implemented across the organisation to ensure that

documentation is properly maintained and managed. This includes client contracts, supplier contracts or terms of business.

4. Directors and officers — Directors and officers should ensure they are well aware of their duties. New directors should attend courses to learn about those duties. There are organisations such as the Australian Institute of Company Directors and Women on Boards which run courses for aspiring directors.

Awareness of your company’s operations and key business activities is imperative, as is knowledge of the various laws and regulations which govern areas like OH&S, environment, consumer protection, privacy, tax and corporations law.

5. Growth and expansion — If you are expanding your business, ensure that a properly thought-out risk management program is implemented across that growth.

6. Develop a credit policy — Avoid risky customers and transactions by developing a credit risk approval system and credit policy. More and more these days, customers are making cross claims alleging breach of duty on the part of companies as a way of avoiding paying their bills.

7. Adopt a risk management program — Senior managers, directors and officers should ensure that their company takes risk management seriously and should implement a risk management policy across the organisation.

Individual managers should adopt a challenging mindset and ask questions about risk. Don’t make assumptions. If you are a small organisation without in-house counsel, get external advice. Get the right insurance coverage in terms of both quantum and business activities. Find an insurance broker to help get the right cover.

For companies implementing a risk management policy for the first time, Australian/New Zealand Standard 4360:2004 Risk Management, published by Standards Australia and Standards NZ, ‘provides a generic framework for establishing the context, identifying, analysing, evaluating, treating, monitoring and communicating risk’.

8. Work with your insurer and get advice early — Your insurer is in the business of insuring risks and providing peace of mind. It goes without saying that your insurer will love you if you are a good risk or if you do everything possible to manage your risk.

And if something does go wrong, or looks like there’s a chance that it might go wrong, don’t wait. At the first sign of a problem, notify your insurer immediately and get early advice. ■