MPR | MANAGEMENT & PROFESSIONAL RISKS

Management Liability Loss Examples (Directors & Officers and Company/Entity Sections) Compendium

After almost 10 years since MPR was established, we have witnessed many Management Liability ("ML") claims. The loss landscape continues to deliver some old favourites, but new themes have emerged. Whilst all will be context dependant, they illustrate the variety of risks to which all trades and sectors are exposed and demonstrate the potential value in a high quality, human underwritten, ML solution.

Claims are broken down by area of cover, including those which trigger both the Directors & Officers Liability and Company (Entity) sections – highlighting the importance of not having these limits blended together, as many policies do. They also specify the trade/sector of the policyholder.

SECTION 1 – Directors & Officers Liability Claims

1) Private Limited Company

Trade/sector: Manufacturing

Cover Section Operative: Directors & Officers Liability

The policyholder entered administration. It was alleged they owed money for services they had received and that a former director of the policyholder had personally assured the claimant, in front of witnesses, that he would pay any debt which the policyholder was unable to pay. The director denied making the statement. The appointed solicitor believed allegations made were vague and poorly articulated with no legal claim set out. Section 4 of the Statue of Frauds Act 1677 provides that a guarantee must be in writing and signed by a director, but the claim was aggressively pursued. The demand was successfully defended, with costs in excess of £15,000.

2) Private Limited Company

Trade/sector: Treatment and Disposal of Waste

Cover Section Operative: Directors & Officers Liability

Nine officers from the Competitions and Markets Authority raided the head office of the policyholder. This followed a court order requesting seizure of IT equipment and papers. The investigation focussed

on alleged price fixing and collusion under Section 26 of the Competition Act 1998 and the restriction of market share. Only 24 hours was allowed for responses to be submitted. The policy paid £47,000 in costs for the directors targeted.

3) Private Limited Company

Trade/sector: Building/Construction

Cover Section Operative: Directors & Officers Liability

A director, who was also a shareholder, was dismissed for gross misconduct, along with his wife, who was an employee. Along with employment tribunal claims for unfair dismissal (managed under the Employment Practices section of cover), an unfair prejudice claim under the Companies Act was filed, attempting to force the purchase of shares. On complex claims such as these, it was important to ensure a law firm with the necessary level of experience was appointed. Although costs of the claim were in excess of £250,000, these could have been much higher had solicitors unfamiliar with this type of claim managed the case.

4) Partnership

Trade/sector: Legal Services/Solicitors

Cover Section Operative: Partners, Members, Directors & Officers Liability

Although employment claims will almost always be paid under covers for the employing entity, on occasion they can trigger D&O sections of cover. In this case, a claim brought by an employee for injury and discrimination (most typically where these triggers occur) named an individual director. Although the claim amount was £25,000, over £75,000 defence costs were paid under the policy.

5) Private Limited Company

Trade/sector: Engineering & Fabrication

Cover Section Operative: Directors & Officers Liability

The policyholder received a letter of claim against a director from their former Chairman asking for outstanding fees to be paid. The fees related to a fund raising and were documented within the board minutes, which the claimant had written himself. The minutes stated the fees were to be paid within 10 weeks of the close of the raise. However, the fundraising had taken longer than expected and was also incomplete, leading to a disagreement over payment. Costs to defend the position of the director, which was considered to be strong, still exceeded £25,000.

6) Private Limited Company

Trade/sector: Manufacturing

Cover Section Operative: Directors & Officers Liability

The policyholder sued a competitor for infringing their patent. The competitor refuted the allegations and responded by countersuing the director of the policyholder on the basis that he was the person who signed the letter to their customers to make them aware of the dispute and the products which were said to have been infringed upon. Costs were over £150,000.

7) Private Limited Company

Trade/sector: Packaging

Cover Section Operative: Directors & Officers Liability

Directors of the policyholder received a letter from solicitors instructed by liquidators claiming misfeasance, unlawful preference and breach of duty. It was alleged directors failed to make provisions for the fact

that the cash management strategies might not have been allowable and that movement of funds within the group had deliberately put funds out of the reach of creditors. Although some costs were not able to be recovered under the policy, costs of £250,000 were paid during the course of the claim.

8) Private Limited Company

Trade/sector: Sports

Cover Section Operative: Directors & Officers Liability

The administrators wrote to directors notifying them of circumstances that may lead to a claim from them, subject to further investigation. These included payments made for no commercial purpose, the transfer of £1.5 million which was made for no apparent consideration and in breach of the directors' fiduciary duties and the surrender of long term leases for no commercial benefit, again in breach of their duties. Defence costs of £48,000 were incurred even though no claim followed.

