

MANAGEMENT LIABILITY – STATUTORY LIABILITY

Claims Scenarios

Claims Example 1: Escaping Pollutants Background

An Insured construction company was fined \$40,000 for causing pollutants to escape from a building site.

Outcome

The Policy was triggered and indemnity was extended to the Insured. The Insured was made to pay the fine of \$40,000 and it was deemed to fall within the cover provided under the Statutory Liability section of the Policy.

Claims Example 2: Dumping Garbage Background

An Insured licensed club was fined \$12,000 from the EPA for dumping garbage in what was deemed to be an illegal dumping site in the vacant lot next door. The hotel had been using this site for the last 12 years and was under the impression that they were allowed to dump garbage there as many of the other businesses in the area were doing the same.

Outcome

The Policy was triggered and indemnity was extended to the Insured. The Insured was made to pay the fine of \$12,000 and it was deemed to fall within the cover provided under the Statutory Liability section and therefore covered by the Policy.

Claims Example 3: OH&S & Statutory Liability Background

An apprentice chef from the insured hotel restaurant was busy preparing for the dinner service. Unfortunately, he suffered severe injury when he sliced his hand on the hand slicer.

A full Occupational Health and Safety investigation began which eventually led to the company being prosecuted. The prosecution alleged that the company failed to provide adequate training and supervision to the apprentice.

Outcome

It was determined that the Policy was triggered and indemnity was extended to the Insured. The company vigorously denied and successfully defended all allegations. Despite their attempt at defending the claim, the company was fined \$25,000 and incurred close to \$20,000 in legal defence costs.

Claims example 4: Dumping hazardous waste Background

The director and company were charged with four offences under the Environment Protection Act. These were indictable offences and each charge carried a potential maximum fine of \$280,000. The EPA alleged that the electrician (employed by the company) dumped hazardous waste into a nearby vacant lot which was not determined to be a legal dumping site.

Outcome

The policy was triggered and following a 3 day hearing, the director and company were found liable and were fined \$120,000. Overall defence costs of \$60,000 were incurred over the duration of the investigation and prosecution.



MANAGEMENT LIABILITY – DIRECTORS & OFFICERS LIABILITY

Claims Scenarios

Claims Example 1: Misleading & Deceptive Conduct Background

A marketing firm was sued for misleading and deceptive conduct by one of the Insured's competing restaurant for advertising that the Insured restaurant employed a celebrity chef. This particular chef was employed by the rival restaurant. The marketing firm then joined the Director of the Insured hotel to the proceedings alleging that they provided a verbal and written statement that this celebrity chef was employed in their restaurant.

Outcome

The Policy was triggered and indemnity was extended to the Insured. The claim was ultimately settled out of court for the amount of \$230,000 with the Insured agreeing to contribute \$160,000 to the settlement of the claim. Overall, costs of approximately \$65,000 were incurred and were also covered under the Policy.

Claims Example 2: Unfair Competition Background

The Managing Director of a medium sized hotel left and started up business in a larger hotel. He was subsequently sued by the Directors of his former company. The Directors of his former company alleged breaches of intellectual property rights and plagiarism in relation to the way in which the Managing Director was marketing his new business. The former company issued proceedings in the Federal Court seeking damages in excess of \$2 million.

Outcome

As the claim was made against the Insured Person, it was determined that the Policy was triggered and indemnity was extended to the Insured. The claim was settled at mediation with defendant Director agreeing to pay the amount of \$360,000 in damages. The legal costs incurred in this claim were in excess of \$200,000.

Claims Example 3: Misappropriation of Trade Secrets Background

A Managing Director of a competing construction company sued the Directors and Officers of an Insured competing construction company for \$820,000 after 4 builders left to join the Insured competing construction company. The company alleged theft of trade secrets and claimed that the 4 builders employees were still in the employment of the construction company when they began sharing proprietary information with the Insured competing construction company.

Outcome

The Policy was triggered and indemnity was extended to the Insured. The claim proceeded to hearing and was settled at mediation for the amount of \$680,000 with \$240,000 of costs incurred in legal costs and expert fees.

Claims example 4: Misleading & Deceptive Conduct Background

A group of 4 home owners issued against the Insured Company and the Insured Director on the basis that they were dissatisfied with how long it took for their new homes to be completed. It was claimed that the company and the Director falsely misled new clients by stating that all new projects would be completed within 6 months. Many homes were still left uncompleted after 12 months.

Outcome

The D&O and Company Reimbursement sections of the Policy were triggered and indemnity was extended to the Insured. The Company negotiated an out of court settlement with the clients for a combined amount of \$950,000. The total legal costs incurred were \$85,000.

MANAGEMENT LIABILITY – CRIME

Claims Scenarios

Claims Example 1: Theft of stock Background

Over a period of 2 years, an employee of the Insured construction company in collusion with his wife and son were stealing building supplies to build homes for other clients. The employee and his wife had a marriage break up which resulted in her coming clean to the police. The employee was arrested and charged with the theft of \$550,000 worth of building supplies.

Outcome

The Insured made a fidelity claim on their policy and it was determined that the Policy was triggered and indemnity was extended to the Insured. The Insured was able to prove their loss and make a claim for the amount of \$680,000 following the report of the loss assessor who assisted the Insured to quantify their loss.

Claims Example 2: Theft of money Background

A group of 4 employees were stealing money from their employer by accepting cash payments for construction work completed. Over the space of 12 months, it was determined that the Insured lost approximately \$120,000 in revenue.

