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Insurance Brokers Pty Ltd

COTMA PRESENTATION

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Ladies & gentlemen, we are very aware that this is a topic that has grown in importance recently, for all the wrong reasons. Whilst I am happy to take questions later on any type of insurance cover, I know that liability insurance is the most urgent issue and I will focus on the situation with that class.

Before talking about the specific effects on historic rail societies, I want to briefly explain the background behind the current general liability insurance market situation.

First, I would like to explain the circumstances where liability to a third party will arise.

- . You must have a duty of care to the third party/ plaintiff
- . You must breach that duty
- . The plaintiff must suffer loss, damage or injury as a result of that breach
- . The loss or damage must have been reasonably foreseeable

A duty of care can arise through your ownership or occupation of premises, through your conducting an event, business or activity, and through your employees, officers or agents.

What the insurance industry is saying

The general insurance industry says that it has struggled for the past 18 years to be profitable. Sharply rising premiums over the past 18 months have put it back on the road to recovery, although full profitability is yet to be restored.

The correction in pricing (some would say the overcorrection) has come at the same time as the worst manmade disaster (in dollar terms) in history. The combined effect has been catastrophic to large sectors of Australian society.

What is happening in practice

There is a scarcity of capital and underwriting capacity in the global insurance market (due, to some extent to the September 11 events) and this does explain some premium increases. There can be little doubt, however, that insurers have seized the opportunity afforded by the events in the USA and have used this to justify their actions, irrespective of the real relevance to their own circumstances. It has become a sellers market, with premiums and underwriting restrictions now reflecting the insurers' frantic scramble back to underwriting profits.

Insurers are now taking great care and, some would say, excessive zeal, in risk selection and premium setting. Risks that were routinely considered small, 12 months ago, are now often outside the insurers' severely restricted acceptance guidelines, or priced out of reach.

The impact of this has become painfully evident across the community, and often liability cover in particular, has become either unaffordable or unobtainable.

Everyone has been, and will continue to be affected. From suburban tennis clubs, to giant shopping centres, from schools, to major industry. Everyone is being forced to dig deeper, and the cost increases are inevitably passed to the community. Builders warranty and medical indemnity covers are two highly publicised examples.

The rail sector, both commercial and historic, has experienced enormous premium rises and restrictions in cover over the past twelve months.

Until the year 2000, Triton underwriting in Sydney, was able to offer \$20m of affordable cover for historic societies with the insurer American RE. When this capacity contracted to \$10m, those of our clients requiring \$20m of cover, were left with two choices - take \$10m with Triton and buy the second \$10m elsewhere, or insure the \$20m with St Paul.

Questions:

1. Questions were asked by a number of delegates concerning insurance covered by compulsory 3rd party motor vehicle insurance using methods such as “green slips”.

The Victorian situation was described where accidents involving “trams” and motor vehicles were covered by this type of insurance. Delegates from other states and New Zealand (with the possible exception of Christchurch) were unsure whether their own states’ 3rd party insurance schemes covered such accidents and it was not thought to be of advantage to reduce insurance costs to the Museums. The advantage discussed was that 3rd party claims were capped by government regulation. It was also felt that the Victorian situation only applied to trams in public streets and only involving motor vehicles and had no real bearing on museum trams operating on their own sites, and offered no avenue of reducing the cost of public liability insurance.

2. A question was asked about the experience in public risk insurance in overseas countries other than USA.

The response was that Australian insurance premiums were low and underpriced, and the “honeymoon” period in Australia ended with the incident on 11th September 2001. Rates in UK/Europe had been rising for a number of years previously and Australian costs had not reflected these increases but remained artificially low. The recent increases in Australian premiums are just reflecting an increase to world parity rates.

3. A question was asked about how an individual’s “duty of care” was taken into account when public risk insurance claims were made.

It was explained that claims are not treated lightly and negligence is difficult to prove. Factors such as the actions of the victim are taken into account as well as the safety standard applied to the organisation involved. The court system varies in its judgements, not so much based on applying the letter of the law, but often on society values on how a person’s life expectations are affected. An example was given of an individual who was injured due to a thoughtless incident, and remained incapacitated for life. The person would receive a large payout judgement due to the loss of the normal social interactivity he would suffer for the rest of his life. The fact that the accident may have been almost self-inflicted is not taken into account.

On the positive side, the claims experience with rail groups is good. There have been few claims and payouts have been low. The courts do look at contributory negligence which reduced the exposure of the groups. The only problem is that these cases are often settled in court and legal costs to obtain judgement are high. Fire claims are high but are not frequent. Incidents involving children are difficult because actions can be brought over a long period. Insurers look at profiles where family activities occur and often set premiums high.

4. A question was asked as to what is the future. Do we close our Doors? Will premiums drop?

The response was not optimistic. Liability is almost impossible to predict and the future prognosis is not good.

5. A question was asked if government intervention is likely to occur to cap premiums and assist volunteer groups.

The response was that this type of action was unlikely. Government control of private industry is not a viable solution and is likely to be resisted. The Australian insurance industry is only small and most companies seek re-insurance overseas to cover possible claims. Overseas insurance rates are not low, and this reflects ultimately in the premiums offered here. Australia has very little impact on the insurance scheme worldwide.

6. A question was asked as to the impact on premiums if groups could be covered under the umbrella of the insurance policy of their local municipal council.

The response was that there could be problems doing this because after a risk analysis, the council’s premium may increase significantly, and the council may not wish to risk the backlash from the local ratepayers.