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John's part, it became clear to the underwriter that the crater and consequent prevention of access to the store was an insured event.

Raines Carpets' claim was paid promptly, which David says demonstrates that brokers are "worth their weight in gold".

David said walk-in business was not quite back to normal yet, but the store had achieved its pre-crater turnover by using the phone and going out to see customers.

David shudders to think of the ramifications had he been uninsured. "We'd have had to increase our line of credit," he said. The other stores' turnovers would have had to prop up the lost income from Bellevue Hill. Had the situation not been resolved within months, he would reluctantly have had to sack staff.

Other retailers in the area have not been so lucky. Without BI insurance, they are talking about seeking compensation from Sydney Water. "I feel their pain," David said. The local TAB has closed because customers could not get to the outlet to place their bets.

But he acknowledges a prudent retailer would consider all contingencies and buy BI cover. "The insurance did exactly what it was meant to do," David said. ➤

## AIMS sets high goals

JMD ROSS IS PART of the A&I Member Services (AIMS) network of insurance brokers.

AIMS is a company that provides a range of services for members of the Austbrokers and IBNA cluster groups.

AIMS negotiates with underwriters on its members' behalf to allow them to provide exclusive, superior manuscript wordings for clients.

The network's combined strength gives it the ability to provide specialist products and services available only to AIMS brokers' clients.

### JMD Ross, specialists in:

- \* Professional indemnity
- \* Commercial insurances
- \* Travel industry
- \* Affinity groups/associations
- \* Claims management



## Specialised covers on offer

JMD ROSS PROVIDES a full range of property and liability covers for its clients.

It also has access to a range of specialised covers, including:

- High-value householders
- High-value cruisers/yachts
- Prestige motor vehicles
- Domestic/commercial strata title cover
- Trade credit
- Heavy transport
- Association liability
- Management liability

Account executive Ray Potter said while most clients were aware of the range of property and liability covers offered by JMD Ross, the newsletter should include a list of the specialist covers available because the newsletter's readership was often much broader than those already familiar with the JMD product offering.

Talk to your account executive or email [jmdross@jmdross.com.au](mailto:jmdross@jmdross.com.au) for information on how JMD Ross can assist you with specialised covers. ➤

Account director Ray Potter (right) receives a package of Tintilla wines, from the Hunter Valley, for his suggestion the JMD Ross newsletter alert readers to the brokerage's expertise in providing specialised covers. He is pictured receiving the wine from CEO John G Duncan.

## Check fine print on credit card covers

MANY CORPORATE CREDIT CARDS offer travel insurance and some cardholders rely on it to protect them when they travel. But are they really getting adequate protection?

JMD Ross director and corporate travel insurance specialist Tim Ross said a comparison of cover provided by a typical credit card travel policy and a dedicated corporate travel policy underwritten by a specialist insurer, for example, Chubb's corporate travel policy, showed there were many differences.

For example:



TYPICAL CREDIT CARD TRAVEL POLICY	CHUBB CORPORATE TRAVEL POLICY
Pre-existing medical conditions generally excluded.	No pre-existing medical condition exclusions. The only prerequisite is that you are fit to travel. Providing you are not travelling against a doctor's advice, you are covered.
Terrorism events (eg, the London bombings) that result in cancellation, travel delay or personal liability excluded.	No terrorism exclusion.
Excess per claim: often about \$60.	Nil excess, apart from \$250 for portable business equipment.
Baggage losses to be reported to police within 24 hours.	No time restrictions.
Restricted or no cover for baggage items stolen from a vehicle.	No restrictions, except electronic equipment excluded, unless stolen from the boot of a locked vehicle.
Luggage delay trigger – 12 hours.	Luggage delay trigger – eight hours.
AIDS/HIV excluded entirely.	No exclusion if AIDS/HIV is medically acquired or infection is accidental, eg, through an assault.
Flying while pregnant – no cover after 26 weeks.	Up to 30 weeks (most airlines prohibit flying after 30 weeks).
Time frame restrictions for missed transport connections.	Cover provided when a delay has occurred.



## Jurisdictions create employer minefield

AUSTRALIA'S MYRIAD workers' compensation systems create minefields for employers.

Moray & Agnew ACT partner Andrew Muller says the issue of "connection to a jurisdiction" for injured workers "remains an area of substantial confusion", despite state and territory governments saying they intend to enact a uniform scheme.

He advises employers to "exercise great caution in taking any steps to limit their policy coverage to a single jurisdiction".

Mr Muller's analysis of three court cases, in an issue of Moray & Agnew's Legal Directions, illustrates the judiciary's differing views. The schemes generally use a three-tier test to determine connection.

- The first tier is the state/territory where the worker usually works.
- If no single state/territory is identified, the state/territory where the worker is usually based for his/her employment.
- The third tier is the employer's principal place of business.

