Welcome message

Welcome to the September-October 2012 issue of Insurance Insight.

Thousands of years before Edward Lloyd opened a coffee house popular with ship owners in the 1680s – paving the way for Lloyd’s of London today – people had been using early forms of insurance to transfer and distribute risk.

As long ago as 3,000 years BC, Chinese traders travelling river rapids would spread their wares across many boats to limit their losses if one capsized or was ambushed.

While marine insurance survives today in a vastly more sophisticated form, businesses are also facing entirely new sources of risk which arise from technology.

In this issue, we look at one of those risks – posed by social media – in the wake of some interesting court decisions which mean businesses can be held responsible for material written by members of the public.

I hope you enjoy this edition of Insurance Insight and look forward to keeping you up-to-date with EBM and industry news.

Jeff Adams

Managing Director

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Social media poses liability risks

Liability issues loom large in insurance – and recent cases which held companies responsible for comments made by users of their Facebook pages have opened a new can of conundrums.

Companies were held to be responsible for the offending comments even though they didn’t write them – because they failed to promptly remove them.

In a case note, law firm Freehills concluded the sun appears to have set on the days of social media being an “unrestricted” communication medium allowing brands to fly beneath the regulation radar.

“In order to minimise risks, brands might implement strict front and back-end social media policies that include monitoring guidelines and appropriate user behaviour or, alternatively, may prefer to remove the user content functionality from their social media offering,” wrote Freehills solicitor Dean Isreb.

In August, the Advertising Standards Bureau (ASB) ruled that comments posted by users of the VB beer Facebook page constituted “advertising” and breached relevant standards.

Owners of VB, Fosters, argued unsuccessfully that they did not have a “reasonable degree of control” over the comments and that the allegedly homophobic and discriminatory comments were, in the context, “ironic” and “humorous”.

The ASB concluded companies had a duty to monitor social media and remove offensive material “within a reasonable timeframe” – but did not specify what that was.

In the wake of the case, the Australian Competition and Consumer commission told Fairfax large companies needed to remove non-complying comments within “perhaps 24 hours or less”.

Much to the relief of the growing social media marketing industry, the ASB did not decide companies needed to review all posts before they became public.

The ASB decision was consistent with a position taken by the Australian Federal Court last year, which ruled Allergy Pathway Pty Ltd was responsible for Facebook claims users posted about its products.

The court ordered $15,000 in fines and corrective advertising – including the need for a prominent link on the firm’s Facebook and Twitter accounts headed “False and Misleading Conduct and Contempt of Court by Allergy Pathway”.

Freehills said factors a court might consider in determining a reasonable removal time for smaller businesses include the size of the business, the nature of the comments and the amount the business invested in social media.

The Managing Director of EBM Insurance Brokers, Jeff Adams, said advertising standards were not the only issues businesses needed to be wary of in the social media space, pointing to the potential for sexual harassment, discrimination, copyright breaches and defamation cases.
ATO explains alarm bells

Small and medium enterprises – and individuals with a net wealth of over $5 million – are the subject of a new compliance guide by the Australian Taxation Office (ATO) detailing issues likely to attract “attention”.

“Irrespective of the business and tax advice you receive, you are responsible for your own tax affairs. From a risk-management perspective, you need to know how the tax law applies to your transactions,” the guide warns.

The ATO said it took a “private-group” approach when assessing the risk of non-compliance for wealthy individuals, using data mining to detect relationships between entities including people, companies, trusts and partnerships at a “holistic” group level.

“Wealthy individuals are behind some of Australia’s largest and most successful businesses. Many take on a great deal of personal risk to build their businesses. Given their positions of influence it is important they do not take unacceptable risks when it comes to tax compliance,” the guide warns.

The guide gives a list of characteristics which “may attract our attention” including:

- tax performance varying from business performance;
- inconsistencies in activity statements or spikes in refund claims;
- large, one-off or unusual transactions;
- tax and economic performance varying significantly from business in the same industry;
- lifestyle not supported by after-tax income;
- treating private assets as business assets or accessing business assets for tax-free private use;
- using complex structures and intra-group transactions to minimise tax;
- poor governance; and
- a history of aggressive tax planning by individuals or their advisors.

To see the guide, visit http://tinyurl.com/csjamyt.
Are you reading this sitting down? Yes? It could reduce your brain power and even your life span.

Earlier this year, University of Sydney academics published research showing adults who sat for more than 11 hours a day had a 40% higher chance of dying in the next three years than those who sat less than four hours a day – after adjusting for other lifestyle factors.

The study of 200,000 people brings to mind a recent book, *Brain Rules*, by molecular biologist John Medina about how brain science could influence the way we work and learn.

Rule #1 was this: “Exercise boosts brain power.”