9) Private Limited Company

Trade/sector: Transportation & Haulage

Cover Section Operative: Directors & Officers Liability

The claimant alleged that the defendant director had deliberately marketed themselves as a company owned by the claimant and traded on the reputation and goodwill of that company. They issued proceedings demanding the court enforce a name change and issue an acknowledgement that the defendant company was in no way related to the claimant's business. Defence costs and settlement totalled in excess of £100,000.

10) Private Limited Company

Trade/sector: Manufacture of Industrial Equipment

Cover Section Operative: Directors & Officers Liability

Three minority shareholders threatened legal proceedings against the directors of the policyholder for Unfair Prejudice under s.994 of the Companies Act. The main allegations were that fundraising rounds were not genuinely required and were actually designed to dilute their shareholdings (even though the claimants had full rights to participate in the share issues but chose not to). The allegations were strongly denied but the claimants pushed for the purchase of their shares and for compensation. Despite barrister advice that the claimants cases was weak, with little chance of success if it were to proceed to court, the claimants persisted. Costs of the claim were over £300,000.

11) Club/Association

Trade/sector: Sports

Cover Section Operative: Trustees, Directors & Officers Liability

A member was removed from the committee of a club because of their conduct. A claim alleging unfair treatment followed. Shortly afterwards, the committee was replaced by a new one which concluded that the previous committee had not acted in the best interest of the club. Notwithstanding this, the claim dragged on for some time in an attempt to clear the name of the member. Eventually, it was agreed the claim would be withdrawn on the basis of no order being made for costs, but this was not before costs of £60,000 had been incurred.

12) Private Limited Company

Trade/sector: Property Management

Cover Section Operative: Directors & Officers Liability

The company managed a block of flats which had the option to purchase the freehold. Not all owners took up the offer, so one of the directors purchased them via a newly established company. Any future sale of the non-participating flat freeholds would therefore accrue to the company at rates higher than the original participating offer. As a director of the property manager, it was alleged that this was a breach of fiduciary duty. Costs of the claim were £72,000.

13) Private Limited Company

Trade/sector: Building/Construction

Cover Section Operative: Directors & Officers Liability

The policyholder entered into administration and liquidation followed. The liquidator filed a writ against the defendant to recover money on the basis that the defendant breached his duty as director of the company by making a payment to the parent company when it ought to have been known this was unlawful. Costs were over £85,000.

14) Private Limited Company

Trade/sector: Packaging

Cover Section Operative: Directors & Officers Liability

The insured person held 100% of the shares in the policyholder. An agreement was alleged to have been made to allocate 10% each to 2 fellow directors. No formal contract existed to support this, but reference was made to this in letters and emails between the directors. The business entered into administration and was bought by the major shareholder. Following a meeting, the directors were offered 2.5% of the 'new' company, on the basis no formal agreement existed and they were not entitled to roll any shares forward. Costs of over £100,000 were incurred in the settlement of the dispute.

15) Private Limited Company

Trade/sector: Building/Construction

Cover Section Operative: Directors & Officers Liability

A plaintiff alleged that directors of the insolvent policyholder negligently overstated the company's profit and understated creditors. This allegedly false information induced the claimant to extend a line of credit that they argued they would not have done had they known the real position of the company's finances. Costs of the case exceeded £300,000.

16) Private Limited Company

Trade/sector: Industrial Electrical Installation

Cover Section Operative: Directors & Officers Liability

The managing director of a subsidiary of the policyholder alleged that the defendant director breached both his written employment contract and oral agreements by failing to fulfill a management buyout. A trade buyer purchased the subsidiary at a lower price than had been agreed with the potential purchaser. Costs of the claim exceeded £100,000.

17) Private Limited Company

Trade/sector: Manufacture of Floor and Wall Coverings

Cover Section Operative: Directors & Officers Liability

The claimant provided the policyholder with patent protected services for many years. On cancellation of further orders, it became apparent that the policyholder was using the technology to produce the services in-house and had hired staff of the claimant to support production. Allegations included wrongful appropriation of the claimants trade secrets and tortious interference with trade. Defence costs and settlement exceeded £200,000.

18) Private Limited Company

Trade/sector: Wholesale of Food Products

Cover Section Operative: Directors & Officers Liability

4 minority shareholders (also former employees) threatened action under the Unfair Prejudice provision in s.994 of the Companies Act. Amongst the allegations were that funding rounds were unnecessary and dilutive of the minority shareholdings, even though they were invited to participate. The action sought purchase of the shares for fair value, as well as compensation. Despite the case presenting as weak, mediation failed and £250,000 defence costs were incurred.

