

## Costs and Expenses

AIG has been writing management insurance around the world for more than 40 years. This experience means that no matter what threats and exposures directors face, in any company, sector or continent, AIG can offer a solution. It also means that our coverage is constantly road-tested and is continually evolving.

AIG in Australasia has developed the Gold Complete Costs and Expenses Section as a companion Section to the existing Gold Complete suite. This Section provides certainty on costs and expenses where the Policy becomes subject to a charge.

### New Zealand: the Bridgecorp decisions

The initial Bridgecorp decision was handed down by the High Court of New Zealand in October 2011<sup>1</sup>, successfully appealed in the New Zealand Court of Appeal by AIG in December 2012 and then finally appealed to the Supreme Court of New Zealand in 2013.

Following these decision, if the damages and compensation in a civil claim in New Zealand could exceed the aggregate policy limit, the entirety of the policy proceeds will be subject to a statutory charge in favour of the claimants meaning that the limit is reserved for payment of the civil claim and will not be available to directors for payment of their costs and expenses, including defence costs.

This ruling affects all liability insurance policies that cover civil compensation and other costs within the aggregate limit, as generally occurs with Director's & Officer's insurance and many other management insurance policies.

As the highest Court in New Zealand has now ruled on this issue, there is little prospect of the New Zealand law being changed without legislative amendment by the New Zealand parliament.

### The position in Australia

The law is less settled in Australia.

In the Chubb v Moore case<sup>2</sup>, handed down in July 2013, the New South Wales Court of Appeal excluded defence costs from the ambit of the charge, taking the view that the charge did not interfere with the insured's contractual rights to be

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<sup>1</sup> *Steigrad v BFSL 2007 Limited*, 15 September 2011, Lang J

<sup>2</sup> *Chubb Insurance Company of Australia Limited v Moore* [2013] NSWCA 212

paid their defence costs. This case continues to be the only decision that directly addresses the issues raised in the Bridgecorp decision under similar legislation in New South Wales and other Australian territories.

This may not be the final position in Australia as it may be heard in other Australian jurisdictions or by the Australian High Court.

## Key Features

The Gold Complete Costs and Expenses Section provides a dedicated limit for costs and expenses that will be triggered should the existing management insurances be subject to a charge that prevents the policy from advancing defence costs.

### Contingent to a charge

- Main policy covers defence costs and other expenses if a charge is declared

### Triggered by a declinature due to a charge

- No requirement for charge to be threatened by plaintiff
- No requirement for a judicial declaration

### Broad cover

- Drafted to sit seamlessly with existing Gold Complete Sections
- Provides not only defence costs, but all expenses including Public Relations Expenses and Assets & Liberty Costs that would otherwise be frozen – this Section will respond to any costs under any Section, other than damages and compensation
- A single retention is payable under both this Section and the other applicable Section(s) for a claim

### Reimbursement of Costs and Expenses

- The Gold Complete Costs and Expenses Section is reimbursed if the main Sections are not exhausted – this allows the Costs and Expenses Section to be reinstated to deal with any subsequent matter.



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