



PRIOR PRACTICE COVER FOR FORMER EMPLOYEES

Recent legal actions have exposed the liability of employees where they have been closely involved in projects. Under the current NZACS policy, employees of member firms are automatically insured.

However, a problem can arise where a claim is directed at an employee's actions carried out when employed at a prior practice, and which may or may not still be in existence.

NZACS has now addressed this issue with an extension to the PI policies. We understand that we are unique in providing this cover to architecture practices in NZ.

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 practise 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 brains, charm, 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 since 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 ? No it isn't - a case like this has occurred within another Society.

What NZACS has done to address this situation:

Your NZACS Directors believed that such a situation was unfair. As a consequence they asked the NZACS Insurance Consultants to negotiate an extension to the NZACS policy to cover such a situation.

The objective is to provide cover for employees faced with a claim against them arising out of prior employment.

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. We hope to negotiate this for subsequent years.

The terms include a limit of the Indemnity at \$250,000 for any one claim and in the aggregate for all claims during the period of insurance, with an excess of \$5,000. This provides 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.

This new Extension was offered from the new insurance year commencing 1 December 2008. It is (to our knowledge), unique to NZACS. It demonstrates the leadership shown by your Directors in providing quality coverage options, and re-enforces the value of being an NZACS Insured Member.

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