

Headlines

art fair edition 11



**YOUR RIGHTS
ON COPYRIGHT**

THE PARTNERS LIFE STORY

**AUCKLAND
UNLEASHED**

**DISASTER
PROTECTION**



Welcome to the 2011 edition of HHeadlines magazine, Hesketh Henry's publication for clients and friends of the firm.

As you read through, you will see there is a strong art theme to this issue. Our 'Art of Law' brand ties in nicely with our various art sponsorships. However, there is more to it than that. It is intended to convey the fact that law is not just a job to us. We are a relationships-based firm, which means that we strive to be unrivalled in the value that our relationships – with our clients, our staff, our referrers, our other supporters and the wider community – deliver.

We're excited to, once again, be a major sponsor of the Auckland Art Fair. Held every two years, it has gained an excellent reputation for the quality of art and the wide array of New Zealand and Australian art galleries and artists represented.

The 2011 Auckland Art Fair will be held from 4–7 August at the new Viaduct Events Centre. If you are at all interested in art, then I would recommend a visit.



This issue of HHeadlines marks the start of a new era. From now on we will include at least one client feature in each issue – profiling some of your organisations and the great work you are doing. This issue features an interview with Naomi Ballantyne, Managing Director of Partners Life, a newcomer to the insurance scene that aims to shake up the market. Naomi talks about the first month of trading, her ambitions for Partners Life and how Hesketh Henry have helped her and her team to date.

We also highlight a number of issues that will impact on many of our clients' businesses including:

- The Auckland Supercity's 'Auckland Unleashed' discussion document that will form the basis for planning for development in the Auckland region over the next 30 years.
- Advice from Marsh about minimising business risk in the event of a natural disaster. Shaun Sellwood, Managing Principal at Marsh in Christchurch, sets out key recommendations for businesses and highlights components of Marsh's business continuity plan that got the business through the dark days following the Christchurch earthquakes.

Given our 'Art of Law' branding and our sponsorship of the Auckland Art Fair, we thought it would be timely to include an editorial on philanthropy and the arts. We talked to some leaders in this area including James Wallace, well known supporter of the arts and owner of the Pah Homestead collection, and Fiona Campbell, founder, director and trustee of the Real Art Roadshow.

Plus there's plenty more. You'll notice that there is less emphasis on legal issues than in earlier editions. That's because these are highlighted in our newsletters, which are sent out at the time issues arise. If you would like to know which newsletters we produce or would like to receive any of these, please email reception@heskethhenry.co.nz or contact your Hesketh Henry lawyer.

We'd welcome your feedback on our new look magazine. Thank you for your ongoing support.



Erich Bachmann
Managing Partner



Cover image: *Pohutukawa Decending* by artist, Jim Wheeler courtesy Artis Gallery.



Fiona Campbell, Gen G philanthropist. Page 10



AUCKLAND UNLEASHED

If you work, live or do business in Auckland, you need to know what is planned for the region. Partner Stephen Layburn outlines what we know of these plans so far.

You may have heard of 'Auckland Unleashed' but what is it?

One of the primary drivers for bringing Auckland together under the Supercity structure was the ability to plan and allocate resources on a region-wide basis. Despite all the media attention given to the establishment of the Auckland Council and the election of our new mayor, there has been surprisingly little comment about one of the first steps towards harnessing some of the benefits of that unified structure: the release by the Auckland Council, at the end of March, of 'Auckland Unleashed', a discussion document that will form the basis for planning for development in the Auckland region over the next 30 years.

'Auckland Unleashed' boldly states that the planning process is to drive the direction for Auckland and its communities integrating social, economic, environmental and cultural objectives in New Zealand's only city of global scale. Auckland must fulfil its potential to make a major positive contribution to the New Zealand economy, something that has taken on greater importance since the Christchurch earthquakes. For Auckland residents, there are significant knock on impacts on their quality of life if the planning processes across the Auckland region function well. Also, because some major developments (such as transport infrastructure) extend beyond the budgets of the Auckland Council, a collaborative approach with central government and the private sector will be required.

Already we have seen some positioning by central government on the growth strategy for the Auckland region. For example, the Government has clearly indicated a preference for roading and private vehicles over a greater reliance on public transport. Then there is the very public debate about a further Harbour crossing – with the Government clearly preferring a new bridge over the (more expensive) tunnel option.

The Auckland Council has been consulting widely with the final outcome being the blueprint for development in the region (the 'Auckland Plan') which is set to be adopted in December. The Government's obvious interest, financial and otherwise, in the development of the Auckland region has led one commentator to ask whether the Auckland Plan will be Wellington's plan for Auckland?

What does it cover?

'Auckland Unleashed' is over 200 pages long. It has a strong ecological and social focus. The mayor talks of making Auckland "the world's most liveable city" and, as well as economic indicators, the discussion document lists as objectives:

- improving the quality of life for everyone (and putting children and young people first);
- enhancing socio-economic wellbeing;
- responsibly managing the built and natural environments; and
- developing a rational land use plan in the public interest.

The economic targets include:

- increasing Auckland's relative contribution to New Zealand's GDP from 34% to between 39% and 44% by 2031; and
- improving Auckland's ranking against other OECD cities by 20 places in 20 years.

What are some of the big picture possibilities?

'Auckland Unleashed' refers to the conditions necessary to achieve a business friendly city as being:



AUCKLAND UNLEASHED

- world class infrastructure (particularly transport and broadband as well as water, wastewater and security of energy supply);
- proper land use planning to support future business growth and to protect against the risk that available business land will have been exhausted by 2021 (through a mix of protecting existing industrial zoned land against residential encroachment, identifying new greenfield sites, special zoning provisions for value-added manufacturing sectors and co-investment with the private sector to create economic development and industrial precincts); and
- efficient and responsive (“Can Do”) Council and regulatory processes.

