

Claim Scenarios

PrivateEdge

Claims Scenarios: Management Liability

The potential scope of Management Liability is shown by these scenarios based on actual claims. Note that we have changed details to ensure confidentiality and that the examples are illustrative only and not to be relied on to justify coverage in any particular situation.

Insolvent trading

The directors of a company in financial distress appoint an administrator who subsequently puts the company into liquidation. The liquidator alleges the directors have allowed the company to trade while insolvent during the six months leading up to the administrator's appointment. Defence costs and the directors' personal liability have the potential to reach a 7 figure sum.



Personal liability, fines, banning orders

Directors defend regulatory action seeking fines and compensation as well as overturning banning orders disqualifying them from acting as a company director.

Environmental prosecution

Under the Environmental Protection Act, directors are liable for prosecution if their business is suspected of pollution damage. In one case, charges against a director went ahead – even though the company had confirmed their tanks did not even hold the contaminant identified in an adjacent stream.



Fire Safety Regulations

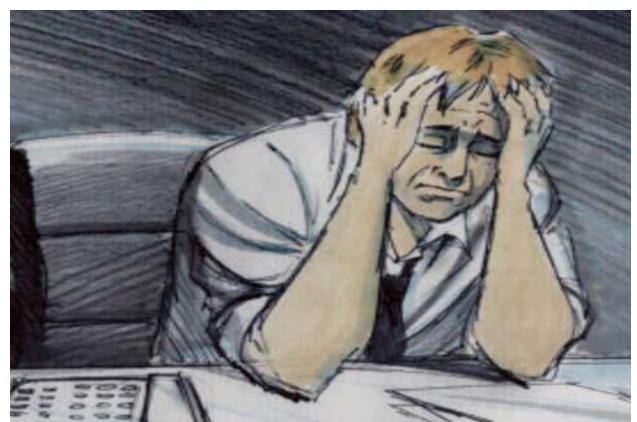
Directors are prosecuted by local authority after consistently failing to comply with fire regulations. They claimed that the work required to their premises by the local authority was unnecessary. We defended the directors and eventually an acceptable solution was reached – defence costs were 5 figures.

Defence to public inquiry

Directors are concerned about a public inquiry, fearing their reputation and personal liability is at risk. We fund the professional costs of preparing directors for interviews, production of documents and in attending the investigation for questioning.

Intellectual property breach

Directors defended an action in the Federal Court alleging breach of IP rights and the Trade Practices Act in using a transport equipment company's designs for a purpose built industrial trailer without permission and acknowledgement of ownership. The action was for damages, a declaration, injunctive relief, surrender of designs and corrective advertising. Defence costs were 6 figures with a further 6 figure settlement.



Claims Scenarios: Corporate Liability

The potential scope of Corporate Liability is shown by these scenarios based on actual claims. Note that we have changed details to ensure confidentiality and that the examples are illustrative only and not to be relied on to justify coverage in any particular situation.

Environmental prosecution

A company is prosecuted following an accidental breach of regulations concerning a protected wetland site. No damage is identified and there is no finding of a deliberate contravention or motivation to save costs. The court finds the breach could have been prevented by a robust environmental compliance program.

Occupational health and safety

In a prosecution by the Victorian Work Cover Authority a workplace death is held to be caused by an inadvertent accident. The company pleads guilty to charges of failing to provide a safe plant and system of work, training and supervision. Unusually for a death, the directors are not convicted. Defence costs exceed 6 figures.

Breach of contract

A company is sued by its former agents after it terminates their contracts in order to replace them with fulltime staff. The agents sue for non-payment of commission. Overall settlement and defence costs reached 6 figures.

Unfair treatment of shareholders

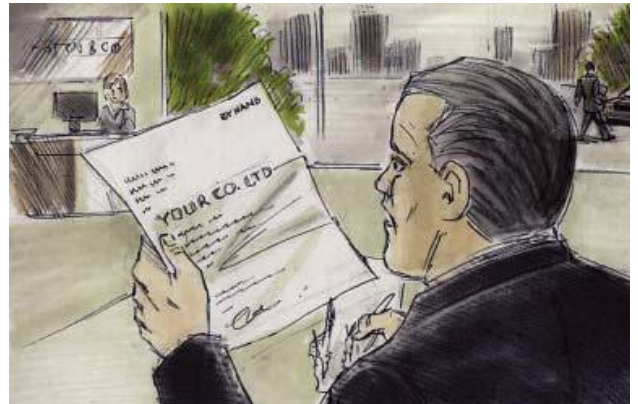
A shareholder employed by the company claims he was dismissed in order to allow the company to purchase shares at an unfair price. Defence costs reached 6 figures.

Identity fraud

A customer is the victim of a scam by a person fraudulently representing itself as the company. Fees, costs and expenses up to 6 figures are incurred in establishing the fraudulent misrepresentation – to protect the company from being drawn into its customer's action.

Accidental death

The tragic accidental death of a director creates financial hardship for a company. Executive search fees and other consequential costs are mitigated with a \$100,000 lump sum paid to the company.



Claims Scenarios: Employment Practices Liability

The potential scope of Employment Practices Liability is shown by these scenarios based on actual claims. Note that we have changed details to ensure confidentiality and that the examples are illustrative only and not to be relied on to justify coverage in any particular situation.

Wrongful dismissal

A senior employee is dismissed after lodging complaints of bullying and aggressive conduct by the managing director. Complaints are also made of racial discrimination and disability discrimination. Action is commenced in the Federal Court and the matter is settled for a 6 figure sum.