In *Michael Hanns v Greyhound Pioneer Australia Ltd* (ACT Supreme Court), the employer argued the

"usual" place of work was where the worker spent most of his working hours. Hanns was a bus driver who spent 80% of his working hours in NSW. The employer, Greyhound, was based in the ACT.

But Justice Gray said Hanns had no "usual" place of occupation, as he worked in several jurisdictions. That invoked the second tier, and his "usual" base was found to be the ACT.

In the ACT Magistrates' Court, in *Falls v Avon Products Pty Ltd*, an Avon sales manager worked in the ACT, but performed book work at her home in NSW. The magistrate found her usual place of work was the ACT, because she could have performed the book work anywhere. That she did so at home in NSW was irrelevant.

The WA District Court reached a different conclusion in *Tamboritha Consultants Pty Ltd v Knight*.

Knight was a contractor who worked in various states. Each job was considered a new contract, performed at a specific location. Although his injury occurred in Victoria, Commissioner Herron concluded WA was the "state of connection".

JMD Ross director Sandy Ross said he agreed with Mr Muller's comment that the vexed question of which state/territory was applicable for employment purposes still contained "many traps and pitfalls".



## International partnership demonstrates benefits

THE VALUE OF JMD Ross's international partnerships has borne fruit with JMD Ross, Globex International, and a major US broker combining to provide a package of covers for an international company working on Australian government contracts.

Globex International Group Inc is a multinational risk management, insurance and employee benefits consultancy firm that operates through 336 partner brokers in 130 countries.

Account manager Yohan Seneviratne said JMD Ross, working with Globex and the US broker, provided workers' compensation, general liability and professional indemnity covers for the client.

Mr Seneviratne said Globex was one of several international risk and insurance groups and partnerships with which JMD Ross worked.

Through its partnerships, JMD Ross placed and serviced business in Australia for overseas-based companies and arranged risk and insurance programs for Australian-based companies operating internationally.

Using the broad international experience of the Globex team allowed JMD Ross to offer clients a full global capability, Mr Seneviratne said.

It ensured clients' business exposures and risk management requirements were considered against the backdrop of a full risk assessment of the local environment. ➤

## Business sector beset by claims expansion

IT'S A TOUGH MARKET for private companies.

The global financial crisis has seen an expansion in employee fraud; workplace laws have got tighter, meaning unfair dismissal claims are more common; workplace harassment claims have increased; and there are more armed hold ups at cash-rich businesses.

While traditional directors & officers' (D&O) liability insurance will provide protection against some risks facing Australian private companies, management liability insurance is designed to protect directors and officers' personal assets by providing indemnity for losses arising from claims as a result of wrongful acts committed while they are conducting their duties and obligations as directors and officers.

The cover includes:

- D&O
- Corporate liability/entity coverage
- Legal representation at formal investigations
- Employment practices liability
- Statutory liability
- Trustees' liability (superannuation)
- Crime/fidelity guarantee

Management liability insurance is a cost-effective way to provide broad coverage for a range of risks, including third-party theft, legal expenses, employment and OHS-related claims, and fines and penalties.

For example, here are two recent claims paid to insureds with Chubb's ForeFront management liability policy:

- A warehouse/distribution company's former accounts director established a phantom firm that allegedly provided tax services. He stole almost \$600,000 over four years. Investigation costs were \$28,000. Claim paid, inclusive of costs.
- An electrical contractor dismissed a site manager for unsatisfactory work performance, after many attempts to resolve the issues. The manager took action in the Industrial Relations Commission. Claim settled for \$37,000. Defence costs: \$21,000. Claim paid, inclusive of costs. ➤





## Tax slug hits prudent insureds

VICTORIANS PAY THE HIGHEST insurance taxes in the world, and insureds in NSW and Tasmania are also heavily taxed through fire service levies.

The high level of under and non-insurance identified in the aftermath of the February bushfires in Victoria demonstrates that many people cannot afford to insure. There is no doubt the high level of taxes is in part responsible.

According to Insurance Council of Australia (ICA) figures, 2,029 homes were totally destroyed in the fires, but insurers received just 1,468 claims. The ICA said insurance affordability was a major deterrent for many residents in bushfire-affected areas and asked the bushfire royal commission to consider “those factors that may contribute to non-insurance, including the levels of taxation on insurance in Victoria”.

The cumulative effect of taxes is a key problem. Policyholders pay GST (10%), stamp duty (7.5%–11%, depending on the state) and – in NSW, Victoria and Tasmania – a fire services levy (FSL) (up to 84%).

The National Insurance Brokers' Association (NIBA), which is campaigning hard against taxes on insurance, says: “Insured homeowners and businesses pay a tax to fund the state’s fire services. Uninsured people don’t pay, and they still get use of the fire services.”