The media coverage of ‘Auckland Unleashed’ discussed innovation clusters. On a larger scale, the discussion document refers to three principal areas as having the potential to achieve a ‘step-change’ in Auckland’s economic performance:

- **International City Centre** (which extends to the CBD, a number of inner city areas and includes Devonport) – as the “cultural and civic heart” and the hub for the knowledge, academic and research institutions;
- **Southern Opportunity Area** - centred on the airport and Manukau Harbour, as the location for high value manufacturing, a place of population “diversity” and an area of residential growth; and
- **North Western Opportunity Area** – which includes Albany and West Auckland and which is identified as a centre for the further development of ICT (information and communication technology) as well as a hub for marine and film industries and a model of new ways of undertaking public-private partnerships (PPPs) to improve housing supply options.

Having identified these “top spatial priorities”, Auckland Unleashed draws on earlier research to suggest that there are a number of priority sector areas (the clusters referred to above) that largely fall within the three zones. As well as the core activities identified in each of the three zones, the clusters include:

- **Food & Beverages** – with an emphasis on food processing and including the proposed food innovation precinct at Manukau / Auckland Airport;
- **Health Technologies** – a hub around Middlemore Hospital;
- **Biotechnology** – at this stage no more than an action plan to build on the 42% share of the biotechnology industry already in Auckland; and
- **Marine** – to take greater advantage of Auckland’s marine industry.

Again, the objective of identifying areas of activity and seeking to better integrate planning and development is part of a wider proposal to help Auckland to further pull its weight for New Zealand.

Whilst ‘Auckland Unleashed’ identifies a number of high-level targets, the hard data such as costings and timelines for delivery are to be included at a later stage in the planning process.

The implementation of a number of the key elements discussed in ‘Auckland Unleashed’ will depend on a number of funding strategies. Given the impact of rebuilding Christchurch, together with the current economic climate, there will be real constraints put on the Government’s ability to spend in Auckland. As a result, the Auckland Council will need to be innovative both in developing new future funding sources and leveraging its asset base (more than \$30 billion), rather than relying on rating. The proposals described include targeted rates and development contributions. In the area of transport,

tolls, congestion, parking and road user charges are listed as options. Some mention is made of private capital with the result that there will, no doubt, be much debate about PPPs.

What is the timeline?


The Auckland Council aims to have the Auckland Plan adopted by the end of this year. While this seems ambitious, in light of the 30-year horizon, and the need to get Auckland working, it is important that the agenda for planning and policies, including land allocation is in place. This needs to happen before the much-anticipated economic recovery so that planning within the Supercity is more strategic and less ‘patchwork’. This will ensure a greater long term return on the investment.

What now?

As this plan will impact on businesses, as well as Auckland residents, we encourage you to think about your future planning:

- Are you likely to grow / expand / move premises?
- What are the transportation needs for you and your staff and for your raw materials and finished products?
- What does your future product or service to market model look like, and are you located where you need to be, with the necessary supporting services and resources?

If you are interested in having your say then the next stage of formal consultation will take place between August and November. As well as inviting feedback by email, the Auckland Council also invites feedback via its website, Facebook and Twitter.

Contact Stephen Layburn
on T: **(09) 375 7633** or
E: **stephen.layburn@heskethenry.co.nz**
to discuss how you and your business may be impacted and what influence you could have on the final Auckland Plan. 

A GREAT LIFE STORY

In the first month of trading, Partners Life, New Zealand's newest life insurance company, has achieved one-fifth of its aggressive first year budget. We talk to Naomi Ballantyne, Managing Director of Partners Life, about the philosophy behind Partners Life, her aspirations for the future and the part Hesketh Henry has played in the story so far.

Naomi is clearly excited about how well Partners Life has performed during its first month in business. According to Naomi, the newcomer to the insurance market is already competing with the big boys, having written more business in its first month than a number of the established life insurance companies typically write in the same period.

"500 financial advisers have signed up as distributors of Partners Life products and 100 have already written business with us. Even if we now just continue to write the same amount of business each month, we'll achieve 2.5 times budget in the first year. If some of the other 400 advisers who have signed up as distributors for our products write business with us, we'll blow our budget out of the water," says Naomi. "Our biggest challenge is getting team members on board quickly enough to meet demand. We have five new team members joining us over the next three weeks. There have been a lot of early starts and late nights but it's been a great first month. I've been blown away by how quickly things have taken off."



A GREAT LIFE STORY

Naomi believes one of the key reasons for this early success is that Partners Life got its timing and its offering right. Naomi set up the business along with Chris and Richard Coon, all veterans and, arguably, pioneers of the New Zealand insurance industry, having between them successfully established and run two of this country's leading insurance companies in the past: Sovereign Assurance and Club Life (now Onepath Life) as well as prominent home equity release products company, Sentinel.

The Partners Life philosophy is simple: to offer, at competitive prices, comprehensive products through independent advisers that stack up against those offered by other insurance providers and to pay all genuine claims.

“The Hesketh Henry team understand start-ups. They understand insurance and they know us. Our relationship is built on trust.”

“Independent advisers have had it hard. They've had regulations imposed on them, many have struggled through the global financial crisis and existing insurance companies don't appear to have focused on them - either because they are looking to control distribution and aren't sure they want to deal with independent advisers or because they've been going through restructures or mergers and so have been internally focused.” Naomi expects independent

advisers “to scrutinize us, our products and our service to ensure we stack up. When all is said and done they can choose who they use.”