19) Charity/Not for Profit

Trade/sector: Residential and Respite Care

Cover Section Operative: Trustees, Directors & Officers Liability

An allegation was made against a trustee by the fellow trustees. They claimed there had been a breach of duty through the receipt of fees and through the making of improper investments. A Charity Commissioner's investigation followed with costs approaching £50,000.

20) Partnership/LLP

Trade/sector: Legal Services/Solicitors

Cover Section Operative: Partners, Members, Directors & Officers Liability

Money was moved from a client funds account by the finance director to settle a tax payment that was due. This subsequently proved to have been unnecessary but repayment was also delayed without explanation. A Solicitors Regulatory Authority investigation put a Section 43 order in place. The COLP of the practice was targeted by the SRA for failure to supervise the finance director and for the breaches of Solicitors Accounts Rules that took place. The allegations were not founded on dishonesty but on impropriety. Costs associated with case were over £40,000.

21) Private Limited Company

Trade/sector: Data Processing & Hosting

Cover Section Operative: Directors & Officers Liability

A shareholder issued proceedings alleging breach of fiduciary duties through failing to keep shareholders appraised of the ongoing financial position, as well as alleging the running down of the business leading to a proposed acquisition at a price significantly below historic values. Defence costs were £80,000 and settlement amounts over £100,000.

22) Private Limited Company

Trade/sector: Information Technology

Cover Section Operative: Directors & Officers Liability

The joint administrator of a company issued proceedings against a director alleging breach of duty of care and skill with respect to several transactions in the year preceding the administration of the company. Claim costs were over £400,000.

23) Private Limited Company

Trade/sector: Manufacture of Plastic Products

Cover Section Operative: Directors & Officers Liability

The plaintiff lawsuit against the insured person alleged the defendant utilised information obtained in his capacity as director of the claimant to set up a rival company and breached fiduciary and contractual duties as director of the claimant. A total of £175,000 was paid under the policy.

24) Private Limited Company

Trade/sector: Information Technology

Cover Section Operative: Directors & Officers Liability

The policyholder entered into administration. Creditors commenced proceedings alleging that the defendants knowingly and recklessly made false representations, both orally and in writing, regarding the financial status of the company on which the claimant relied to advance funds. Defence costs were over £300,000 and costs to the policy in total were over £500,000.

25) Private Limited Company

Trade/sector: Management of Real Estate

Cover Section Operative: Directors & Officers Liability

Following liquidation, an action was taken against directors to recover the full value of intercompany loans made to 7 other companies. These loans were considered not to be commercially rational. Total policy costs were in excess of £800,000.

26) Private Equity Portfolio Company

Trade/sector: Information Technology

Cover Section Operative: Directors & Officers Liability

A director (and residual shareholder) alleged that the private equity company (the major shareholder) had acted in a manner that was unfairly prejudicial. By dismissing the director, it was alleged that the private equity firm had sought to take advantage of the 'early leaver provisions', forcing the director to give up the remaining shares for a fraction of their value. It was alleged that no board meeting of all directors took place as was required and, as no notice was provided of such meeting, it could not have taken place. Additionally, a (required) written agreement of the directors was not obtained. It was alleged that the remaining directors breached duties owed pursuant to section 172 and 174 of the Companies Act 2006 and had disregarded these in the dismissal. Total loss costs were in excess of £250,000.

27) Private Limited Company

Trade/sector: Manufacture of Wire Products

Cover Section Operative: Directors & Officers Liability

A minority shareholder brought a lawsuit alleging the defendant acted to benefit his personal interest

in the company, misrepresenting to purchase their shares at an undervalued level. Defence costs and settlement totalled over £300,000.

28) Private Limited Company

Trade/sector: Manufacture of Metal Products

Cover Section Operative: Directors & Officers Liability

Creditors relied on the company's accounts, which were wrong due to alleged mistakes in taking on financial commitments. The company entered bankruptcy and creditors tried to call in their debt and indicated that they would also rely on the director's personal guarantee. Defence costs were over £200,000.

29) Private Limited Company

Trade/sector: Wholesale of Machinery and Equipment

Cover Section Operative: Directors & Officers Liability

The company purchased imported machinery from a local dealer and dealt with it as a domestic matter without paying import tax as the machinery was already available locally. It later transpired that the dealer had imported them from overseas without registering them. A regulatory investigation followed with costs in excess of £50,000 incurred.

30) Private Limited Company

Trade/sector: Manufacture of Doors and Windows

Cover Section Operative: Directors & Officers Liability

The Competition and Markets Authority commenced an investigation into the conduct of directors' and officers' potential breaches of the Enterprise Act 2002 following the supply and installation arrangements for their self-manufactured products. £100,000 costs were incurred before the directors were cleared.

