

Insurance – The fine print...

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The purpose of this article is to alert readers of the need to understand the impact of buying into unnecessary products and/or services. Insurance is an important element in all walks of life, but even more so in the ever-increasing global economy to ensure the protection and preservation of the continuity of any business.

As Insolvency Practitioners, it is both necessary and prudent to have automatic insurance coverage over assets of the Company to which we may be appointed as External Administrators whether such appointment is as a Liquidator, a Provisional Liquidator, a Receiver and Manager or a Voluntary Administrator, or as a Trustee in Bankruptcy. In a perfect world, it would be logical to believe that having entered in an Insurance Service Agreement with a reputable insurance company that such insurance company would be mindful of their contractual obligations to ensure that they act in the best interests of their Client, namely the External Administrators. Sadly, this duty of care and diligence to Condon Associates, as a Client, was overlooked when it came to a recent insolvency appointment.

By way of illustration, when an External Administrator determines they will continue to trade-on the business of the Company to which they were appointed, then upon making this determination they need to consider, inter alia, appropriate insurance coverage during the period of the trade-on.

Such insurance considerations would include coverage for:

1. Workers Compensation insurance for employees, local and interstate;
2. Professional Indemnity Insurance;
3. Public Liability Insurance; and
4. Product and Content Liability Insurance

Apart from Workers Compensation insurance, the other 3 areas usually stipulate a minimum coverage period of between 1 to 3 months and, as such, result in relatively expensive premiums. To not have such insurance coverage may leave the External Administrator and the Company to which he was appointed, exposed to massive claims in the incidences of claimable events and, in some appointments, a personal liability exposure to the External Administrator.

To preserve the anonymity of the Client Company under external administration, it is sufficient to note that in one of our recent external administrations we were advised by our Insurance Service Provider that we must obtain (and were subsequently invoiced for) Professional Indemnity Insurance (PIA) cover, for a minimum of 3 months, at a cost of circa \$14,000.

Professional Indemnity Insurance is provided to those businesses that offer specialised services and skills and require coverage for claims of negligence.

Upon the issue of the invoice for this amount and, prior to payment of same, the Voluntary Administrator wisely decided to seek an independent review by another Insurance Service Provider in regard to both the PIA coverage and the invoiced amount. The results and advice received from such Independent Insurance Specialist provided us with some extremely important insights and lessons.

Firstly, our Independent Insurance Specialist advised that there was no need for such PIA coverage given the nature of services and work undertaken by the Company during the Administrator's trade-on period.

Secondly, and a more damning, even unforgiveable and disappointing aspect of such advice from our original Insurance Provider, was that included in the "Exclusions" clauses forming part of such PIA Insurance Policy, were words to the effect that the actual coverage that we were advised to take out by them was expressly "excluded" under such Policy. In effect we were being charged circa \$14k for 3 months PIA coverage, but all claims in regard to such PIA was excluded from the Policy.

So, what are the lessons to be gleaned from the above experience?

Be prudent and always seek an independent opinion from that offered by your Specialist Service Provider, especially when you or your staff are unsure of the correctness or the impartiality of such advice provided by such Specialist Service Provider- the old axiom of "better to be safe, than sorry" has relevance in this new technological age.