NIBA’s tax discussion paper says Victoria’s FSL, which is substantially higher for country-based businesses than urban companies, is ironic, considering volunteer-based rural fire services are less likely to reach country properties in time to extinguish fires.

A business in country Victoria with a base premium of \$100 is charged an additional \$122.64 in taxes – 84% FSL, 10% GST and 10% stamp duty. The FSL rate for businesses in metropolitan Victoria is 50%, NSW is 39% and Tasmania 28%.

Homeowners pay less FSL than businesses, but the amount is still sizeable. The levy for homeowners in rural Victoria is 31% and 20% in metropolitan areas. The NSW homeowner levy is 21%. (*Rates correct at 9–9–09*)

Last November, the NSW Government added a fourth tax on policyholders to fund the State Emergency Service. It came into effect on July 1.

NIBA is encouraging policyholders to write to their MPs to complain about the high level of taxes on insurance policies. JMD Ross encourages its clients to do likewise. MPs’ contact details are available on [www.niba.com.au/taxes](http://www.niba.com.au/taxes).

You can also go to [www.notaxoninsurance.com.au](http://www.notaxoninsurance.com.au) to sign an e-petition. ➔



## One small step for man, one giant leap for self-insurance

This year’s 40-year anniversary of the Apollo 11 moon landing brings to mind a quirky example of the options available through self-insurance.

Before they embarked on their journey to the moon, the three astronauts identified their most vital risk – a failed mission – evaluated it and sought a creative alternative risk transfer.

Neil Armstrong, Buzz Aldrin and Michael Collins signed a series of first-day cover commemorative envelopes to be sold to raise funds for their families if they died.

The high-risk expedition meant life insurance was impossible to buy, but the intrepid astronauts’ decision to sign the authenticated envelopes meant there would at least have been some funds available to support their families.

A fine example of prudent self-insurance.



Victorian bushfires, February 2009. Photo shows Paul Beckman, 53, sifting through the ruins of his life after fires destroyed his house and livelihood at Narbethong, near Healsville. Photo by Jason South for The Age Feb 9, 2009.

## How the average clause works

THE LARGE NUMBER of commercial properties damaged in the Victorian bushfires in February that had insufficient insurance is a stark reminder of the need to insure to the true value of the property.

Many policies, but principally property and business interruption policies, contain an average clause, also known as co-insurance.

It means you must insure for the full value of the risk, which varies with the type of cover you take, ie, indemnity or replacement value. If you are underinsured, your claim is settled at an amount being the proportion the sum insured bears to the full value.

For example: A NSW RSL club had a declared value of \$6 million. A fire occurred; the repair cost was \$630,000. The insurer had a valuation conducted, which was \$7.5 million, leaving the club with a 20% shortfall. The insurer invoked the average clause and paid the club \$504,000 (80% of the loss). The club had to find the additional \$126,000. The club no longer exists.

If there is a total loss, only the sum insured is paid.

Insureds are advised to use a professional, independent, qualified valuer to ensure their property and possessions are covered for the correct amount.

Jeremy Kendall, NSW sales & marketing manager with Rushton Valuers, said underinsurance was the main reason fewer than one in three companies suffering a



serious loss managed to survive for more than three years after the loss.

“Inflation, currency fluctuations, changes to statutory requirements or just poorly considered estimates of replacement values can lead to serious underinsurance. Regular professional valuations can eliminate this danger,” he said.

“In simple terms, if property is insured for less than its true value at risk at the time of the loss, only a proportional part of the proved loss will be paid. This still applies if the amount of the loss is much lower than the insured sum.”

Mr Kendall said if sums insured were established ‘in house’, business proprietors had to accept responsibility for their accuracy and possibly the company’s future.

A valuation provided detailed reports on which to base a claim if a loss occurred. It also protected directors and officers of an insured company from any allegation of failing to adequately protect the company assets.

Mr Kendall said where claims occurred involving risks that had been regularly valued for insurance purposes, they were more readily settled quickly and fully. “Regrettably, where insurance amounts are inadequate and records incomplete, that inevitably delays settlement and a replacement basis of claim calculation is almost impossible.”

## NSW workers’ compensation requirements change

THERE IS SOME UNCERTAINTY surrounding amendments to the NSW workers’ compensation system that came into effect on July 1, 2008.

The change means employers paying wages amounting to less than \$7,500 in any financial year are no longer required to purchase a workers’ compensation policy.

However, if an employer engages an apprentice or trainee, or is a member of a group for workers’ compensation purposes, a policy is still required, regardless of the amount of wages paid.

Wages includes amounts paid as allowances, fringe benefits, superannuation and payments to contractors. (See the WorkCover NSW website, [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) for a full definition of wages.)

If an employee (including a domestic employee) makes a workers’ compensation claim, the employer must contact WorkCover NSW within 48 hours and the claim will be allocated to one of the scheme’s seven agents.

The employer will be required to pay an administration fee of \$175 per claim.

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