31) Private Limited Company

Trade/sector: Specialised Cleaning Services

Cover Section Operative: Directors & Officers Liability

The insured organisation sold merchandise via designated franchisees through franchise agreements. The franchisees alleged the agreements were breached and that representations were made to induce them into entering in the first place. Defence costs were £90,000.

32) Private Limited Company

Trade/sector: Environmental Consulting

Cover Section Operative: Directors & Officers Liability

An allegation of conspiracy to set up in competition and steal employees and clients was made against directors while still employed. Issues of 'insured capacity' arose (acting outside of their employed role and purpose) as well as matters of wilful and deliberate misconduct. Notwithstanding, some allegations and conduct fell under the policy through the process of allocation at a cost of £100,000.

33) Private Limited Company

Trade/sector: Leisure Services

Cover Section Operative: Directors & Officers Liability

Investors engaged consultants to evaluate the potential purchase of a business. It was alleged that the consultants gained knowledge of negotiations and valuations as a result, following which they withdrew their retainer. The business was then bought for a fractionally higher amount by a fellow group company of the consultants. The investors claimed against the directors for breach of the contractual and equitable duty of confidence in allowing the associated business to access confidential information arising out of the retainer. Directors were also accused of breaches of fiduciary duties and unlawful means conspiracy. Total claim costs were in excess of £1,000,000.

34) Private Limited Company

Trade/sector: Treatment and Disposal of Waste

Cover Section Operative: Directors & Officers Liability

The Environment Agency ('EA') advised that a product being sold as soil conditioner should be classified as 'waste' and the sale of it was therefore not legal. The EA asked that the product stop being sold while they investigated and sought clarification on the testing and independent classification of the product. The directors, on behalf of the company, attended a voluntary interview under caution 6 months later. After a lengthy process the courts found the product was not waste. The total costs were upwards of £250,000.

35) Private Limited Company

Trade/sector: Renting and Leasing of Machinery

Cover Section Operative: Directors & Officers Liability

The company went into liquidation. The liquidator filed a claim of misfeasance against the defendant director, alleging that they failed to prevent the other directors from taking benefits from the company prior to the liquidation. Defence costs were £65,000.

36) Not for Profit

Trade/sector: Residential Care

Cover Section Operative: Trustees, Directors & Officers Liability

Five trustees and board members were accused of manipulating grant awarding processes and of the misappropriation of funds. No gain could be established but it was alleged that grants were given for non-qualifying properties and that close acquaintances were being used on the contracts. Two trustees pleaded guilty whilst the remaining three were cleared, but the court concluded no employee personally benefited from missing funds. The costs of the claim were £230,000.

37) Private Limited Company

Trade/sector: Manufacture of Furniture

Cover Section Operative: Directors & Officers Liability

A customer began to manufacture a product previously supplied by the insured organisation. As a consequence, a warning letter about the use of intellectual property was sent advising legal action may be taken if an infringement was found to have taken place. The customer then took out a preliminary injunction claiming fraud, tortious interference, conversion and unjust enrichment against insured persons. The injunction was defeated but costs were over £1,000,000.

38) Private Limited Company

Trade/sector: Wholesale of Agricultural Machinery

Cover Section Operative: Directors & Officers Liability

Having left the employment of the insured organisation, the claimants set up a new company in direct competition. Learning of this, a director sent an email to all of the insured organisation's customers and suppliers. The email accused the former employees of fraud and theft. The claimants took action for libel as the statements were without foundation. Despite an offer to settle and to issue of a letter of apology and statement on the website, the matter escalated. Claim costs were over £350,000.

39) Private Limited Company

Trade/sector: Manufacture of Food Products

Cover Section Operative: Directors & Officers Liability

The claimant alleged misrepresentation by directors of the financial strength of their business in order to gain investments. An investment of £500,000 had been made, following which the mischaracterisation of the fiscal strength of the company emerged. Fraudulent misrepresentation and negligence were amongst the allegations. £275,000 was paid under the policy.

40) Private Limited Company

Trade/sector: Manufacture of Doors and Windows

Cover Section Operative: Directors & Officers Liability

Trading Standards acted on a complaint from a customer about a price quoted by the insured organisation for building products on the basis that they believed they had been given false discounts. An investigation commenced which involved the seizure of goods and documents. Other customers were contacted and further complainants surfaced. The Managing Director and Sales Director both received notice of allegations of false and misleading sales practices constituting criminal offences and summons were issued against both. The summons alleged that the directors were knowingly carrying on business for a fraudulent purpose, contrary to the Companies Act. Following a lengthy legal defence both directors were acquitted on all charges. Legal costs were in excess of £1,000,000.