Harassment and discrimination of third parties

A service provider makes allegations of harassment and discrimination against the company. Two employees are named and the company is found to be vicariously liable for the offending conduct.

Unfair dismissal

A pregnant employee is dismissed for non-attendance. The manager who dismissed her says he was not aware of her pregnancy – although the company fails to reverse this decision when the employee produces confirmation from her G.P. The case is settled for a 5 figure sum.



Duress

An employee complains of being asked to form an unacceptably close relationship with a client. The employee claims that once they refused, they were dismissed. The case is settled for a 5 figure sum.

Misconduct

An employee is dismissed after sending a stream of offensive emails to colleagues about one of his senior managers. However the employer failed to follow proper process in dismissing the employee and the case was settled for a 5 figure sum.

Discrimination

A female employee is made redundant. She complains her line manager constantly belittled and insulted her in front of colleagues with cutting remarks and offensive comments. The case is settled for a 4 figure sum.



Constructive dismissal

A manager claimed he was forced to resign after being poorly treated by his employer. He claimed he was shouted at by directors, that his management capabilities and confidence were undermined in front of staff and that problems he escalated were ignored. The claim was successfully defended with 5 figure legal costs.

Claims Scenarios: Crime Protection

These hypothetical scenarios show the potential scope of Crime Protection claims. Note that they are illustrative only and not to be relied on to justify coverage in any particular situation.

Fraud by a lone employee

An employee who processes invoices also has access to the supplier creation system. The employee sees that when invoices are approved for payment, the financial controller examines the largest payment in detail and then signs the rest. The employee creates a false supplier and makes many small payments totaling thousands of dollars over several months.

Fraud by a lone employee

A company's commission scheme for new sales pays six months payments up front, with no cancellation clawback. An employee creates false sales to fictitious clients, receives the 6 months commission and then cancels the order. It turns out that several other employees have also seen the opportunity, and are running the same fraud.

Fraud by an employee colluding with customer

An employee is empowered to negotiate discounts with clients up to 20%. He approaches his closest clients and agrees that their current discounts of 5% can be quadrupled on the understanding that the additional discount is split between client and salesman.

Fraud by internal collusion

A quality control manager labels undamaged goods as substandard to be marked for disposal. His accomplice, the company's stock manager, arranges for the "faulty" goods to be removed from the premises and the goods are sold off in pubs and on internet auction sites.

Fraud by collusion with supplier

A trusted employee has authority to select suppliers for the company. He channels a large proportion of projects to one particular supplier in return for regular cash payments of several hundred dollars each month. The fraud is only discovered after 4 years and an anonymous tip off.



Claims Scenarios: Superannuation Trustees Liability

These hypothetical scenarios show the potential scope of Superannuation Trustees Liability claims. Note that they are illustrative only and not to be relied on to justify coverage in any particular situation.

Fund administrator

An employee acts as administrator of a superannuation fund established by the company for fellow employees. Fund shortfalls are alleged to have resulted from poor record keeping and a failure to ensure the collection of contributions from the employer company.

Inappropriate investment strategy

Two employer appointed directors of a company superannuation fund are sued by the fund members for breaching trustee obligations. Bulk member exits force the liquidation of assets, disadvantaging remaining members. The investment strategy is found to be inappropriate for the fund membership.

Failure to monitor fund performance

Sustained poor performance of the fund assets is alleged to be a failure of the trustee to monitor the strategy and execution delivered by an outside fund manager.

Failure to prevent fraud

A trustee is alleged to have failed to maintain adequate supervision of the fund administration to prevent the fraudulent withdrawal of fund assets.

Conflicts of interest

Regulators investigate the trustee's alleged conflicts of interest between the duty owed to the fund and the employer company.

Incorrect advice

An exiting member sues the trustee after receiving incorrect advice on the extent and scope of benefits available to retirees.

Incorrect payment

The trustee makes incorrect payments out of the fund after misinterpreting the fund rules and applicant criteria. The trustee fails to give the payment request the required consideration and also conduct the relevant inquiries which would have identified material adverse to the claim on the fund's assets.



Claims Scenarios: Statutory Liability

These hypothetical scenarios show the potential scope of Statutory Liability claims. Note that they are illustrative only and not to be relied on to justify coverage in any particular situation.

Environmental prosecution

A company is prosecuted following an accidental breach of regulations concerning a protected wetland site. No damage is identified and there is no finding of a deliberate contravention or motivation to save costs. While a 7 figure corporate penalty is possible, a guilty plea for the accidental breach results in a 5 figure penalty.

Occupational health and safety

A golf club takes on a part-time worker to cut the rough alongside the first hole. Serious foot injuries are sustained when the worker alights from a ride on mower to retrieve 3 balls lying in the grass. An investigation finds breaches of workplace health and safety obligations and the Industrial Magistrate awards a 5 figure penalty.

Licensing breach

An investigation finds that a hotel has breached the maximum capacity specified by its Liquor Licence. A 5 figure penalty is payable.

Employment practices

A company implements a scheme to transfer all employees in one of its units to a subsidiary. The transfer means the employees are no longer covered by certain industrial instruments. The scheme is found to be discriminatory and in breach of disclosure obligations. A 6 figure penalty is payable by the company.

Superannuation trustee breach

A trustee of a company superannuation fund discovers a deterioration in the value of certain trust assets that indicates it will be unable to make payments to fund members as and when the payment obligation arises. The trustee neglects to immediately notify the regulator in writing of the event and is liable for a penalty.



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