In contrast to when they set up Club Life and Sovereign, Naomi, Chris and Richard are not bringing a brand new product to the market via Partners Life. “It takes a lot of work to get advisers on board with a new product as they need to be comfortable that it will deliver what it says it will. We knew that if we wanted a quick start we needed product familiarity. We researched the market and found the best life insurance products out there in each category and matched the best features and benefits.” This gives advisers the confidence that there is nothing missing.

Naomi acknowledges that a big concern for advisers is whether their clients will be safe taking out insurance policies with a start-up. “Prior to industry regulation there was no test for newcomers to prove they were financially viable. When we first started Sovereign we were investigated by everyone because it was easy for competitors at the time to suggest we were struggling. Now regulations are in place we have to meet the same

standards other firms do. We're licensed just like they are. Regulation definitely helps take some of the fear away.”

“We are comprehensively reinsured. This gives advisers and clients comfort that, should the company fail, valid claims are still covered by the reinsurer. We reinsure with Scor Globale Re, a large reinsurer in the world market.”

Building trust

Because Partners Life is the third life insurance company start-up Naomi has been involved with, she believes it's been easier to get buy-in this time around. Advisers trust her, Chris and Richard because of their track record. “We have our skin in the game this time around. Club Life had a major cornerstone shareholder, which was great but it meant that when the shareholder wanted out, we had to sell to ING. Two thirds of Partners Life shares are owned by the Management Team. The other third are owned by a number of other people we know and trust.”

Naomi's ambitions for Partners Life are impressive. “We don't want to be just a life insurance company. We want to offer a one-stop shop for all financial services so that people can get their life, income protection, medical, disability, trauma cover, business risk protection, fire and general, annuity, home and contents, and car insurance from one company. Because we're a start up we can build our systems with this goal in mind. Long term we'd like to set up franchises overseas. There are a number of countries such as Scotland, Ireland and Canada, which have similar demographics to New Zealand. We think the Partners Life offering could work really well in those markets.”

Hesketh Henry has had a longstanding relationship with Naomi, having advised

Sovereign in its early days right up until it was acquired by ASB. Managing Partner, Erich Bachmann has been working with the Partners Life team since they set up the business in August 2010. Naomi explains how critical having the right lawyers on board is to Partners Life. “Everything we do is essentially a legal contract. We need to ensure that our policy wording and the way the policies are marketed are correct in order to protect both us and our clients. The wording needs to be black and white so that advisers and clients don’t end up in Court battles trying to get paid. We’re selling ourselves as trustworthy so have built our commitments into our policy wording.

Guiding principles

“If it’s grey we’ll pay’ and ‘We know what the law says we can do but we will do the right thing – not just do what the law lets us get away with’. If we believe someone has deliberately withheld information from us or has committed fraud, we will penalise them as the law allows us to – but, if someone has made a genuine mistake in their insurance application we will re-assess whether that cover would have been offered and on what terms, had that material information been available at application time. Any decision whether a claim can be paid or not will then depend on this re-assessment. We firmly believe that our clients shouldn’t pay for ambiguity and that we must assume the risk. Our lawyers therefore need to ensure what we’re saying is correct in order to protect our clients.”

As a player in a regulated industry, Partners Life has to comply with certain laws. “As a start-up we are a target. We need our lawyers to ensure we don’t breach any laws.” Naomi views

Hesketh Henry as part of the Partners Life team. “I’ve worked with internal counsel in the past but find they are just a conduit between the organisation and external lawyers. We’re not a law firm, a printer, nor a marketing company and so we prefer to outsource to experts in each of these areas.”

“The Hesketh Henry team understand start-ups. They understand insurance and they know us. Our relationship is built on trust. We’ve found the Hesketh Henry team to be practical. They say ‘here’s the law, now here’s what we should do from a practical point of view’. This means we don’t waste money unnecessarily on over-compliance that adds no value. We want our lawyers to be involved in strategic discussions and to be interested in the outcome for the business.”

Naomi believes that those providers that refuse to pay claims, or make it difficult for claimants, give the industry a bad reputation. “That’s why we’ve put our commitments into our contracts. This ensures that Partners Life will always behave this way, no matter who is at the helm. Our reinsurers agreed to this. From the advisers’ perspective this removes the risk because they can be confident their clients’ valid claims will get paid.”

“We’re in the people game. We deal with sick people at vulnerable times so we need to have a heart. If you don’t have a heart then you’re in the wrong business.”

Partners Life certainly offers a compelling proposition from the consumers’ perspective and they’re clearly off to a flying start. We are really enjoying being part of their team and their story and look forward to the next chapter. **HH**





PROTECTING YOUR BUSINESS FROM DISASTERS

Who could have predicted, a year ago, that within a six month timeframe Canterbury would be rocked by two major earthquakes and numerous aftershocks. Our thoughts remain with those who have lost loved ones, and whose lives have been affected by the tragedies.

We spoke to Shaun Sellwood, Managing Principal at Marsh in Christchurch, about the insurance implications of the earthquakes and his recommendations for all New Zealand businesses to ensure they minimize their risks in the event of another natural disaster.

“The considerations for Christchurch-based businesses, when taking out insurance, have changed dramatically since the February earthquake,” explains Shaun. “There are a number of aftershocks each day which could increase the extent of damage to premises. In the last three months the majority of New Zealand insurers have decided they won’t offer additional capacity.

This has huge implications for businesses, which are now trading normally and that may want to increase the amount of their property insurance or business interruption insurance coverage. It means that many businesses may be underinsured in the short term.”

Shaun advises all New Zealand businesses to sit down with their insurance broker and review their coverage, ensuring they are covered for the right things.

