

## Christchurch Earthquake: Business Insurance

### PROMPT ACTION & GOOD ADVICE CRUCIAL

It is critical that businesses think through the issues associated with insurance following the latest Christchurch earthquake. The financial effect on many businesses will be large and ongoing, but financial implications will vary significantly from business to business, and will not always be immediately apparent.

All businesses will want to ensure that they make the most of current policies. Future success or failure of some businesses will depend on how well they manage the insurance process. Accordingly, it is critical that you pay proper attention to this process.

As always with insurance, the terms of the policy determine what may and may not be claimed. The most relevant type of insurance for affected businesses will be material damage cover (which applies to physical damage to specified property of the business) and business interruption cover, which applies to the financial implications of physical damage. The latter is usually an add-on to material damage cover, and some businesses will not have it. Many business interruption policies provide that the interruption is covered only if it results from damage to physical property that was insured under a material damage policy, or damage to property in the vicinity of the business which interrupts its operation.

Make sure you thoroughly review your policy and contact your insurer or insurance broker. Clarify any areas of uncertainty with the scope or meaning of the policy, or what is required of you. If you are not satisfied with the response, seek legal advice. It is important your conduct complies with the policy, because steps taken which are contrary to the policy requirements may prejudice or even invalidate cover. If you have an unresolved claim relating to the September 2010 earthquake, it is important that you notify your insurer or insurance broker of any new claim arising out of the 21 February earthquake.

In the case of business interruption cover, the information you will have to initially give may include how long the business is likely to be closed, or to have to operate under reduced capacity, and what steps can be taken to ensure that business interruption is minimised. The policy will probably require such steps to be taken promptly, and in some cases, the insurer may be required to pay or contribute. Carefully think through your answers to the requested information so that the insurer can respond

appropriately. Comprehensive answers now will also avoid a later argument that more accurate information might have resulted in different steps being taken or required.

In most business interruption policies, the claim will be for the gross profits lost as a result of reduced turnover, or for the increased costs of continuing to operate through the interruption. However, it may also include items such as "wasted" wages, professional costs and debts that need to be written-off. In some cases, there may also be cover for losses arising from damage suffered by specified third parties - for example, suppliers or subcontractors.

The calculation of lost profits is likely to be complicated, and you will not know for some time what the payment will be. The starting point is usually a comparison of the gross profits for the relevant period compared with previous equivalent periods, or amounts stated in the policy schedule. But that will then need to be adjusted to take account of factors such as reduced costs being incurred as a result of the earthquake, and other circumstances that would have affected profit regardless of the earthquakes.

It is critical that you keep proper records about the business operation throughout, including extra costs and expenses incurred. You should also have financial data for the pre-earthquake trading period. Ensure that all records are secure, if necessary by removing electronic storage of records to a safe location.

Get the insurer's agreement in advance for any significant expenditure which may be subject to a claim. Again, check the terms of the policy before taking any steps. There's no doubt that the earthquake will emphasise the importance to all businesses of appropriate insurance cover.

Duncan Cotterill has a team of specialist insurance lawyers who can provide advice in relation to the range of insurance issues arising from the earthquake. If you are unable to get hold of your usual Duncan Cotterill contact, please contact:

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