



COMMUNIQUE

Newsletter of the
New Zealand Architects Co-operative Society Ltd

July 2008

UNIQUE NEW BENEFIT FOR 2008-2009

Prior Practice Cover for Former Employees

A Scene Setting Story

“Stuart was newly registered as an Architect and was looking for a broader range of experience in a firm that would also give him greater responsibility. An opening arose with Martha, an experienced and wily practitioner, and he considered he was fortunate to secure a position with her. Just the position he wanted and, perhaps, they could even become a household name together, sometime in the future.

They worked well together and Stuart was given many opportunities including undertaking commissions with only minimal oversight by Martha. As time went on, however, it became clear to Stuart that Martha was not going to entertain the idea of him becoming a principal in the firm. So he left and secured a salaried position with another firm.

Martha continued to practice for a short while and then closed down her practice and retired. Throughout her business career she had reluctantly taken out Professional Indemnity Insurance for the minimum level available. In her view, her claims record was excellent as she had the wit, charm, strong personality, experience, plus the occasional judicious rebate of fees, to solve difficult issues as they arose. Consequently, upon retirement, she terminated her Professional Indemnity Insurance as she believed that as her practice days were over she did not need any “Run Off” insurance.

However, a couple of years later a disgruntled client sought to make a claim against her, and finding she was no longer in business the client then sued Stuart as her employee who carried out the commission.

Unfortunately for Stuart he was found to be personally liable. He had no insurance cover as Martha had not taken “Run Off” cover, and he was not covered by his current firm as that firm’s Professional Indemnity Insurance related only to his work since he commenced as their employee.”

Far fetched you may think. **Well no**, as a recent case that occurred within another Society shows.

Your Directors believed that such a situation, which could apply to any person who is a Principal or Staff Member of a **NZACS** Member Firm where there is no other recourse to “Run Off” cover from their former practice or employment, was unfair. As a consequence they asked the **NZACS Insurance Consultants** to negotiate, if possible, an extension to the current **NZACS** policy to cover such a situation.

NZACS is pleased to advise Members that our Insurers have agreed to provide an Extension from the renewal for **2008/2009** policy to cover any third party claims for compensation for direct financial loss as the result of a prior act, error or omission, subject otherwise to the terms, conditions and limitations of the policy.

A Limit of the Indemnity of **\$250,000** any one claim and in the aggregate for all claims during the Period of Insurance, with an excess of **\$5,000** applying, was found to be practicable to provide the personal protection to employees at no additional cost to the Member Firm.

Member Firms will need to decide whether they require the cover and, if so, then decide if the Excess is to be met by the employee concerned in the event of a claim. It might be that an agreement is entered into between the firm and the employee, or the present employment agreement amended in relation to the payment of the excess should that arise, so that, say, after a certain period continuous employment, the firm may offer to meet a proportion of or the total excess.

However, Member Firms will be able to "opt out" of this new Extension where they do not wish to have any claims from the extended cover incorporated in to their ongoing claim experience.

Members are reminded that under the current **NZACS** policy Employees of Member Firms are automatically insured.

This new Extension, which will be offered from the new insurance year commencing **1 December 2008**, will be unique to the **NZACS**, which demonstrates the leadership shown by your Directors in providing quality coverage options, thus re-enforcing the value of being an **NZACS** Insured Member.

OUTSTANDING SUBSCRIPTION WARNING

The Directors, at their meeting held on **27 June 2008**, reviewed the list of Member Firms still outstanding with their Subscriptions, either in part or in full. What concerned Directors particularly was that of the **40** plus firms listed, a number also had active claims against them or had recently notified a claim.

The attitude of these firms, who expected the Claim Directors to assist them while still leaving part or all of their Subscription unpaid, was strongly criticized. Such an attitude certainly was not in the spirit of a Co-operative Society and is unfair to the vast majority of Members who had met their subscription obligations in full. The lack of professionalism of such firms is disappointing.

Consideration was then given to adding a further step to the collection of outstanding Subscription protocols that would commence from the new insurance year. The Directors agreed as a final step that where a Subscription of part thereof remained outstanding after all other collection steps had been taken, or an instalments regime had not been entered into, the Member's insurance would be terminated.

Members who currently have outstanding Subscriptions are not only urged to pay now, but are reminded that should any balance remain unpaid at renewal date then to obtain insurance cover for the next year they must pay both the outstanding balance and the full Subscription up front for the new insurance year.

Now there's an incentive to meet those payment obligations.

CLAIMS ARE STRESSFUL – NZACS CAN ASSIST

Members who have had to manage a claim can vouch that the experience is a stressful one. Some Member Firms may say they have never had to notify a claim and feel they are smart and professional enough to avoid them.

However, experience had shown that Member Firms have about a “**1 in 6**” chance of having to notify a circumstance as shown by our claims experience over the past year. Complacency is not a state of mind Members should have. Claims can arise from the most unexpected quarter whether from the possible breach of Statutes and Regulations, a **WHRS** Claim arising from a house alteration 5 years ago (*one third of the claims last year came from **WHRS** notifications*), or a vindictive client.

It is important for Member Firms to take seriously any claim made against them. Be aware any claim will be time consuming, unproductive, and cause stress. Despite this it is necessary to devote appropriate resource within the firm to cope, whether that be personnel and /or financial.

NZACS Claims Directors **Graham Strez** and **Colin Orchiston** are there to assist you in managing your claims and can now bring a vast amount of experience to bear. This could be providing a listening ear, promoting a particular course of action, drafting suggested written responses, or taking some positive action that will assist. It is quite often quoted “*a problem shared is a problem halved*” and while that can sound some what simplistic, it can be very true. Any action taken to alleviate the stress from the situation is a positive thing to do.

In the suite of Companion Liability Covers offered under the **NZACS** Policy the Statutory Liability including Legal Defence Cover is a most valuable one. This policy provides insurance cover for fines, penalties, and defence costs arising out of inadvertent and unintentional breaches of certain statutes and their regulations. Both the Building Act and the Resource Management Act do carry some quite substantial fines for breaches.

Some **28%** of Member Firms now hold this optional cover and those firms who have not yet decided to opt for it should seriously do so when Renewal time comes around in on **30 November 2008**. The increasing legislative controls and bureaucracy which are now in place affecting the building industry, and therefore the profession, really suggests that for any prudent firm this particular Companion Cover should be one they should opt for, rather than opt out.

Knowing that this cover is held will take away much of the stress relating to any claims that may arise from this particular, and rather complex area of practice risk exposure.

SUCCESSFUL ANNUAL MEETING AND SEMINAR

The Annual Meeting of the Society was held in Dunedin on Friday **27 June 2008** with a very good attendance of Dunedin members. This was followed by Barry Dacombe’s successful **CPD** Seminar entitled “**Practice Survival – Managed and Mitigated.**”

It was great to catch up with Dunedin architects, a number of whom I had not met for a number of years. In fact some of those “*Young Architects*” like John Gray, Simon Parker, John McKenzie and Norman Oakley to name a few, are now quite mature and experienced! Also it was good to see the “*Elder Statesmen*” of Dunedin, Tim Heath and Ashley Muir there as well. Ashley actually earned some CPD points by being present, much to his surprise!

ELECTION OF DIRECTORS DECLARED

At the Annual General Meeting, Chairman Hamish Wixon declared the result of the postal ballot for two Directors. The result was the re-election of **Tom Dixon** (Auckland) and **Colin Orchiston** (Wellington) for further terms.

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*We welcome contributions from readers,
on how they manage risk.*