Business Interruption insurance policies are designed to provide indemnity for business interruption losses caused by physical damage at the insured’s premises. This “base cover” is only available where the physical damage at the insured’s premises is insured under a property insurance policy. The indemnified business interruption loss is confined to those losses that would not have occurred “but for” the insured physical damage at the insured’s premises. Normally, the business interruption is due solely to physical damage at the insured’s premises and no coverage issues arise.

The base cover does not indemnify business interruption losses caused by circumstances other than insured physical damage at the insured’s premises.

Business Interruption insurance (previously called loss of profits insurance or consequential loss insurance) covers loss of profit (i.e. reduced turnover or an increase in expenses) caused by a business interruption. However, not all business interruption results in cover under the policy. As always with insurance, the terms of the policy determine what is covered.

“It’s vital that businesses sit down with their insurance broker to review their requirements taking into account their plans and level of coverage required.”

“At this stage New Zealand Insurers have not made major changes to the coverage that is provided under a Property Insurance or Business Interruption Insurance policy. However, this may change in the near future.” One major change to date has occurred with the application/imposing of increased earthquake policy deductibles under Property Insurance policies. Historically, Insurers applied a percentage policy excess to an earthquake loss/claim. However Insurers are now applying/imposing a percentage excess to the site/building value.

The percentage excess may differ within different regions of New Zealand and there may have been a minimum policy excess applied previously. However, after the Christchurch earthquakes Insurers and Reinsurers are now imposing the more restrictive site/building excess to all Property Insurance and Business Interruption Insurance policies.

“The earthquakes have highlighted numerous problems with valuations of buildings. The cost of demolition work has been grossly underestimated and, because there is so much rebuilding work and labour and materials are scarce, organisations and people are paying a premium. This means that the level of cover many businesses have, simply isn’t enough to cover the costs of the rebuild.”

Shaun points out the importance of putting in place a business continuity plan (BCP) saying, “The ability to restore operations quickly after a disaster can be the difference between business survival and failure.” In June 2010 Marsh did a test run of its own BCP, little knowing that it would be required in September. Following the first earthquake, Marsh undertook a review of its BCP and looked at what they could do to enhance it and be better prepared for future events.

Key components of Marsh’s BCP included:

- Details of where and how to assemble the BCP team in the event of a crisis in order to put plans into action.

- Ensuring all staff are accounted for – Shaun advises all organisations to remind staff throughout the year to update their contact information so that the company has this information should they need it.

He also recommends compiling a list of employees personal/home email addresses – particularly for those who do not have remote access to their work email account – so that employers can continue to communicate with them via email in the event of an emergency.

- Creating communications templates so that the company could quickly communicate to all of its stakeholders in the event of a crisis. For example, Marsh set up a web to text sms system so that the team could quickly stay in contact with colleagues when calling wasn’t possible.
- Sourcing alternative premises from which to work.

On 22 February 2011 Marsh’s BCP was, once again, put to the test. This time, however, the situation was much more serious. Marsh rented space in the Pyne Gould Corporation building and tragically lost three of its staff when the building collapsed. Marsh was able to quickly organise counseling for its Christchurch-based team as this was included in its BCP. Marsh’s plan extended to purchasing and taking chemical toilets to Christchurch, hiring rental cars for its people who were left without transport and providing accommodation in motels for those left without homes.

The BCP team had a daily conference call with its Christchurch team to give them the opportunity to share information and request any assistance they needed.

“After the September 2010 earthquake, we reviewed our business continuity plan and put in place a number of measures that we hadn’t previously considered. As a result, we were back up and running within three days of the February earthquake.

The time, effort and money we spent on business continuity planning and the contingency planning day we ran to ensure everything worked, was 100% worth it. It meant that we could get back up and running and helping our clients, and our staff, extremely quickly.” **HH**

The philosophy BEHIND philanthropy



As a mid-sized New Zealand business that supports the arts, we thought it was time to review why it is important for organisations, like Hesketh Henry, to get involved. Some call it philanthropy. We call it good sense. We talked to some passionate people who know a thing or two about giving time, energy, passion and money to endeavours that have enriched our New Zealand way of life, to find out why they believe philanthropy is important.

There was a time when many of New Zealand's major corporates, including a number of law firms, prided themselves on their art collections and their support of the arts sector in all forms. This is still the case for many, including Hesketh Henry, but there have been changes. Much of the focus has moved to evidencing sustainable business practices and ways in which businesses are 'future proofing' their operations.

However, engaging with the communities in which we live and work remains important. While this may appear to be a moral or ethical decision, it is also a very astute business decision. The spin-off from supporting community activities, arts and the non profit sector is that organisations connect to their own employees and customers, as well as future clients.

James Wallace, of the Wallace Corporation Ltd and the Pah Homestead TSB Bank Wallace Arts Centre says,

"Personal philanthropy is vital for the health of the arts as New Zealand, like most countries, doesn't have enough relevant local or state funding." There is a large gap between available funds and what the sector needs, and that is unlikely to change in the immediate or mid-term future, particularly given the current financial situation and the spending required to rebuild Christchurch.

According to Philanthropy Australia, in the USA there is a belief that "the community should look after the community". As a result, financial and time donations are much higher than in New Zealand or Australia. One of the primary concerns for many in the arts sector is the lack of younger people who are getting involved in supporting the arts, and the not-for-profit sector as a whole. This isn't solely about the financial support; all seem to agree, it's also about the time and expertise individuals can provide to organisations.

New Zealand has a few, very well utilised individuals, such as James, who are often asked to get involved in a wide variety of projects, to sit on boards, and to support a growing number of initiatives. This then gives enormous rewards to both the organisations and those who are involved. Deborah White, of Whitespace, says "It is hard to quantify what individuals get out of it, but the ability to get to know talented and creative individuals who have the same interests, can enrich your experiences and broaden your boundaries." However, if the volunteer pool were deeper then more organisations would benefit and more people would experience those rewards.

