

Management Liability

Loss Examples (D&O and Entity):

23 for 2023

MPR has now been established for over 6 years and since then we have observed many Management Liability claims. Perhaps as might be expected, there is a noticeable increase in regulator activity during that period. However, the claims landscape seems to evidence a continuation of the wide and varied spectrum that our underwriters have witnessed in over 25 years underwriting this type of cover. Whilst examples can only ever be illustrative, they can be instructive nonetheless.

1) Private Limited Company

Cover Sections Operative: Company Insurance (Entity Cover)

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.

2) Private Limited Company

Cover Sections 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.

3) Private Limited Company

Cover Sections Operative: Company Insurance (Entity Cover)

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.

4) Private Limited Company

Cover Sections 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.

5) Private Limited Company

Cover Sections 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.

6) Private Limited Company

Cover Sections Operative: Company Insurance (Entity Cover)

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.

7) Private Limited Company

Cover Sections Operative: Directors & Officers Liability and Company Insurance (Entity Cover)

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.

8) Club/Association

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

The policyholder was a sports and leisure complex/club. A 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.

9) Not for Profit**Cover Sections 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.

10) Private Limited Company**Cover Sections Operative: Directors & Officers Liability and Company Insurance (Entity Cover)**

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.

11) Private Limited Company**Cover Sections 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.

12) Club/Association**Cover Sections Operative: Trustees, Directors & Officers Liability and Organisation Insurance (Entity Cover)**

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.

13) Private Limited Company**Cover Sections 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.

14) Private Limited Company**Cover Sections Operative: Directors & Officers Liability**

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

15) Club/Association**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.

16) Club/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.

17) Private Limited Company**Cover Sections 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 Companies Act. Following a lengthy legal defence both directors were acquitted on all charges. Legal costs were in excess of £1,000,000.

18) Private Limited Company**Cover Sections Operative: Directors & Officers Liability**

A limited company entered administration. Investors sued the directors over mezzanine debt, 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.

19) Partnership/LLP**Cover Sections Operative: Partners, Members, Directors & Officers Liability**

A partner was in a dispute with the mother of their child (the mother was an employee at the firm) and

a referral was made to the Solicitors Regulatory Authority. Cover applied because the investigation commenced due to the allegations relating to acts done whilst working. Legal costs were £40,000.

20) Partnership/LLP

Cover Sections 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.

21) Private Limited Company

Cover Sections 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. The investment had been based on information that had been provided by the company seeking the investment, which in total was £15,000,000. 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.

22) Private Limited Company

Cover Sections 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.

23) Private Limited Company

Cover Sections Operative: Company Insurance (Entity Cover)

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.

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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