

Management Liability Insurance – Example of Claims

DIRECTORS & OFFICERS

Additional Defence Costs for Directors	<p>A small shareholder in a private company took action against its directors alleging that, over a period of several years, the directors had abused their positions by paying themselves excessive salaries but paying low dividends to the shareholders. The shareholder applied to the High Court for a review of the directors' actions and this resulted in the court upholding the shareholder's allegations to be true. The directors were ordered to repay over £1m back to the company; however, their insurance policy only provided for a limit of indemnity of £500,000. A reinstatement was not provided in this case unfortunately.</p>
Civil Fines and Penalties	<p>Under the Finance Act 2009, the Senior Accountant Officers (SAO) of large companies have a duty to take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements. A duty is placed on the SAO to provide HMRC particular documents, on an annual basis, which meet certain requirements. The SAO of an insured company was fined £5,000 for not complying with his duty, as he did not provide the annual certificate to the HMRC. The insurance cover only provided for punitive and exemplary awards.</p>
Compensation for Court Attendance	<p>A director of a company, which imported and distributed wine to off-licences, was disqualified for 12 years and ordered to pay a sum in excess of £1 million in connection with wrongful trading offences. Although acquitted on criminal charges, the director faced a long civil case brought by the liquidator. The finance director of the same board was required to attend the court tribunal on several occasions to testify as a witness to the court. The insurance policy provided compensation to the finance director for each day he attended court.</p>
Corporate Killing or Manslaughter	<p>A driver fell asleep whilst driving for the family-run haulage company, for which he was employed. Two motorists were killed. The court held that the operations manager should have ensured that his driver adhered to the relevant driving regulations. He had also failed to keep in close touch with his co-director on these matters. Both directors incurred substantial defence costs before being convicted of corporate manslaughter</p>
Crisis & Regulatory Event	<p>A customer had allegedly bought expired foods from the insured, a national leading supermarket, and after consumption, had alleged he was suffering from severe food poisoning. The customer threatened to go to the media with these allegations and furthermore, threatened to take action against the supermarket. The directors, being at risk from reputational damage and a possible health and safety investigation, hired a public relations consultant and legal representation to ensure limited adverse publicity. The costs of hiring these services were covered under the Directors & Officers policy.</p>

Deprivation of Assets	A director was under investigation by HMRC for tax evasion – his personal assets and bank accounts were frozen during this period. The director was required to pay for his children’s school fees. The Deprivation of Assets cover responded in this case as the insured was unable to use financial resources which would have been available to him under normal circumstances.
Investigation Defence Costs	The board of directors of a privately owned delivery business were banned following the company’s insolvency and subsequent DTI investigation. Although only two directors ran the business on a day-to-day basis, all were found to be responsible for the accounting books and records not being up to the necessary standards and for a lack of working capital. Considerable investigation defence costs were incurred to defend the legal actions against the directors
Emergency Costs and Expenses	It had been alleged that a director had been running a company for the benefit of his family rather than in the interest of the shareholders, with only small dividends being paid out whilst the company was performing well. The shareholders brought an action against the director and the director was subsequently taken for questioning by the authorities. As it was a bank holiday, the director could not contact the insurer to advise of the situation, however, the insurer met the defence costs retrospectively.
Management Buyouts	The insured, a holding company of a small materials manufacturer (subsidiary) had been the target of a management buy-out (MBO). The subsidiary company was no longer a part of the overall company group. However, two weeks after the parent company was bought, an action was brought against a director of the subsidiary company for embezzling company funds. In this case, the Directors & Officers insurance policy continued to respond to claims made against the directors of the subsidiary for 30 days following the MBO.
Mental Anguish or Emotional Distress	The director of an advertising company was taken to court following an allegation made against him by a former female employee, alleging sexual discrimination and harassment. The former employee claimed she suffered from emotional distress and mental anguish. The defence costs of the allegation were covered under their defendant’s Directors & Officers policy.
Outside Directorship/ Entities	A director, at the request of his company had been asked to sit on the board of a third-party company as a Non-Executive Director (NED). His responsibility to the third-party company as an NED was to ensure that the financial information reported by the company was accurate and that financial controls and systems of risk management were robust and defensible. However, the company reports were inaccurate, and this led to an investigation. The directors as well as the non-executive directors were investigated by the Financial Services Authority as it was deemed that the NEDs had as much responsibility in this area as those who were active in the day-to-day running of the company.
Personal Liability for Unpaid Taxes	A company had become insolvent, and a number of creditors had to be paid by the company. The director of the company unknowingly paid off various creditors first, and therefore had no funds left to pay