41) Private Limited Company

Trade/sector: Manufacture of Electronics

Cover Section Operative: Directors & Officers Liability

The policyholder entered administration. Investors sued the directors over mezzanine debt that had recently been raised, alleging that the downfall of the company was down to overtrading. This was denied and defended on the grounds many other competitors entered administration around the same period due to the condition of the market. The claim was for the £3,000,000 debt and the ultimate policy costs were upwards of £1,000,000.

42) Partnership/LLP

Trade/sector: Legal Services/Solicitors

Cover Section Operative: Partners, Members, Directors & Officers Liability

The Solicitors Regulatory Authority commenced an investigation into the conduct of a partner, who was accused of breach of client confidentiality and taking drugs. The matter concluded with the individual receiving a warning letter. The legal costs were £93,000.

43) Private Limited Company

Trade/sector: Manufacture of Drinks

Cover Section Operative: Directors & Officers Liability

Three substantial investments were made into a company (the insured organisation) totalling £5,000,000. Serious concerns subsequently arose about the anticipated market opportunity and sales estimates and whether the product had been fully tested, proven and approved as was claimed. It was alleged that board reports exaggerated the level of interest in the product and the amount committed by other investors did not reflect previously issued figures. As a consequence of the conduct, a petition under section 994 of the Companies Act 2006 was issued. Costs were over £1,000,000.

44) Private Limited Company

Trade/sector: Cargo Handling & Transport

Cover Section Operative: Directors & Officers Liability

The insured received a letter from the Office of the Traffic Commissioner which required it to attend an enquiry into whether the insured was of sufficient repute and standing to meet the requirements of professional competence. It was alleged that cheat emulators were fitted to vehicles, which the insured plead they were not aware was contrary to the regulations and was an industry practice they had followed. They fully co-operated on the claim and were not suspended but over £45,000 costs were incurred.

45) Private Limited Company

Trade/sector: Manufacture of Metal Products

Cover Section Operative: Directors & Officers Liability

The claimant was a former director of a subsidiary of the policyholder who was dismissed for gross misconduct. He was also a director of another company which was a supplier of raw materials to the policyholder. The claimant was alleged to have made several serious breaches under his service agreement and was in breach of the duty to act in the best interests of the directorship. Issues of allocation arose, with costs exceeding £25,000.

46) Partnership/LLP

Trade/sector: Legal Services/Solicitors

Cover Section Operative: Partners, Members, Directors & Officers Liability

A referral was made to the Solicitors Regulatory Authority about the conduct of a partner in the firm, despite the matter concerning a domestic dispute (the other party was also an employee of the firm). Cover applied because the investigation commenced due to the allegations relating to acts allegedly committed whilst working. Legal costs were over £400,000.

47) Private Limited Company

Trade/sector: Wholesale of Chemical Products

Cover Section Operative: Directors & Officers Liability

Directors of the insured organisation allegedly committed an administrative offence in contravention of EU Regulations for the evaluation of chemicals used in the labelling and packaging of substances. The regulations placed the burden of proof on companies to show they complied with the regulation by identifying and managing the risks linked to the substances they manufacture and market in the EU. Data sheets supplied by the insured organisation were allegedly non-compliant and a director received a prosecution notice. Total claim costs were £45,000.

48) Private Limited Company

Trade/sector: Management consultancy activities

Cover Section Operative: Directors & Officers Liability

A director who held 40% of the equity in the company, filed a petition under s994 of the Companies Act claiming alleged unfair prejudice suffered throughout his directorship and alleged detriment suffered as a result of a proposed share allotment. Defence costs were £100,000 even though the settlement figure was only £25,000 (settlement amounts are typically not covered under s994 claims).

SECTION 2 – Company Insurance (Entity Cover) Claims

49) Private Limited Company

Trade/sector: Manufacture of Clothing

Cover Section Operative: Company Insurance

A clothing manufacturer sent notice to the policyholder alleging infringement of their trademark. The claimant believed that a diamond used on skiing apparel was visually too close to their own and amounted to passing off. A cease and desist letter had to be managed by lawyers with defence costs reaching £30,000.

50) Private Limited Company

Trade/sector: Manufacture of Soft Drinks

Cover Sections Operative: Company Insurance

The policyholder entered into a contract to develop a product. The contract was terminated several months later. The claimant sought a return of the money they had expended on the development costs and materials, which was refused by the policyholder. The claimant issued proceedings against the policyholder without their knowledge and a CCJ was entered, even though proceedings had not been served. The CCJ needed to be lifted and the claim defended. The breach of contract defence costs cover assisted the policyholder in appointing a high quality lawyer, with costs over £18,000 incurred.