James advises people to start with their interests. "You don't have to have any knowledge of the areas in which you get involved, but it helps to have an interest because it means you will stay involved for longer, you will gain a greater sense of satisfaction from your involvement and are more likely to get others involved as a result."

Gen G on the rise

'Gen G' is how the new generation of philanthropists are being described. They are young, and are actively supporting organisations with their time, expertise and money. Some, like Fiona Campbell, are starting their own organisations if



there isn't one that fits their interest, or where they see a gap that needs filling.

Fiona started 'The Real Art Roadshow' which showcases contemporary New Zealand art to school children. She is now on the Board of Te Papa and is recognised as an inspiring Gen G philanthropist. In 2009 the Real Art Roadshow was the Supreme Winner of the NBR Sponsorship of the Arts Award. It was started as a way to expose NCEA art students to the art they were reading about in books. The collection is 'housed' in a purpose built truck and travels the country, stopping in main centres, and small towns. It includes paintings by some of New Zealand's finest artists. Fiona says, "The reaction from the children at all levels and ages is fascinating to watch. There were children who were 'wagging' school regularly, who turned up to school on the days the Roadshow was there."

Fiona believes the support she and her team have had from other businesses, including those with specialist skills, such as adapting the truck to house and showcase the art, has been the difference between being able to get out on the road, and not.

James Wallace agrees that accessibility is key to engaging with people long term. Pah Homestead has recently had its 100,000th visitor. James says it was a wonderful example of how well initiatives,

such as the Homestead, work. "The 100,000th visitor was a young Samoan girl from Maclean College who had been here on a school trip and had brought her parents to see the Arts Centre." It is this type of exposure that those involved in the visual arts believe has to happen at all ages and to all groups of our society. Without support from business and individuals, this will cease to be possible.

James explains "There is substantial research that shows the health of a nation requires a healthy body and mind. In addition the economy is greatly aided through the arts for example through film, music and theatre."

"It is important for students to see there is more to life than business, but unless you get exposed to those other things, how will you know?"

Why aren't more people involved?

We live in a busy age, where time pressures can make it difficult to commit to additional activities, but there are other reasons why organisations aren't getting involved:

- Defining how and where to get involved can be hard – start with organisations you know or issues about which you or your teams have an interest

- Budgetary constraints – consider giving your time and expertise as individuals or as an organisation to make a difference.

Fiona believes there are additional issues around image within the younger generation. "For my generation, philanthropy doesn't have a cool factor. If it could have a cool factor then bragging rights come in. Gentle bragging rights about what you helped out with helps with the 'cool'." She adds "I also believe in personal karma – if I'm good and do good then I hope to receive goodness in return."

So, as organisations, the benefits of being involved in philanthropic activities are:

- To our community
- To our client engagement
- To our team engagement
- To the future of a well rounded and achieving society

As individuals the benefits of giving our time, energy, money and expertise are:

- To our own personal development and well being
- To our own personal karma

If that doesn't convince you, Fiona says, "The people I have met who are rich, but don't do things in their community, would be pleasantly surprised how rewarding and active involvement can be!" **HH**

OUR GERMAN DESK your **GATEWAY** to **EUROPE**

Despite the ongoing economic problems facing some EU countries, the German economy has performed very well. As the largest and most buoyant national economy in Europe, the country has firmly cemented its position as the European powerhouse. For those companies looking to gain a foothold in Europe, Germany provides a great entry point. It is ranked as one of New Zealand's top ten trading partners, largely due to its established business practices, its favourable geographic location within the EU and its position as the second largest export nation in the world. Europe's other German-speaking country, Austria, and Switzerland (with a substantial German speaking population) also continue to perform strongly.



In order to help businesses take advantage of the opportunities German speaking countries afford, we have set up a dedicated German Desk to assist:

- New Zealand businesses operating, or looking to expand, into Europe.
- Investors and businesses from Germany, Austria and Switzerland operating in New Zealand.

The German Desk comprises a team of German-speaking lawyers who understand the cultures, mentalities and customs and who have strong connections to businesses and influencers in Germany, Austria and Switzerland.

How can we help?

We help (and have helped) New Zealand, German, Austrian and Swiss companies to communicate effectively with their counterparts or advisers here, or in Europe, in relation to commercial, contractual and other legal issues. We are often able to confirm that what may appear unusual to foreign eyes is quite usual and, therefore, not a potential 'deal breaker'.

We are able to bridge the many (sometimes subtle) gaps that can arise when different language and cultural backgrounds meet in a business context. While it is true that a lot of Germans and other Europeans are able to communicate in English, this doesn't mean that every English language communication will be fully and instantly understood. Often, native German speakers want to converse in German on complex issues including legal matters as it is vital that they have a complete understanding. Communicating solely in English can, and often does, lead to unnecessary problems or unintended consequences.

Roland Lapp, Director of Contamo Investment Ltd says, "We are an international investment company for business properties. Our main activity lies in Europe but for the past 15 years we have been investing also in overseas countries. Those investments were only possible because we could count on the support and efficiency of a well reputed and efficient law company. However, the main advantage was the skilled performance in correspondence and in telephone calls in German language. This is a must to us, since most of the staff has no or little command of the English language. It is, therefore, of great advantage especially to understand legal particularities in each country to be advised in the German language."

His comments were supported by Rob Astley, Managing Director of the Tiri Group. "We had a potential major warranty issue in Germany that could have cost the company millions of Euros, if not handled correctly. We asked Erich Bachmann from Hesketh Henry if he could recommend someone in

Germany who would be able to provide legal assistance. We discussed a number of capable lawyers and engaged Astrid Lüdtkke, a partner in the Düsseldorf office of major German commercial law firm, Heuking Kühn Lüer Wojtek, whom Erich recommended due to expertise and cultural fit. Astrid's ability to grasp technical issues, her ability to explain German law in layman's terms, response time and command of the English language, both written and oral was outstanding," said Rob.

