



Demystify Insurance

Average – What is average and how can it affect the insured?

This is a clause which is included in most insurance policies and will be applied where there is a loss occurring. The most common cases are for property claims, and the clause applies when the sum insured is found to be inaccurate. The property should be insured on a reinstatement basis not a market value basis. Therefore in the event of a settlement insurers will deduct from the settlement a percentage which represents the difference between sum insured and actual reinstatement value. In the event of a significant claim, this differential can be large.

How to protect yourself against this? There are various mechanisms which should be followed in order to protect against the problem of average eg:-

- **Have the property re-valued on a regular basis for a reinstatement sum insured, minimum of every 5 years**
- **Have the policy with index linking**

In essence it is the responsibility of the owner to make sure the property is at the correct value at the outset, which will then create the right basis of the policy to be insured? Failure to do so can prejudice the payment of a claim and will ultimately lead to a deficit against repairs when a claim is settled. If you wish to discuss this clause please speak to your account executive at MacKay Corporate Insurance Brokers.



Mackay Corporate Achieved Chartered Status

2009 was an important step in the development for MacKay Corporate Insurance Brokers with achievement of Chartered status for the firm. This is a gold medal for insurance brokers and MacKay Corporate are delighted to achieve this.

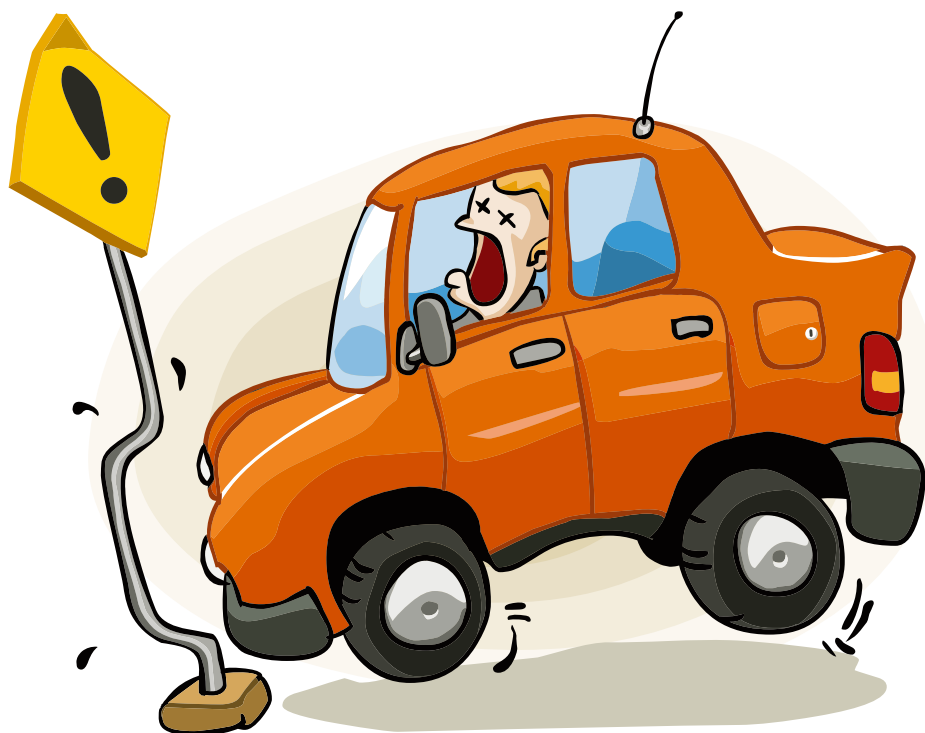
A safe way to protect yourself

Limited Liability status protects the shareholders BUT the directors and officers are fully exposed for their personal assets

Morrison PLC is suing former directors of Safeway for many millions of pounds to recompense for huge fines imposed on them because Safeway operated a price rigging circle with other supermarkets before they were bought by Morrison. This is yet another example of how directors are becoming increasingly vulnerable as injured parties seek to recover compensation from anyone who can pay. Many businesses still do not insure directors and officers against the growing risks they face and failure to do so can cause great financial distress to individuals. Premiums are not high and if you are not protected already just give us a ring.



Could you suffer a Toyota type disaster?



The problems encountered by Toyota regarding defective brakes and accelerators highlight a problem many businesses face. The recall is estimated to cost well over £1bn, excluding the management time to deal with the crisis, the damage to its reputation and the impact on future sales. When the final costs are counted, it will probably be over £2bn.

