

The Edge

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Welcome to the Autumn 2009 edition of the LMI Group's newsletter.

Since the last edition, not only has LMI Group celebrated its 10th Anniversary, but the team has made spectacular progress with a number of initiatives, some of which you will have already seen-such as **LMI BICalculator**-and others that we are rolling out between now and 1 July 2009. Another milestone was celebrated just recently with **LMI Policy Comparison** providing over 100,000 comparisons in a 12-month period to the end of March 2009.

We've also been heavily involved in claims preparation in all of the mainland States and particularly in the recent Victorian bushfires. We assisted 48 CFA members who suffered claims ranging from total losses to the loss of freezer contents. With one minor exception, the insurers acted as promptly as circumstances permitted and with a great deal of sensitivity.

As an industry, we can be justifiably proud of the contribution we make to restoring shattered lives as well as addressing pure economic loss.

To support our increased level of activity, our staff numbers have grown and we now have claims representation in all Australian States except Tasmania (as well as our overseas offices in New Zealand, Indonesia, Singapore, China and the UAE), in addition to a growing number of IT professionals supporting our expanding range of online research and knowledge management services.

In this edition, we will feature case studies based on recent claims where LMI Group has acted as claim preparer. We trust you will find these interesting and that these examples illustrate the benefits of engaging a professional claims preparer.

Allan Manning
Managing Director, LMI Group

CLAIM CASE STUDY **A Matter of Interpretation**

As often happens, LMI Group was engaged on a claim that had 'run off the rails'. This was a personal accident and illness claim where the claimant (a hairdresser) is a working director. He suffered an injury that rendered him totally disabled from his usual occupation for a period of approximately 3 months. During this period, he had no source of income and relied on a loan from his company for day-to-day living expenses.

His claim was subsequently rejected on the grounds that although his total disability was not in question, he had been in receipt of income during the period of disability and was therefore not entitled to any benefit under the policy. The insurer relied upon the following clause to deny the claim:

"We will reduce our payment for any weekly benefits you are entitled to receive, and where allowed by law, will reclaim any weekly benefit paid under another insurance policy or any other income which forms part of a past economic loss award, any salary, wage or other payments including sick leave receivable from any employer or principal and/or under any statutory workers or transport accident scheme."

The Insured referred the denial to the insurer's Internal Dispute Resolution panel. The insurer's IDR panel confirmed the denial, stating in part that the Insured had misunderstood the nature of the policy and reiterated that as he was in receipt of income from his employer during the disability period, the policy would not respond as the amount received was greater than the weekly benefit. The insurer's IDR panel was of the opinion that *"it does not matter whether the payments are described as drawings or wages"*.

We should mention here that the insured company's income was reduced significantly during the director's disability period, so there was no question of the Insured not having suffered an economic loss during this time.

It was at this point that the Insured's broker referred the claim to LMI Group's Sydney office. Having reviewed the claim, it was clear that the insurer had no issue with the circumstances of the accident, nor was the insurer suggesting that the director had not been totally disabled. Their denial centred around their contention that funds lent to the director by his company constituted income even though they were to be repaid upon settlement of the claim. Clearly, the funds lent to a working director in these circumstances could not be regarded as past economic loss award, salary, wages or sick pay, and we prepared a submission to the Insurance Ombudsman on behalf of the Insured setting out the facts of the matter.

The Insurance Ombudsman found in favour of the Insured, agreeing with our view and ordering the insurer to meet the claim, as well as paying interest from the date of the denial letter to the date of settlement.

LMI Group's experience in handling contentious claims and in policy drafting and interpretation served to facilitate a positive outcome for this Insured and his broker, in line with the intention and cover afforded by the policy.

CLAIM CASE STUDY

Critical Plant or Process

This claim arose from a fire that damaged just one machine in a joinery, and illustrates how damage to a key item of plant can present some complex issues from a business interruption perspective.

The fire occurred in a sanding machine at the Insured's premises shortly after the close of business in mid November. By a stroke of good fortune, some staff members were onsite and were able to contain the fire until the fire brigade arrived. Damage was confined to the machine, its dust extractor and a minor amount of stock.

The Insured produces timber products of exceptional quality, including doors, window frames and cabinets, and the sophisticated sanding machine is crucial to the process. The Insured had already taken steps to outsource some of the sanding work to a nearby joinery before our first meeting on Day 2 of the interruption.

The damage to the machine was extensive. As is the case with most modern machinery, there is a significant element of electronic componentry built into the sander, and this was damaged by the extinguishing agent as well as having been affected by the heat of the fire. It seemed apparent from the outset that repairs, if feasible, would take some time. We therefore arranged with the Insured to hire a replacement sander with its own dust extraction unit, as this cost is claimable under the Increase in Cost of Working provisions of the policy. This unit was able to provide about 60% of the capacity of the damaged machine. With regard to the remaining 40%, the outsourcing arrangement fell short of expectations in terms of time available and the physical limitations of the machinery.



The Insured resorted to hand finishing to achieve the high standards his customer-base demanded, and this work took 25 times longer than the process usually required (80 minutes, compared to 3 minutes).

The adjuster's proposed course of action was to have the damaged machine repaired. As such, quotes were obtained from the company that supplied the machine, as well as a specialist in restoring damaged electronic equipment. It became obvious that the repair time would run

into weeks, during which time the Insured's business would continue to be disrupted. In addition, there was no guarantee that the repair would be successful in returning the machine to its pre-damage capability.

We determined that the most economical outcome would be achieved by replacing the machine, and were able to negotiate a favourable price and delivery time from the supplier. As the machine had to be imported from Italy, a quick decision was required to pre-empt the supplier's Christmas shutdown. We were able to demonstrate to the adjuster and the insurer that the proposed course of action we were proposing was prudent in that it would produce savings in the business interruption claim that would considerably outweigh the additional expenditure on the property claim. They agreed to this proposition and the claim proceeded on that basis, with the Insured returning to normal production by the end of February.

Cooperation between the Property and BI Insurers can be vital to producing the best outcome for all concerned. While in this instance the same policy covered Sections 1 and 2, there is an increasing tendency to place these covers separately. Where this occurs, those involved in handling the claim must be prepared to keep both insurers aware of developments and to negotiate with both when and where appropriate.

Are you maintaining your Continuing Professional Development?

Remember that attending an LMI Group training session will entitle you to CPD/QPIB points. These sessions are usually conducted by our Managing Director, Dr Allan Manning, who is well known as a leading educator in the insurance industry.

Topics range from 'Making BI Insurance Sexy' to 'Understanding Management Liability'.

Please visit www.LMIGroup.com for further information or [click here](#) to request details of dates for upcoming training sessions near you.

We look forward to your comments and any suggestions you may have. To provide feedback, please [click here](#).