following Insolvency	off his tax bill. This led to an investigation for not complying with HMRC regulations even though the director had acted innocently. The director was subsequently charged for failure to pay the company's tax and. as the director's liability is not limited, the director was fined for this wrongful act.
Pollution	A manufacturer employed a waste disposal contractor to dispose of old oil. Contrary to the manufacturer's expectations, the contractor dumped the oil in a field and then became untraceable. The Environment Agency brought criminal proceedings against the manufacturer's directors and considerable defence costs were incurred to achieve their acquittal.
Retired and Former Directors	An advertising agency was successful in bringing a claim against its former managing director for diverting parts of the business and its opportunities to his new company. The court held that the managing director had misused the property of the agency, therefore breaching his fiduciary duty, that he was accountable to the company and that he should personally pay compensation to the agency.
Shareholder Action Deriving from Pollution	Following an accident, and subsequent chemical spill / damage to the environment, the shareholders of the insured brought an action against the directors (Insured) for breach of fiduciary duty and corporate waste. The complaint alleged that, despite numerous other prior safety and environmental concerns, the defendants elected to cut costs, including safety and manufacturing expenditures in pursuit of profitable results. Their Directors & Officers policy was able to cover the costs involved with defending the claim against the shareholders.
Shareholder Claim Cover	Minority shareholders brought a derivative action in the name of the company, against the directors of a subsidiary, claiming that the directors should have accepted a higher bid for the company when it was sold. The directors defended their actions saying that the company making the accepted offer was better for the long-term interests of the company – despite this the shareholders still had a legitimate claim.
Spouses	Two directors of a company were held liable to creditors for sums representing the total payments made to one of the directors in the period before the company went into insolvent liquidation. It was successfully argued by the company's creditors that these payments should not have been made whilst the company had not paid off its debts. The directors were held personally liable, and their personal assets were seized by the court. This included one of the directors' homes which he joint owned with his wife.
Discovery Period	The insured, a management consultancy company had gone into administration. Two weeks later, the insured notified their insurers of a potential claim, due to an action brought by shareholders because of sharp drop in share price value. Unfortunately, the insurance policy had expired as a result of the insolvency because the company no longer existed. However, the director had purchased an extended discovery period which enabled the claim to be upheld.

Company Reimbursement	A director failed to report the company Reports and Accounts on time. Due to this omission, the board of directors were investigated and thus investigation defence costs were incurred on the directors' part. On this occasion, the Company had no funds to reimburse the defence costs to the directors as the company was in fact in administration.
Company Reimbursement Cover	A fraudulent director of a company committed a number of crimes such as embezzling funds illegally for his own benefit and implicated another innocent board member. Both directors were accused of these crimes and subsequently investigated by the authorities. However, it was not in the company's best interests to pay for the directors' defence costs against these allegations due to the risk of potential harm the company's good reputation may suffer. Since a fraudulent activity had occurred, the non-executives were also subject to an investigative action for not 'policing' the board.
Employment Wrongful Acts	A director of a company was on maternity leave. Whilst on leave, the CEO made the decision to replace the director and to terminate the director's contract of employment. This termination resulted in a breach of contract and the director ultimately decided to bring an action against the CEO and the HR director for unlawful dismissal. The Directors & Officers insurance policy in this case met the legal defence costs of the board of directors to bring the case to a settlement.

CORPORATE LIABILITY

Contractual Liability Defence Costs	A company that manufactures/delivers widgets to wholesalers and retailers were accused of allegedly breaching terms of contract with their customers. This was due to the products being delivered after the confirmed delivery date and some of the products being delivered faulty. The customer companies brought actions against the widget company for breach of contract.
Corporate Killing to Manslaughter Defence Costs	A small UK company was involved in building work in Normandy. One of its sub-contractors died from a fall at the site. The parent company and the manager of the company were prosecuted in France for manslaughter and incurred a large amount of defence costs in understanding the foreign procedures and achieving acquittal.
Emergency Costs and Expenses	A small number of employees across some companies were involved in the illegal activity of bid rigging. The FSA conducted a dawn raid investigation out of business hours. The directors of the companies had to call up their offices to request the necessary paperwork that the FSA required for their investigation. As the raid occurred outside of business hours, the directors did not have time to notify their insurers of the situation

Pollution Defence Costs	<p>The insured, a chemical producer company was responsible for pollution of a river following an escape of toxic waste from containers on site. The court ordered the company to pay compensation for damage to local angling and remediation costs to the Environmental Agency. The EA has powers to remove pollutants, remedy the effects and restore polluted watercourses. Importantly, the EA also has the power to recover these remediation costs from the polluter.</p>
Social media Public Relations Consultancy Fees	<p>A company sued a competitor for defamation after the competitor company made disparaging remarks about the business practices of the insured at a conference. These comments were repeated in the local press – in newspapers and on the internet. In addition to bringing a libel action, the insured also paid a public relations consultancy to mitigate the potential adverse effects on the company’s reputation. These costs were covered by the Directors & Officers policy</p>

****This content was sourced and adapted from Pen Underwriting. A big thank you to our insurance partners at Pen for providing these helpful examples and insights, which we’ve tailored for our website.***

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