51) Private Limited Company

Trade/sector: Building/Construction

Cover Section Operative: Company Insurance

A construction firm used social media to showcase project work that they had completed. They received a letter before claim on behalf of the owner of what were alleged to be copyrighted soundtracks, seeking damages for the unauthorised use of the music. Over £50,000 was sought in damages. The Directors & Officers Liability section of cover has no inner limit on cover, but the claim was made against the entity, cover for which extends to a £100,000 sublimit on defence costs. Costs to settlement were over £35,000.

52) Private Limited Company

Trade/sector: Remediation Activities and Waste Management

Cover Section Operative: Company Insurance

The policyholder was found to have been releasing more than the permitted amounts of waste at their treatment plant. The local water authority had been monitoring the levels following a previous site

visit and issued a summons in lieu of a prosecution for breach of consent. Pollution defence costs of £50,000 were incurred under the policy.

53) Private Limited Company

Trade/sector: Transport by Rail

Cover Section Operative: Company Insurance

The policyholder was retained to manage and maintain locomotives. Following an accident, damages to carriages and minor injuries to passengers occurred. It was determined that the cause of the accident was driver error. Despite the fact that the locomotive had undergone a full mechanical inspection prior to the accident, the Rail Accident Investigation Branch attended. £11,000 of costs were incurred to protect the position of the policyholder from any potential actions.

54) Private Limited Company

Trade/sector: Freight Transport

Cover Section Operative: Company Insurance

The policyholder received a letter from The Environment Agency regarding a shipment they had made which was allegedly contaminated with metals, in breach the Transfrontier Shipment of Waste Regulations 2007. Despite the allegations containing some misstatements, a mistake had been made and preventative measures were put in place. Although the outcome was that no prosecutions followed, solicitors had to navigate a tricky course through for the policyholder, costs of which came to over £15,000.

55) Private Limited Company

Trade/sector: Manufacture of Office and Shop Furniture

Cover Section Operative: Company Insurance

A fitout was completed using an incorrect specification. As a consequence, two members of the public were injured following failure. The Company Insurance section responded to the HSE investigation that followed. Given the circumstances, the insured entered a guilty plea with the policy paying £66,000 costs.

56) Private Limited Company

Trade/sector: Freight Transport by Road

Cover Section Operative: Company Insurance

An insured organisation was asked to submit evidence for, and attend at, a public inquiry in respect of its goods vehicles operator's licence. The claim fell under the company insurance investigation section up to the sublimit for regulator costs of £250,000. Specialist transport lawyers were appointed to defend the position of the insured organisation at a cost of over £30,000.

57) Private Limited Company

Trade/sector: Treatment and Disposal of Waste

Cover Section Operative: Company Insurance

Natural Resources Wales investigated the insured organisation for allegedly processing some of their products without a permit. Despite having already checked that the products in question did not actually require a licence, the investigation proceeded and had to be disputed. There was no finding against the insured organisation but almost £200,000 of costs were incurred in the filing of a defence.

58) Private Limited Company

Trade/sector: Wholesale of Household Goods

Cover Section Operative: Company Insurance

The policyholder received a notification relating to lead allegedly being present in mugs sold by a subsidiary. The mugs were sold to a shop in the United States and a private enforcer alleged that they contained lead and were therefore in breach of California's Safe Drinking Water and Toxic Enforcement Act 1986 by "knowingly and intentionally expose[ing] any individual to a chemical know to the state to cause cancer…without first giving clear and reasonable warning to such individual". The claim fell under pollution defence costs and costs incurred were £35,000.

59) Private Limited Company

Trade/sector: Building/Construction

Cover Section Operative: Company Insurance

The HSE wrote to the policyholder identifying a breach of health and safety law. They also received a letter from the HSE confirming that a report has been submitted to the Crown Prosecution Service. This followed the collapse of a concrete block wall resulting in injuries to four people. Whilst the liability insurers were heavily involved, the policyholder was liable to pay HSE's fee for intervention of almost £50,000.

60) Private Limited Company

Trade/sector: Manufacture of Metal Products

Cover Section Operative: Company Insurance

A manufacturer developed a product for a customer. Following issues with test batches, the relationship was terminated and a request to have monies returned for development costs and ingredients was made and refused. Lawyers were instructed to defend the position at a cost of more than £10,000.

61) Private Limited Company

Trade/sector: Transport/Haulage

Cover Section Operative: Company Insurance

An employee died through high voltage cable electrocution. The HSE investigated and imposed a fine. The policyholder plead guilty to a charge under Regulation 4(3) of the Electricity at Work Regulations 1989 and 33(1)(c) of the Health and Safety at Work etc. Act 1974. The HSE fee was paid under the policy at just over £15,000.