The evolutionary argument is that the awesome human brain came into being when we were being physically active: “If we sat around the Serengeti for eight hours – heck, for eight minutes – we were usually somebody’s lunch.”

Biologically, exercise transports blood to the brain, bringing glucose and oxygen while also stimulating the protein that keeps neurons connecting.

In case you’re wondering how on earth it could be practical not to sit down if you have a desk job, Medina also writes about his experience installing a desk above a treadmill in his office. “It took a whopping 15 minutes to become fully functional typing on my laptop while walking 1.8 miles (2.9km) per hour,” he recalls.

Medina is not the only one to have a “treadmill desk” – a successor to the “standing desk”. Treadmill desks have their own Wikipedia page and are commercially produced while the Internet abounds with instructions on how to make one yourself.

In August, photos of BBDO New York CEO John Osborn circulated the internet, showing him working at a treadmill desk – allegedly with a donut hung from the ceiling and just out of reach as “incentive”.

In reviewing the academic literature, *Brain Rules* concludes: “If you wanted to create a business environment that was directly opposed to what the brain was good at doing, you probably would design something like a cubicle.”
While the academics of the Sydney study admitted that limiting sitting time to four hours was no mean feat in today’s corporate culture, here are some ideas to increase your activity during the working day:

- don’t use the printer closest to your desk;
- take the stairs not the lift;
- walk over to colleagues’ desks instead of emailing them;
- park your car further from the office, get off at a more distant public transport stop or cycle to work;
- take bathroom breaks on a different floor;
- sit on an inflatable fitness ball instead of an office chair (if you can balance okay);
- book a meeting room on another floor – and take the stairs to get there;
- stand up and walk around while you’re on the phone;
- use breaks for physical activity, even if it’s just walking to a cafe; and
- suggest a walk around the block with a colleague instead of a coffee or formal meeting.

Doors open at EBM, Karratha

EBM Insurance Brokers has officially opened their doors to the public and is the only permanent insurance broker in Western Australia’s Pilbara region. EBM’s Pilbara office will help rapidly growing north-west businesses cope with big increases in liability and risk.

The new Karratha office is headed by Regional Manager Owen Connolly, supported by Assistant Account Manager, Suzanne Kimpton. Newly appointed Account Manager, Grant Homann, is due to move to the Pilbara in the coming months after completing his induction through the EBM Geraldton branch.

Grant, formerly with Penberthy Insurance Limited, has been recruited from New Zealand and will add to the strength of the Karratha team, Owen said.

“It will be a great for our clients to able to meet face to face with a local, qualified insurance broker to discuss their insurance requirements,” he said.

“Owners are often so busy growing their businesses that they don’t take time to adequately protect themselves. In the event of a major claim, these people could lose everything they have worked for,” Owen said.

The resource, construction and transport industries are a major part of EBM’s portfolio and the company has extensive knowledge and understanding of complex industry risk.

“Liability issues also become more complicated when companies take on bigger contracts, particularly when the customer is a multi-national, and basic insurance policies commonly do not provide adequate protection or respond to contractual obligations,” Owen said.
“Subcontracting and workers’ compensation are also complex. People often think that subbies have their own insurance cover so they must take all the risk but the principal can still be liable for claims.

“This is where business owners need to be able to sit down with an adviser, talk through the issues and find the best protection for their particular situation.”

EBM’s Karratha office is located in the new eight-storey Pelago West building in Sharpe Avenue.

Meet EBM’s number one Dockers fan

Growing up in Perth, Glenn Hahn wanted a financial services career – which, back then, translated into a choice between banking and insurance.

Glenn chose insurance and, more than 30 years on, still finds it rewarding, varied and challenging.

“On any given day, I can deal with queries ranging from involved marine or mining issues to analysing contractual conditions, or arranging a complex workers compensation policy across a whole range of industries,” he said.

Large fishing and charter vessel total loss claims are among the many major claims he has been involved in managing over the years.

More recently Glenn’s mining; energy and general industry insurance experience has come to the fore in Western Australia as the fishing industry has waned.

Glenn has run an autonomous corporate unit within EBM Insurance Brokers Perth over the last 15 years and has extensive specialist knowledge in the complex areas of Marine Insurance, Professional Indemnity and Directors and Officers Liability insurances.

From his start with an insurer, and subsequent moves to international broking companies and EBM, Glenn has always been based in his home town of Perth – despite offers of moves to interstate and overseas.

Outside of work, he enjoys an interest in sport. While his knees no longer let him partake in the competitive tennis he played over many years, he owns a number of “pacers” – horses competing in the trots – including one called Old MacDonald who won its last six races before being put out for a spell.

Glenn is a passionate follower of the Fremantle Dockers and, at the time of our interview, was planning to attend the AFL Grand Final in Melbourne – “hopeful but not optimistic” that the Dockers would be there. We’re sorry about that Glenn!