Outcome

The Insured made a fidelity claim on their policy and it was determined that the Policy was triggered and indemnity was extended to the Insured. The Insured was able to claim the amount of \$120,000 on their policy. The insurer then issued separate recovery proceedings against the fraudsters to recoup the amount of the loss along with the Insured's deductible.

Claims Example 3: Theft of property Background

A claim was made for the loss of \$220,000 worth of alcohol and stock from the Insured licensed club. Surveillance cameras detected a group of 4 employees and their friends stealing alcohol and stock totalling over \$250,000. The alcohol and stock were sold to unsuspecting purchasers who were not aware that the goods were stolen. The employees were charged and prosecuted by the police and were only able to repay the amount of \$30,000.

Outcome

It was determined that the Policy was triggered and indemnity was extended to the Insured. The Insured was able to claim the amount of \$220,000 on their policy. The insurer then issued separate recovery proceedings against the fraudsters to recoup the amount of the loss along with the Insured's deductible.

Claims Example 4: Theft of stock Background

The owners of a small family owned carpet installation company were shocked to discover one of their trusted employees manipulated inventory supply numbers of stock to defraud the company. The stock was stolen and on sold by the manager and employee over a two year period.

Outcome

The total loss to the company was in excess \$20,000. The owners were able to make a claim for this amount under their Management Liability Policy.

MANAGEMENT LIABILITY – EMPLOYMENT PRACTICES LIABILITY

Claims Scenarios

Claims Example 1: Wrongful Termination Background

A business and development manager in a National office was terminated by the Insured on the basis that his position was made redundant. The ex employee issued proceedings in the Human Rights Commission alleging that he was wrongfully terminated on the basis that someone else was promoted into his position and that his former role was not redundant.

Outcome

The ex employee was able to prove his case and accordingly, the Commission determined that there was wrongful termination and ordered the employer to reinstate the employee and pay him \$50,000 in damages and costs.

Claims Example 2: Harassment & Bullying Background

A claim was made by four former drilling contractors against certain directors, managers and supervisors for bullying, harassment, abuse and sexual harassment. Claims were made against the entity alleging that it failed to respond to those allegations. Employees claim combined compensation of \$500,000.

Outcome

It was deemed that insuring clause 2.2(c) triggered. After protracted litigation, the matter settled for payment by the company of \$80,000 per claimant. In addition to this, the company incurred over \$150,000 in defence costs.

Claims Example 3: Sexual Harassment Background

A former employee who was retrenched as part of a company wide reduction in work force commenced proceedings against the company and two managers alleging sexual harassment, intentional infliction of emotional distress, wrongful termination, retaliation, and sex discrimination. The employee had made allegations against the Managing Director that he had inappropriately touched her and that he regularly made abusive and sexually explicit comments towards her. The employee further alleged that as a result, she has suffered depression and now unable to re enter the workforce due to her mental distress.

Outcome

The Company was held liable and ordered to pay the former employee \$60,000 plus her legal fees. In addition the company paid \$30,000 in defence costs.

Claims example 4: Unfair Dismissal & Sexual Harassment Background

A male former employee lodged claim with Fair Work Australia, claiming he was terminated because of his gender. His manager was a woman and most of his work colleagues were women. He alleges that his manager showed him inappropriate photos of herself and her husband and emailed these to him. He also alleged that she made advances of a sexual nature, which he says he rejected. He alleged that after that rejection she raised various performance issues which led to his employment being terminated. He seeks 6 months' salary by way of compensation, being \$60,000.

Outcome

The matter settled at Conciliation with the employer agreeing to pay \$20,000. Legal defence costs incurred in this claim totalled \$16,000.

MANAGEMENT LIABILITY – OCCUPATIONAL HEALTH & SAFETY/PECUNIARY PENALTIES

Claims Scenarios

Claims Example 1: Background

A mining engineer and geotechnical specialist, contracted by the insured mining company were inspecting a tunnel for the purposes of deciding how to support the excavations and what type of equipment would be best suited to cutting and drilling the rock mass. During the inspection, they were severely injured when part of the tunnel collapsed on them. The mining contractor was left paraplegic and the geotechnical was left with deep lacerations on his right thigh along with a punctured lung and head trauma. The insured company was subject to a full Occupational Health and Safety investigation and prosecution.

Outcome

It was deemed that insuring clause 3.1(b) and 3.11 were both triggered. The company vigorously denied and successfully defended all allegations. Despite their attempt, the company was fined \$450,000 and incurred close to \$100,000 in legal defence costs.

Claims Example 2: Background

A team of 25 factory hands were contracted by the insured manufacturing company to work on the production line in the build up leading up to the Christmas period. The contractors received a speedy 2 hour course in safety and procedure. Unfortunately, on the first day of employment, two of the workers were seriously injured. One of the contractors suffered a deep laceration on his hand whilst the other contractor lost partial hearing in his left ear for failing to wear the safety equipment correctly. A full Occupational Health and Safety investigation began which eventually led to the company being prosecuted.

Outcome

It was deemed that insuring clause 3.1(b) and 3.11 were both triggered. Following a 2 day hearing, the company was found liable and was fined \$120,000. Overall defence costs incurred were \$130,000.

Claims Example 3: Background

An apprentice builder on a construction site was inspecting drilling equipment was severely injured when a pile of debris fell on him. He was airlifted to hospital but unfortunately died two days later. A full Occupational Health and Safety investigation began which eventually led to the insured construction company being prosecuted. During the investigation, it was deemed that the company had failed in its duty of care to provide a safe work place for its employees.

Outcome

It was deemed that insuring clause 3.1(b) and 3.11 were both triggered. Following a 1 day hearing, the company was found liable and was fined \$250,000. Overall defence costs incurred were \$80,000.