Who operates the German Desk?

Erich Bachmann, Hesketh Henry's managing and the senior corporate and commercial partner is a native German speaker who completed his secondary schooling and law degree in New Zealand. He is also:

- Honorary Consul of the Federal Republic of Germany in Auckland
- President of the New Zealand German Business Association, the official representative in New Zealand of the German Chamber of Industry and Commerce, an organisation to which every business enterprise in Germany must belong and which therefore enjoys a position of considerable influence in that country.

In this latter capacity, Erich recently attended the German Chamber of Commerce's 150th anniversary celebrations in Berlin. The celebrations culminated in a gala evening with over 700 guests, comprising the Federal Minister of Economics and other politicians, high profile German business representatives, and chamber representatives from around the world, featuring a keynote speech by the Head of State, the President of the Federal Republic of Germany.

Sarah Kerr, a corporate and commercial partner, is also a German speaker, having worked in Clifford Chance's Frankfurt office for just under two years. While there she was primarily involved in structured finance transactions for the likes of Deutsche Bank, Bankgesellschaft Berlin, ABN Amro and Dresdner Bank.

Sarah recently advised the New Zealand subsidiary of a multinational scaffolding company, headquartered in Germany on a complex shareholder dispute. She was able to deal directly with the organisation's Head Office and help them to effectively navigate applicable New Zealand law.

Erich and Sarah are ably assisted by German-speaking solicitor, Julika Wahlmann, and the German legal interns who are hosted by the firm on a regular basis. If you are looking to do business in Germany, Austria or Switzerland, or are a German, Austrian or Swiss company active in New Zealand, then talk to us about how we might be able to help. **HH**

SCULPTURE ONSHORE RAISES \$70,000 TO SUPPORT THE VITAL WORK OF WOMEN'S REFUGES



In Search of Barebottomland by Christian Nicolson.
Photo: Howard Williams



Justin Cox, Sue Harvey, Lisa Paterson



Cathryn Davey and Dorothy McHattie



Erich Bachmann and Heather Henare

18,000 people visited Fort Takapuna, from 4–14 November 2010, to view some of New Zealand's leading sculptors' work. In the process they helped raise NZ\$70,000 to support the vital work of the NZ Women's Refuges.

The cheque for \$70,000 was presented to Heather Henare, Chief Executive of NZ Women's Refuges, on Wednesday May 11 by the Friends of Women's Refuges Trust and NZ Sculpture OnShore, in the presence of trustees, supporters, volunteers, patrons, organisers and sponsors of the event.

Hesketh Henry was the Platinum sponsor of the 2010 NZ Sculpture OnShore. Erich Bachman, Hesketh Henry's Managing Partner says, "Supporting this event reflects both our commitment to, and association with, the visual arts and the community in which we live and work."

Erich adds, "What makes Sculpture OnShore so appealing for our team and our clients is its level of accessibility. Whether you are a collector and connoisseur of art, an appreciative amateur, or are new to the art scene, there is something for everyone."





California Dreaming by Pam Oliver. Photo: Howard Williams



Lexie Turner and Rachel McNall



Jane Goddard and Jill Goddard



Genevieve Becroft and Jayne Parsons

"It is also wonderful to know we are supporting the vital work of NZ Women's Refuges."

The 2010 event was another fantastic success with over NZ\$400,000 of sculptures being sold and NZ\$70,000 raised for NZ Women's Refuges.

"Our sunny 10 days in November seemed a lifetime away from the devastation Christchurch experienced in September and then again, a few short months later, in February. However, we are delighted that NZ\$30,000 of these vital funds for the NZ Women's Refuges were fast tracked and used to assist the women and children which the organisation looks after in Christchurch," says Erich.

"Our refuges around the country were able to immediately mobilise volunteers and staff to support the already stretched resources in Christchurch, providing

water, basic food resources and other vital support to those most at risk. The ongoing support of funds raised by the sculpture exhibition allows us to offer more support to women experiencing violence in their homes," says Heather.

We expect Sculpture OnShore 2012 to be another wonderful event, which will again raise funds for NZ Women's Refuges. We hope to see you there! **HH**

You paid for it **BUT** do you own it?

A simple question, which should have a simple answer... or so you might think. However, when it comes to determining who owns the rights to certain intellectual property it's not always clear cut. And the consequences of getting it wrong can be costly, time-consuming and frustrating.

Almost every modern business engages in marketing/ advertising of some kind. When you do you will almost certainly outsource part, or all, of this function – from logo and brand design to advertising campaigns, photography and copywriting. You pay for it, but do you own it?

Whether you are in the middle of a marketing campaign, launching a new product, or telling the market about what it is you do, the last thing you need to discover is that you don't actually own the copyright to the material you have commissioned.

When your business invests time, money and resources into developing intellectual property with external assistance,

you need to be in control of your brand, your image and your material for as long as your business requires it.

There are three underlying principles that you must be aware of:

1. The person who creates the work owns the copyright
2. Commissioning principle: If you pay me to create something you own the copyright
3. An 'agreement to the contrary' can assign ownership back to the creator, rather than leaving it with the commissioning party as would be the case under the 'commissioning principle'.

The third principle is the one which can prove the most problematic for businesses commissioning work. The relevant clause which imposes an agreement to the contrary is often buried in the fine print of the terms and conditions of the agency you engage with.

It is an old line, but a very modern truth: Always read the fine print.