Toyota will be looking to offset some of these costs by claiming against the suppliers of the defective parts. Few companies can survive such a financial hit and although not on the same scale many businesses could find themselves in a similar position.

Conventional insurance policies do not cover the types of costs incurred by Toyota and the risks of recalls are rising all the time because of the growing impact of media on safety conscious and consumer issues. As soon as a product is recognised as being faulty businesses face the dilemma of leaving it out on the market or undertaking an expensive recall. The first inclination is to keep quiet and hope the problem does not become serious but if the defect is safety critical

major problems can emerge. Insurers could refuse to pay out for any injury or damage caused, huge fines could be imposed, directors would be sued and, in the worse case, even sent to prison for health and safety breaches or corporate manslaughter; the risks are too high for anyone other than the desperate.

The situation is exacerbated in that a large part of manufacturing is now done in the Far East especially China. If their goods are defective attempts would normally be made to recover the costs. This is virtually impossible especially against a Chinese company with no assets in the UK. The only hope is to sue the UK importer if there is one. These are unlikely to have the appropriate insurance so the chances of recovery are very low.

This scenario leaves the UK business shouldering the burden themselves with little prospect of recovery.

Insurance against the financial risks of recall is available. It is a small market and cover can be costly but should be considered by businesses that manufacture or import consumer goods or their parts.

Please contact us if you would like further discussions.



Corporate Manslaughter

New legislation will make prosecutions much easier

At long last, the Corporate Manslaughter and Corporate Homicide Act came into effect on the 1st April 2008 and applies to the whole of the UK. Its prime aim, when there is a fatality, is to punish organisations for breaching health and safety requirements.

In the past it has been difficult to convict a company as the direct link between the corporate officers and the act leading to death needed to be proven. Under new legislation an organisation will now be guilty of the offence if the way in which its activities are managed or organised cause a death and amounts to a gross breach of a duty of care to the victim. The act only applies to organisations and not to individuals but does extend to partnerships. Individual directors and officers can already be prosecuted for manslaughter under existing legislation so their position has not really changed.

The courts have the authority to impose unlimited fines on organisations upon conviction and force them to publicise the facts of the conviction and they can set a remedial order.

The new offence applies to duties including:-

- Those of an employer and occupier of premises and land
- Supplying goods and services
- Commercial activities
- Construction and maintenance works
- Using or keeping plant, vehicles etc...



Fatal accidents will be investigated by the police with the help of relevant safety organisations.

So far as insurance cover is concerned, most policies have been extended automatically to cover the costs of defending a prosecution provided the policy covers the consequences of the fatality. For example, an employers liability policy covering fatality of employees, a public liability policy, the death of a third party on a site, a motor policy on a vehicle accident fatality and product liability policies on deaths caused by defective goods and services. Where a company's officers deliberately take a course of action, knowing it was dangerous, such as to cut costs, then insurers may decline to deal with the claim. Insurers will not pay for any fines or cover any loss of reputation risks.

Most businesses should be even more vigilant in complying with all health and safety regulations and good practice. They should also have legal expenses cover and protect its officers with a directors and officers insurance policy.



MacKay Corporate Insurance News



Congratulations

MacKay Corporate are delighted to announce that Liam Timothy, Yvonne Bulloch and Marion Kerr (not pictured) have been awarded the Certificate in Insurance. We wish to pass out congratulations on to all of them. MacKay Corporate are committed to the ongoing development of all their staff and the sitting of professional exams where appropriate. These are the latest employees to achieve a professional standard in their chosen area.

Ayrshire Chamber Welcomes David... David MacKay, Director of MacKay Corporate Insurance Brokers has recently joined the Board of the Ayrshire Chamber. His position is effective from January 2010 and David is looking forward to working with the Chamber and upholding its success in the local area.

Competition Time

Enter to win either...

2 tee times at Dundonald Links, one of the best links courses in Ayrshire

or lunch for 2 at the Lochgreen House Hotel in Troon

Questions...

At which course is the first golf major held and known as the masters in April?

Name the current captain of the European Ryder Cup team?

Name the Insurance Clause which is demystified in this month's newsletter?

Please email back your answers and quote reference MCIB April 2010.

Closing date is 31/07/2010 when we will draw the winner and thereafter the winners notified.

