

# Management Liability Claims Examples

Construction Industry



## Directors and Officers

### Construction Company

- ⌚ 23 staff
- ⌚ \$12M turnover

### Background

A group of four 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 six months. Many homes were still left uncompleted after 12 months.

### Outcome

It was deemed that the Insuring clause was triggered and indemnity was extended to the Insured. The Company negotiated an out of court settlement.

**Payment:** \$950,000 plus defence cost of \$85,000.

### Construction Company

- ⌚ 9 staff
- ⌚ \$12.2M turnover

### Background

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

### Outcome

It was deemed that the Insuring clause was triggered and indemnity was extended to the Insured. The claim proceeded to hearing and was settled at mediation.

**Payment:** \$680,000 plus legal fees of \$240,000.

## Crime

### Construction Company

- ④ 14 staff
- ④ \$27M turnover

### Background

Over a period of two 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 crime claim on their policy and it was determined that the insuring clause of the Policy was triggered and indemnity was extended to the Insured. The Insured was able to prove their loss and make a claim following the report of the loss assessor who assisted the Insured to quantify their loss.

**Payment:** \$680,000.

### Construction Company

- ④ 11 staff
- ④ \$16.6M turnover

### Background

A group of four 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 insuring clause of the Policy was triggered and indemnity was extended to the Insured. The Insured was able to claim. The insurer then issued separate recovery proceedings against the fraudsters to recoup the amount of the loss along with the Insured's deductible.

**Payment:** \$120,000.

## Employment Practices Liability

### Construction Company

- ④ 19 staff
- ④ \$9.1M turnover

### Background

A first year apprentice issued a claim for unfair dismissal from their employer. The former employee claimed that he was sacked to make way for the owner's son to take over as the apprentice. The employee issued a claim with through Fair Work Commission for \$40,000.

### Outcome

The Insured made a claim on their policy and it was determined that the insuring clause of the Policy was triggered and indemnity was extended to the Insured. The case against the Insured was very strong with many witnesses coming forward and giving evidence in favour of the former employee. The matter went to hearing and the Insured was found liable.

**Payment:** \$40,000 plus the employee's defence costs of \$25,000.

## Construction Company

- ⌚ 5 staff
- ⌚ \$2.2M turnover

### Background

A very experienced 62 year old site supervisor was terminated on the basis that his position was made redundant. The ex-employee issued proceedings in the Federal Court 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. He also claimed that he was made redundant based on his older age.

### Outcome

The Insured made a claim on their policy and it was determined that the Policy was triggered and indemnity was extended to the Insured. The ex-employee was able to prove that he was unfairly dismissed in the circumstances and accordingly the Court ordered the Insured pay damages and costs.

**Payment:** \$120,000 in damages and costs.

## Occupational Health and Safety

### Construction Company

- ⌚ 13 staff
- ⌚ \$4.1M turnover

### Background

A sub-contractor tiler was seriously injured when a pile of timber fell from a truck crushing his legs. The sub-contractor was hospitalised for three months and was unable to return to work in any capacity.

### Outcome

A formal Occupational Health and Safety investigation was commenced. It was deemed that the Policy was triggered and indemnity was extended to the Insured. Following a two day hearing, the Company was found liable and was fined.

#### **Payment:**

\$80,000 fine plus \$45,000 in defence costs.

## Tax Audit

### Construction Company

- ⌚ 11 staff
- ⌚ \$1.2M turnover

### Background

An insured building company with over 100 sub-contractors received a notification from the ATO advising that it intended to audit the insured's income tax and fringe benefits tax records for the period ending 30 June 2016 to 30 June 2017. DUAL assisted by appointing Specialist tax accountants to complete the audit. Due to the complexity of the audit, the whole process took over 6 months and costs incurred in the process totaled \$48,000.

### Outcome

It was deemed that the Policy was triggered. The Tax Audit Costs incurred were deemed to be necessary and reasonable and the insured was reimbursed.

**Payment:** \$48,000 less its deductible.

## Public Relations

### Construction Company

- ⌚ 6 staff
- ⌚ \$15M turnover

### Background

Complaints were issued against an Insured building company in relation to building sub-standard housing. The complaints appeared fabricated. The Insured denied any wrongdoing and with the help of its insurers were able to successfully defend the claims. The insured had become aware that its reputation may have been tarnished by the negative experience and reported a drop in the number of new clients it was signing up.

### Outcome

It was deemed that the Insuring clause was triggered and indemnity was then extended to the Insured. DUAL assisted the insured by appointing a Public Relations firm to work with the insured to counter any adverse affect in relation to this claim. Eight weeks later, the insured reported an increase in their business and that many of its regular clients were returning.

**Payment:** \$42,000