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## THE FULL MEASURE

Christmas Edition 2013



### Current Projects

#### Wellington Office

Christchurch Mens Prison  
Foodstuffs - Dannevirke  
Christchurch Schools  
Wellington Zoo The Hub  
SPCA Project Rehome  
Featherston Street  
Clyde Quay Public Spaces  
Wellington Zoo-Meet the Locals  
DOC- Christchurch  
Reinstatement Estimates  
Majestic Tower  
MOE - New Schools  
Cunningham Tce

#### Auckland Office

Rotorua Police Station  
Nga Taiatea Wharekura  
Te Wharekura O Rakaumanga  
MOE Kura Redevelopments  
Holy Trinity Cathedral  
Western Springs College  
Pasadena Beach House  
Diocesan Performing Arts Ctre  
Putney Way Apartments  
Hamilton North Secondary School  
Marsden Cross Trust Board  
Marlborough Primary New Admin  
Auckland Radiology  
Hamilton Endeavour School  
House Reinstatement Estimates  
Old Mt Eden Prison Conservation

#### Queenstown Office

H22 Residence  
Greenstone Tce  
Savanna Management  
Bradleys Wakatipu  
Speargrass Flat Road  
Fong Gabler House  
Gleand Drive, Frankton  
Summerfields Estate

#### Christchurch Office

Ashburton Museum & Art Gallery  
Methodist Church  
Horby Retail  
Reinstatement Estimates

## SHED 10, CRUISE TERMINAL, AUCKLAND

Auckland's new primary cruise ship terminal was opened August 2013 in a 103-year-old historic wharf shed. Shed 10 is the only original building that remains on Queens Wharf.

The two level restored building, almost the size of a football field inside, will be the city's primary cruise terminal from the start of 2013/14 cruise season. The much smaller overseas passenger terminal next to the Hilton Hotel on Princes Wharf will continue to be used but Waterfront Auckland said it was only half the size of Shed 10, which can take ships up to 294m.

Extensive work was done inside the old Queens Wharf building beside the Cloud. The east side of its upper level has a series of sliding doors and movable walls to allow a gangway to be connected anywhere along its length for cruise ship passengers. Materials were salvaged and used wherever possible to retain the heritage values and the ground floor retains its robust functional character.

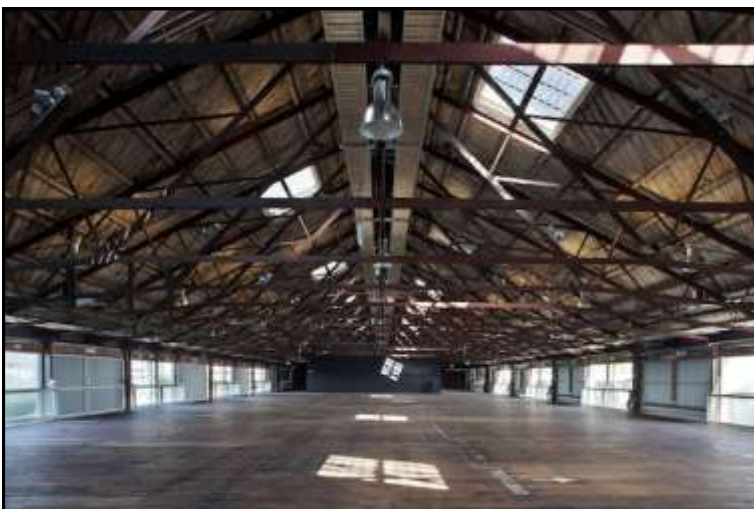
Structural steel was installed to strengthen the building and its frame. New service cores were developed inside the old goods shed at each end of the building with lifts, toilets, service and administration rooms. Stairs, lifts and an escalator have been built for access to the first floor.

The largest solar panel of its kind has been installed onto the roof of Shed 10. The energy generated will be used to light shed 10 with any excess energy being used at other Auckland Waterfront locations.

The upper floor will be the passenger lounge, processing and waiting areas for embarking passengers and customs-controlled space for border agency processing.

The ground floor will be used for passenger luggage, security and also border agency processing.

Jasmax were the architects and along with Salmon Reed Architects have balanced the functional requirements of the shed to the buildings heritage.