Even better, always have a lawyer read the fine print.

The cost of asking a lawyer with the right expertise

CASE STUDY

WHY YOU NEED TO KNOW WHO 'OWNS' YOUR MARKETING

Our Client

A branding and marketing company (New Agency)

The situation

New Agency had just started working for a client in the energy sector. The client wanted to use marketing collateral developed by its previous marketing agency (Old Agency), to run a new online campaign. The client assumed that, because it had paid the original marketing company to produce the collateral, it owned the copyright to it under the commissioning principle.

The client provided that collateral to New Agency who, along with the client, spent hundreds of hours and tens of thousands of dollars developing a new web-based campaign which, in part, used the old marketing collateral.

The issue

When the campaign was active, Old Agency fired off a letter asserting that it owned the collateral pursuant to an agreement to the contrary. On examining the fine print, there was an 'agreement to the contrary' meaning Old Agency owned the copyright and the collateral.

The outcome

Old Agency demanded a hefty licence fee for the collateral to be used in the new campaign, which the client had no option but to pay, otherwise the existing campaign was in jeopardy.

It is a perfect example of a situation where the fine print prevails. If the client had known when it was dealing with Old Agency that an agreement to the contrary existed in the fine print (or even better got their lawyers to look into it at the time) it would have insisted it be deleted so that it retained ownership of the intellectual property under the commissioning principle. No doubt the Old Agency would have agreed, because otherwise it would have lost the job. But, even if the client had known about the agreement to the contrary before it embarked on the new campaign with the New Agency, it would have instructed the New Agency to produce new collateral from the start, avoiding having to pay the Old Agency a hefty licence fee.

The lesson

Be aware of the three underlying principles.

Always check the fine print, or get your lawyer to do so.

to read the terms of engagement, is always worth the investment. The cost of getting this wrong can be huge.

It's a case of buyer beware: If you sign a contract that gives an agency unequivocal rights or licence to use your brand in perpetuity, you are either tying yourself to that agency for a very long time, or buying yourselves a potentially expensive exit strategy.

You need to understand the three principles and how they apply to the agreements you have in place with your agencies and other suppliers. Changing any terms of trade at the outset is simple and inexpensive. The alternative can be anything but.

For more information, or to have your supplier agreements checked, please contact Patrick McPherson on **09 375 8735** or email: patrick.mcpherson@heskethenry.co.nz, or Liesl Knox on **09 375-8756**, or email: liesl.knox@heskethenry.co.nz **HH**

LAW **EMPLOYMENT UPDATE**

There have been several changes to employment legislation recently – some have been widely reported in the media, while others have slipped under the radar. Employment law partner, Jim Roberts, summarises recent changes and what these mean for New Zealand employers.



Four key changes have come into effect recently, which all New Zealand employers need to be aware of:

1. Change to the 90 day trial period – it is now available to all employers, not just those who employ fewer than 20 employees.

For a trial period to be valid and enforceable, you must include a trial period provision in your written employment agreement. You must then ensure the new employee signs and returns their employment agreement before commencing work. A recent Employment Court case saw the Chief Judge ruling in favour of an employee because their employment agreement was not returned to their employer until the day after they had started work.

If you are purchasing a business, and intend to employ an employee of the vendor, you need to be aware that there is currently a big question mark around whether the employee is a new employee. The Employment Court case cast doubt on whether employees who move with the business are, in fact, “new” and, therefore, whether they can be employed on a trial period.

While the 90 day trial period provision states that an employer doesn't have to give reasons for dismissal, the Employment Court recently ruled that employers could (and should) give reasons if asked, but that these don't have to be in writing.

We advise employers to weigh up the pros and cons before using a trial period. Some of our clients don't include it in their agreements because they believe it negatively impacts on their employment brand, whereas others use it selectively or universally. While it does allow organisations to try people out (which can be really valuable) some companies say they find it hard to fill

skilled positions when they include this clause in the employment agreement because candidates don't want to leave the security of their current role for a new one where they could potentially be dismissed within 90 days for no reason.

2. Change to the ‘Test for Justification’. The test for justification has been amended to “whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.” The word “could” has replaced the word “would”, which recognises that there are a range of options for action open to an employer, rather than only one correct option.

The Employment Relations Act now sets out a number of procedural steps that employers must follow to meet the Test for Justification.

If employers currently have good processes in place then there is no need for them to change them. This Test for Justification will give them a greater chance of justifying their actions. However, those employers that are less process oriented should, as a minimum, follow the steps set out in the Act. Failing to do so, could be fatal for employers who end up in court. However, as long as the minimum process is met, any other minor procedural defect is unlikely to render a process unjustified.

3. Change to the Holidays Act, enabling employees to cash up to a week of leave each year.

The media has portrayed this as ‘cashing up the fourth week’. However, the change focuses on employees cashing up to a maximum of one week within each entitlement year. They cannot cash up untaken holiday from previous years.

The Holidays Act does not clearly state whether the changes come into effect for each employee on their anniversary of joining the company or on the reset

date for calculating leave entitlements that occur from the first day of an annual closedown period. While employers should be aware of this, it's important to be practical. There is also some uncertainty about whether the entitlement year starts from 1 April 2011 or 1 April 2012. We believe 2011 is included. Employers should be aware that they are not allowed to ask employees to ‘cash’ up to a week of leave. The request to do so must come from the employees themselves. They may cash up in single days or multiples, up to one week, and do so at different times, subject, of course, to their employer's agreement.

4. The requirement for all employers to have written copies of employment agreements. This requirement came into effect on 1 July 2011 but it hasn't received a great deal of publicity.