62) Private Limited Company

Trade/sector: Manufacture of Steel Products

Cover Section Operative: Company Insurance

A subsidiary of the policyholder was alleged to have made certain products that were protected by patent. The claimant alleged infringement of the patent, contrary to section 60(1)(a) of the Patents Act 1977 and infringement their UK unregistered design rights under sections 226 and 227 of the Copyright, Designs and Patents Act 1988 following a confidential meeting where the designs were shown and the parts allegedly copied. The policy defence costs sublimit of £100,000 was paid.

63) Private Limited Company

Trade/sector: Recruitment and Employment Agents/Consultants

Cover Section Operative: Company Insurance

A MOT found a steering wheel close to detachment. Following this, the Driving Vehicle Standards Agency ("DVSA") sent an inspector to review practices and found some to be deemed unsatisfactory. The DVSA reported their findings to the Office for the Traffic Commissioner, who revised the operator license status of the policyholder from green to amber. A random selection of 3 vehicles by the DVSA followed, finding that none of the selected vehicles had been brake tested. A hearing followed, the possible consequences of which were revocation of existing licences and a ban from applying for any further licenses for several years. Regulatory defence costs were over £15,000.

64) Private Limited Company

Trade/sector: Waste Management & Recycling

Cover Sections Operative: Company Insurance

The Environment Agency ("EA") investigated a large deposit of waste made by the policyholder on the grounds that some of the material was not covered by an exemption that had been granted for end of life materials. The EA sought to discuss the involvement in these allegedly illegal waste activities. The accusations were denied and costs were over £15,000.

65) Private Limited Company

Trade/sector: Manufacture & Supply of Textiles

Cover Sections Operative: Company Insurance

An employee died on premises belonging to the policyholder. They received a Notice of Contravention letter from the HSE which set out identified breaches of health and safety law discovered during their investigation. Technical breaches identified in the Notice were accepted but it was disputed that the breaches were in any way causative of the incident. Fees for Intervention were excluded under the Employers Liability policy and five invoices, totalling over £150,000, were paid under the Company Insurance section of cover.

66) Private Limited Company

Trade/sector: Engineering

Cover Sections Operative: Company Insurance

The claimant issued Particulars of Claim over the legitimacy of a patent for a specialist shielding system registered by the policyholder. The claimant requested that the patent be revoked and a declaration made stating the patent to be invalid. They also required a declaration that stated their use of a similar product did not infringe on the patent of the policyholder, along with an injunction to prohibit the policyholder from issuing proceedings against the claimant. Inquires into damages were also sought per section 34A of the Senior Courts Act 1981. Defence costs were paid totalling over £20,000.

SECTION 3 – Directors & Officers Liability and Company Insurance Claims

67) Private Limited Company

Trade/sector: Building/Construction

Cover Sections Operative: Directors & Officers Liability and Company Insurance

An employee was electrocuted and died. The HSE investigated and fined the policyholder. The Crown Prosecution Service subsequently brought a charge in relation to the death. A guilty plea under Regulation 4(3) of the Electricity at Work Regulations 1989 and 33(1)(c) of the Health and Safety at Work etc. Act 1974 followed. Elements of the claim (defence costs) were covered under the ML policy, which exceeded £50,000.

68) Private Limited Company

Trade/sector: Building/Construction

Cover Sections Operative: Directors & Officers Liability and Company Insurance

An employee was found unresponsive after conducting routine maintenance work. The Police and the HSE attended the scene but it was unclear as to how the death had occurred. The HSE ultimately decided not to prosecute, determining the death to be accidental rather than negligence based. Fees for Intervention were incurred and paid under the policy, with the claim costs exceeding £75,000.

69) Private Limited Company

Trade/sector: Wholesale of Agricultural Machinery

Cover Sections Operative: Directors & Officers Liability and Company Insurance

A supplier of the policyholder issued a claim form for outstanding fees on cancellation of the contract. The agreement in respect of which these were due had been signed by one director without the knowledge of the remainder of the board. The board held the individual responsible for the amount, in excess of £1,000,000, for breach of fiduciary duty and negligence, having failed to consult with the board or with legal advisors before signing. The claim also triggered the breach of contract defence costs on the Company Insurance section of cover. Claim costs were almost £500,000.

70) Club/Association

Trade/sector: Sports

Cover Sections Operative: Trustees, Directors & Officers Liability and Organisation Insurance (Entity Cover)

A dispute developed over an attempt by the club to adjust the terms of the membership agreements. Club members alleged the defendants conducted the clubs affairs in a manner that was unfairly prejudicial to their interests and were in breach of the Companies Act 2006 (the club had incorporated as a limited company). The total costs were over £80,000.

71) Private Limited Company

Trade/sector: Licenced Restaurant

Cover Sections Operative: Directors & Officers Liability and Company Insurance

A counter claim was made against an outgoing director following an allegation of breach of contract by the company. The claimant alleged it was the (subsequent) defendant that breached the contract and duties as a director of the company, abused the position and spent many hours working on own

projects during business hours. Total claim costs were over £100,000.