Emma Vigus provides guidance on how to reduce the risk of suffering a professional indemnity claim

**Emma Vigus** provides guidance on how to reduce the risk of suffering a professional indemnity claim

## Managing risk

**W**ith the spotlight on professional indemnity insurance (PII) claims against valuation surveyors, it is easy to forget that all professional services firms are susceptible to allegations of negligence. An economic downturn leads to increases in claims. Firms are forced to take on instructions they would have declined and parties are no longer as willing to incur losses in the broader interests of the relationship. A PII policy is, therefore, seen as a 'deeply lined pocket' from which to re-coup losses. At the same time, pressure on increasing revenue and margins often reduces the time a business can dedicate to risk management, meaning that it only receives attention after a claim. This may be too late to prevent serious damage especially if a firm carries a high excess, is underinsured or has a claim voided.

The root cause of many PII claims is generally one or a combination of the following.

### Failure to assess risk

Before starting a project or entering a new line of work it is important to undertake a thorough risk review. This should include:

- reviewing contractual documents: are they industry standard forms of appointment and what uninsurable exposures do they impose?
- are you being adequately paid for the work?
- are your employees and resources up to the job?
- do you and the client agree on what is being delivered?
- are roles and responsibilities clearly defined?
- are the timelines realistic?
- are you comfortable with the financial standing, capabilities and insurance arrangements of the other parties? According to accountancy firm PricewaterhouseCoopers more than 600 construction firms failed in the first quarter of 2013. When working as part of a team, you may be subject to the law of joint and several liability (Civil Liability Act 1961). This could leave you picking up 100% of the client's loss, regardless of your own level of negligence, for instance if other contractors become insolvent. A Net Contribution Clause should, to a large degree, negate this position. If this is not achievable, ensure all members of the team have signed the same warranties and/or agreements as you.
- how do you plan to overcome challenges that have arisen on similar projects?
- are your insurers comfortable with the project?

In some instances the risk review may lead to a decision to decline the job. As the UK economy starts to recover, an increasing number of surveying firms are turning down low fee work. But where work proceeds, it will always be easier to implement steps to mitigate risk at the outset rather than a year into delivery.

### Agree the service

It is vital that you and the client agree on the service you are providing and any mid-term changes to the instruction. Each element should be explicit in your terms of business, and you should never start a project when only a letter of intent has been issued, because this does not safeguard the contracting party's rights. When fulfilling the role of designer, the final design should be signed off by the client, having first been peer reviewed to check calculations and suitability. While the responsibility is on you to ensure your client understands your terms of business, the client's expectations must also be reasonable. They cannot, for example, expect you to perform to a standard beyond 'reasonable skill and care'.

### Inspection or supervision?

An architect was sued by a client for allegedly failing to supervise a contractor engaged in propping up a building during redevelopment. The props used were not adequate to support the loads and part of the building collapsed, resulting in a claim.

The architect argued that his duty was only periodically to inspect the contractor's work, and not to supervise it. However, there were doubts as to the terms of the architect's retainer, and some evidence to suggest that he may have promised more than a mere supervisory role. Insurers contributed £55,000 to a settlement of £150,000, resulting in a loss of £95,000 to the architect.

You should also take account the varying levels of client knowledge regarding the construction and surveying process. It is not, for example, reasonable to expect a private homeowner to exhibit the same level of knowledge as a developer. There are numerous examples of notifications arising from building surveys where the client (often a private homeowner) has misunderstood the breadth of the survey expecting, for example, a full inspection of the electrical supply.

It is accepted that specifications change over the project life cycle, but any changes to instructions should be clearly documented, confirmed in writing with the client and fully explained to all other members of the team. Accurate records of communications with clients can be crucial to the successful defence of a claim.

### Poor management and supervision of subcontractors

The ability of staff or project teams to deliver is often hampered by poor management, lack of supervision of both employees and subcontractors and poor communication.

For example, one architect acting as a project manager, was held liable for failing to check calculations supplied by an engineer for the loads to be imposed on the suspended floor of a new factory.

While the court held that the architect was entitled to assume the engineer's competency, it decided that if the architect had

## RICS Extract cont

An extract from RICS Construction Journal written by Emma Vigus a Director at Howden Windsor



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checked the calculations before passing them to the contractor, they would have seen they were obviously wrong and that the floor would not be strong enough for its intended use.

The architect's insurers contributed £78,000 to a final settlement of £234,000, with the remaining costs being covered by the engineer's insurers. In addition to the settlement, the legal fees awarded to the architect's insurers amounted to £69,000.