Because there are fines associated with non-compliance and this is an issue that could potentially catch a lot of employers unawares, we advise all employers to check each employee's file and ensure it contains:

- A signed copy of their employment agreement, or
- A copy of the employment agreement given to the employee (if they haven't signed it and commenced employment between 3 Oct 2000 and 1 July 2011), or at the very least
- A copy of the Terms & Conditions of Employment (for those people employed before 3 October 2000).

If you would like more information about any of these changes and how they could affect you, please call Jim Roberts on T: **09 375 8723** or E: jim.roberts@heskethhenry.co.nz

If you would like to receive our Employment Law News Email Updates, please subscribe via the Publications page at www.heskethhenry.co.nz **HH**

A FOCUS ON CHRISTINA BRYANT



Christina Bryant is a partner in our litigation team, who specialises in resolving complex multi-party contract disputes and negligence claims. Her achievements include acting for Genesis Energy in a long running trial, which was successfully settled last year. She is also a working mum of two.

Christina talks about her practice and her approach to juggling work and home life.

What achievement are you most proud of?

The management of the Genesis Energy litigation, which was successfully settled last year. The litigation was a 'legacy' dispute arising out of a contract between ECNZ and Carter Holt Harvey for the construction of a cogeneration plant at Kinleith Mill. It involved complex legal and engineering issues, tens of thousands of documents, and many witnesses based here and overseas. We were able to use technology successfully to manage a 'mega-litigation' of this sort with a comparatively small team. I am proud of how our team performed and the successful resolution achieved for our client.

How long have you worked at Hesketh Henry?

I joined the team in 2003 as a senior solicitor, becoming a Partner in 2006. Prior to that I was based in London, working for a specialist litigation practice and studying for my master's degree in Medical Ethics and Law.

Why did you decide to join Hesketh Henry?

I wanted to join a medium-sized firm with a diverse practice. A convivial atmosphere, the ability to get involved in a variety of litigation work and flexible working practices were all important criteria for me. Hesketh Henry ticked all the boxes.

What do you see as the key advantages of a medium-sized firm?

I can only speak of my experience at Hesketh Henry, but we do not have the overheads and charge-out rates of some of the larger firms. This means we can provide a cost-effective litigation service, with more time spent on the case at Partner level. We also have the flexibility to adapt quickly and to introduce innovative practices as required. For example, we developed a database to enable us to manage the extremely large number of documents involved in the Genesis Energy case.

We have now adapted this database for other cases. It allows relatively small teams to effectively manage large volumes of documents, thus reducing overall costs. The database can also be accessed by witnesses and clients at their convenience.

How would you describe the firm's approach to flexible working practices?

The firm has a good attitude towards working flexibly and a commitment to putting the necessary technology in place to make this possible. A number of Hesketh Henry staff are part-time. While I am full-time, I have two young children and enjoy the fact I can be at home with them from 5-7pm and then work from home once they are in bed, if required.

The legal profession and the wider business community are increasingly aware of the need to offer flexible working practices, and technological developments have really helped to make this possible. I could not live without my Blackberry – it helps integrate home and business, allowing me to respond quickly to my clients and to effectively manage team priorities no matter where I am.

How would you describe your approach to working with your clients?

In order for clients to feel justified in using Hesketh Henry, we have to strive for excellence – that means coming up with new ideas, understanding the client's issues and risk appetite and working closely with them to ensure the best result. Effective management of time and resources is very important to me. I believe it is essential to have a happy team and to be responsive to their needs. By keeping an eye on their work/life balance and the spread of work within the team, I aim to ensure our staff are all able to provide the best possible support to our clients.

How would you describe the Hesketh Henry litigation and dispute resolution team?

We have an excellent team of people, who resolve disputes in a cost effective and efficient manner. Our size makes us flexible and we attract top talent looking for an alternative to the big firm environment. We provide a good alternative to those firms for our clients and punch above our weight in the litigation market.

What is your passion outside of work?

Spending time with my kids, reading (when I get a quiet moment) and relaxing at the beach. I have a long standing interest in medical law and ethics and am a member of the Northern Y Ethics Committee, which reviews health research proposals in the upper North Island.

LITIGATION & DISPUTE RESOLUTION TEAM FACTS

5 Partners

5 Senior Associates

Backed up by a team of solicitors and experienced support staff

Recent cases:

- Enforcing a cap on damages in a preliminary hearing of a multi-million dollar claim for alleged breaches of obligations to promote and sell software.
- Defending a claim for extensive damage to a "super yacht" following a tropical cyclone. The proceeding was successfully settled following completion of our client's key evidence at trial.
- Successfully defending an injunction application brought by the People's Republic of China against a New Zealand company over the proceeds of sale of commercial property.
- Acting for prominent construction companies in high value claims involving multiple parties and complex design, engineering and construction issues.
- Advising insurers and their clients on a wide variety of claims including allegations of professional negligence, directors' and officers' misconduct in respect of public offerings and breach of the anti-cartel provisions of the Commerce Act.
- Successfully challenging a fixed term coaching agreement on behalf of a prominent New Zealand athlete.
- Enforcing a restraint of trade provision against a former employee.

GALS AT THE GALLERY

Hesketh Henry Partner, Sarah Kerr and her fellow female lawyers from Hesketh Henry, hosted a "Gals Night at the Gallery" for clients and friends at Whitespace, one of Auckland's top galleries. On display were exhibitions from two of New Zealand's leading female artists, Nic Moon and Mary McIntyre.



Kath Hurley and Kate Ashcroft



Marie Donovan and Sarah Brooks



Michelle Spencer, Ngaire Reid and Jennie Deap



Sarah Kerr and Lady Margaret Tindall



Liesl Knox, Sarah Kerr and Rachelle Sutton



Stacey Hahn



Mandy Allen