

Management Liability

Loss Examples (D&O and Entity):

24 for 2024

As with 2023, Management Liability (“ML”) claims continue to arrive from a variety of sources. There has been the closing out of a number of unfair prejudice claims, many of which started as value extraction disputes at the commencement of the Coronavirus pandemic (typically, this kind of claim takes 1 to 2 years to settle). There is also a rise in claims as a consequence of insolvency, a very clear pattern which existed following the 2008 financial crisis and which will continue to be a feature of the claims landscape in the near term. In many of the cases, loss was exclusively paid against defence costs component of cover i.e. there was no settlement amounts.

Each example depends on a unique and specific pattern of facts, so they can only ever be illustrative. Nonetheless, they evidence the potential value in a high quality, fully underwritten, ML solution:

1) Private Limited Company

Cover Sections 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.

2) Club/Association

Cover Sections 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 Commission investigation followed with costs approaching £50,000.

3) Partnership/LLP

Cover Sections 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.

4) Club/Association

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.

5) Private Limited Company

Cover Sections Operative: Directors & Officers Liability

A shareholder issued proceedings alleging breach of fiduciary duties through failing to keep shareholders apprised 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.

6) Private Limited Company

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

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.

7) Private Limited Company

Cover Sections 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.

8) Private Limited Company

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

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.

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

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).

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

The defendants were requested by the Financial Conduct Authority to attend interviews and answer questions about their management of the business. The FCA alleged that there was suspicion of misconduct through failure to comply with the Financial Services and Markets Act 2000 when selling warranties attached to their products. Legal representation costs were over £100,000.

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

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.

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

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.

13) Private Limited Company**Cover Sections 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.

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

Criminal proceedings were brought by the HSE against the defendants alleging breaches of Health and Safety at Work etc. Act 1974 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.

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

The company went 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.

16) Private Limited Company**Cover Sections 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.

17) Private Equity Portfolio Company**Cover Sections 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.

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

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

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

A minority shareholder issued proceedings alleging the defendant acted to benefit his personal interest in the company by misrepresenting the true position to allow them to purchase their shares at an undervalued level. Defence costs and settlement totalled over £300,000.

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

Creditors relied on the company's accounts, which were inaccurate 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.

21) Private Limited Company**Cover Sections 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.

22) Private Limited Company**Cover Sections 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.

23) Private Limited Company**Cover Sections Operative: Company Insurance (Entity Cover)**

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.

24) Private Limited Company**Cover Sections 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.

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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Call: 0161 241 3550
Email: enquiries@mprunderwriting.com

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