72) Private Limited Company

Trade/sector: Wholesale of Computer Products

Cover Sections Operative: Directors & Officers Liability and Company Insurance

The insured organisation was a reseller of computer products. A claim was brought in relation to the alleged purchasing and then selling of products in the European Economic Area ("EEA"), which had not been put on the market within the EEA by the manufacturer itself, or with its consent. The claimant further alleged the defendants infringed its trademark. The costs of the claim were over £120,000.

73) Private Limited Company

Trade/sector: Wholesale of Household Goods

Cover Sections Operative: Directors & Officers Liability and Company Insurance

The plaintiff proceeding alleged infringement of a trade mark, passing off and malicious falsehood. The allegations arose due to a product that the company had been marketing and selling. The name of the product was allegedly a proprietary brand belonging to another company for whom the company was previously the sole UK distributor. Defence costs were over £100,000 and the settlement £160,000.

74) Private Limited Company

Trade/sector: Freight Transport by Road

Cover Sections Operative: Directors & Officers Liability and Company Insurance

The claimant alleged that the defendants had deliberately marketed themselves as a company owned by the claimant and traded on the reputation and goodwill of that company. A writ was issued demanding the court enforce a name change and an acknowledgement that the defending company in no way related to the claimant's business. Defence costs were £85,000.

75) Private Limited Company

Trade/sector: Manufacture of Electrical and Electronic Equipment

Cover Sections Operative: Directors & Officers Liability and Company Insurance

Criminal proceedings were brought by the HSE against the defendants alleging breaches of Health and Safety at Work Act 1973 by failing to ensure the safety of employees at work, which led to the death of a worker. Legal representation costs of £165,000 were incurred.

76) Club/Association

Trade/sector: Sports

Cover Sections Operative: Trustees, Directors & Officers Liability and Organisation Insurance (Entity Cover)

A club member was publicly accused by another member of bullying and cheating. The matter was unresolved by a committee meeting and anonymous notes were then allegedly sent saying the member was not welcome at the club. The policyholder and directors were accused of failing to stop the alleged abuse and/or contributing to its perpetuation. Police investigations followed and other members made allegations of bullying. A letter of claim accused the policyholder and/or the directors of breaching certain common law, equitable and statutory duties that they allegedly owed to the members and damages were sought based on alleged breaches of contract and of the Equality Act 2010. Total claim costs were almost £400,000.

77) Private Limited Company

Trade/sector: Security Activities

Cover Sections Operative: Directors & Officers Liability and Company Insurance

A member of the public was involved in an incident with operatives of the insured organisation and some weeks later died in hospital. The file was closed as there was considered to be no fault. However, following the Coroner's investigation, the Security Industry Authority (an executive non-departmental public body, sponsored by the Home Office) separately investigated the certification status of the insured organisation. Defence costs of £25,000 were incurred.

78) Private Limited Company

Trade/sector: Property Management

Cover Sections Operative: Directors & Officers Liability and Company Insurance

A property management company was appointed to manage a block of flats. An argument developed relating to ownership of, and parking around, a turning circle at the front of the property. Owners of one of the flats claimed they possessed the turning circle, along with most of the surrounding land. The land was actually unregistered 'retained land' and was still owned by the developer who had converted the house into flats. Ultimately, the management company bought the land off the developer for a nominal amount after agreement with all flat owners. Costs of £25,000 were incurred under the policy to resolve this situation to the satisfaction of all flat owners.

79) Club/Association

Trade/sector: Sports

Cover Sections Operative: Trustees, Directors & Officers Liability and Organisation Insurance (Entity Cover)

It was alleged that abusive and foulmouthed texts were sent by a member to the Club Captain and Chair of Committee. The committee expelled the member who then sued both the club and the members of the committee individually. The grounds of the dispute rested upon the interpretation of the disciplinary procedures and the articles of association of the club. Although the former member was prepared to spend an unlimited amount of money on the action, matters were eventually resolved at a cost of £250k, which was the limit on the policy.

80) Club/Association

Trade/sector: Residents & Tenants Association

Cover Sections Operative: Trustees, Directors & Officers Liability and Organisation Insurance (Entity Cover)

Residents claimed that a director of their association did not act properly when arranging the freehold. In particular, it is said that he bought shares in respect of the flats that did not participate in the purchase, leading to a disproportionate ownership in the lease and illegitimate profits as a result of the grant of leases to all owners. A claim was brought in the High Court for alleged breach of fiduciary duty. The total claims spend was just over £100,000.

This information is descriptive only. The precise cover provided is subject to the terms and conditions of the policy as issued.

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