### Lack of expertise

While it seems obvious to state that you should not undertake work that you do not have the necessary experience to complete. Lack of experience in either asset class or territory is one of the most common causes of claims against valuation surveyors. Every firm will be tempted to take on unfamiliar project areas during a downturn. But always question whether it is worth the risk, given the increased likelihood of a claim arising.

### Fee disputes

A demand for payment can result in a counterclaim of negligence, particularly during an economic downturn. While a financial loss

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Related competencies include M005, T077



normally occurs before a PII claim can be brought, very few projects complete without a suitably motivated client finding something they are unhappy with. It is always worth checking in advance whether a potential client has a history of issuing counterclaims, or of being particularly difficult to deal with. When a fee dispute does arise it is vital that you notify insurers at the earliest opportunity, because any failure to notify in a timely manner may lead to any subsequent claim being voided.

In one case, a firm of architects issued an invoice in respect of design work relating to a building extension. Shortly after the invoice was issued, the contractor responded with a 'payless' notice accompanied by a separate letter detailing a series of perceived shortfalls in the architect's work. These included a failure to maintain consistency in materials' specifications throughout the project, and a completion delay due to a late design alteration. The letter itemised the costs associated with correcting each perceived problem, and went on to state that should the rectification costs exceed the remaining fees due, a claim would be made against the insured's PII policy.

### Dealing with a claim

Unfortunately, even the most risk averse firms can be the subject of a claim, unsubstantiated or otherwise. All PII policies explain the procedures to be followed. Failure to follow these requirements may result in insurers declining to cover the claim and associated costs. While the RICS policy wording offers a broad level of cover, situations do arise where insurers attempt to avoid settlement. An understanding of the notification procedures laid down in the policy wording are therefore vital. Furthermore, all members of staff should have a basic understanding of the fundamentals; namely, never admit liability, and never offer to settle and advise the appropriate person immediately of anything that might lead to a claim.

As an example of the problem this can cause, one office of the insured acted as the property manager for a client, while a second acted for the tenant. A dispute arose from the conflict of interest, and insurers were duly notified. After two years the insured advised their insurance broker that they had offered to settle the claim for £200,000, without their insurers' prior agreement. This represented a breach of the insured's professional indemnity policy conditions. Despite the breach, the insured's brokers succeeded in persuading insurers to settle the claim in full.

A tension always exists between risk management and business growth. But many aspects of good risk management, such as risk due diligence, remaining in regular contact with clients and keeping accurate records of communications, are simply good business practice. For firms that remain unconvinced, it is worth asking: how would I trade without PII and how would I cover a claim that insurers refuse to settle? ●

### More information

> <http://bit.ly/t9k9xVK>

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# MALLTBYS

SOCIAL EVENTS

## Wellington Christmas “Do” Fishing Trip

The skills of the specialist QS were put to the challenge for the Wellington Office 2013 Christmas “Do” – though not their usual project work; this time a fishing excursion out into Wellington Harbour and into the Strait.

Despite the weather being slightly overcast at times and windy (no surprises there) the staff were undeterred and expectant of a catch.

Prizes awarded included “First Fish Caught”, “Biggest Fish” and “Most Fish Caught”. All the staff did catch a fish of some variety, however Bernard Chapman had all round talent and was awarded most of the prizes.

The fishing skipper took us to all the best fishing spots – and all of us had fish to take home.

All-in-all a very pleasant trip with great views and fun all round.

The final working day had come and we were all welcomed to an end of year lunch at Joe’s Garage, Tory Street, Te Aro. Lovely food and great coffee to start the holiday period.



Auckland Christmas 2013

The end of year activities this year were a little different than the past as some of us took-on the land and others the sea. Quad biking in Woodhill Forest was a 4<sup>th</sup> year running favourite for Gary, Phillip and Philip who obviously find it irresistible zooming though the treacherous terrain. Meanwhile Anne, Kendall, Huw, Luke and Ken chose to face the adventures of the open sea on a wild jet boat ride around Auckland Harbour. 360 turns were enough to make us all scream!

Once we all had settled down (and cleaned up) from our exciting afternoon we met our partners for a relaxing award winning dinner at Molten in Mt Eden. It most definitely lived up to its name, Molten we will be back!



**MALTBYS**

# Auckland Children's Christmas Party



**MALTBYS**