

# Management Liability Claims Examples

Transport Industry



## Directors and Officers

### Transport Company

- ⌚ 22 staff
- ⌚ \$13M turnover

### Background

The directors of the Transport Company A as well as the Company were both minority shareholders in a rival Transport Company B which they were seeking to purchase the assets and business. Upon completion of the sale, the director of the Transport Company A and the Company sought damages alleging that the rival Transport Company B and its directors and officers had made misrepresentations in connection with the purchase and sale of the Company.

### Outcome

In this instance, it was deemed that the Insuring clause was triggered. The director of Transport Company A and Company A sought \$320,000 in damages and subsequently agreed to a settlement of \$280,000. Company B incurred \$170,000 in defence costs.

**Payment:** \$450,000.

## Employment Practises Liability

### Transport Company

- ⌚ 9 staff
- ⌚ \$6M turnover

### Background

A former female employee was terminated and commenced proceedings against the company alleging sexual harassment on the part of her supervisor. The employee had made allegations that her supervisor had touched her inappropriately and that he regularly made abusive and sexually explicit comments towards her.

### 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 Company was held liable and ordered to pay the former employee damages plus her legal fees.

**Payment:** \$63,000 plus \$10,000 in defence costs.

## Transport Company

- ④ 7 staff
- ④ \$5M turnover

### Background

A claim for wrongful termination was made by a driver of the Insured transport company. The employee alleged that he was terminated without proper procedures being followed and issued a claim with the Fair Work Commission for reinstatement and compensation of \$10,000.

### 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. Liability was very strong against the Insured with many witnesses coming forward and giving evidence in favour of the former employee. The matter proceeded to a hearing and the Insured was found liable.

**Payment:** \$7,000 plus the employee's defence cost of \$5,000.

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## Crime

## Transport Company

- ④ 11 staff
- ④ \$1.2M turnover

### Background

Over a period of 5 years, an employee trust accountant of the Insured transport company misappropriated \$850,000 by altering cheques received from debtors. The employee had a close friendship with the owner of the company and was a trusted friend and employee. The employee facilitated the fraud by continuing a cycle of paying debtors accounts with funds from other debtors throughout this period. This continued until his scheme was uncovered by the company's new auditors.

### Outcome

It was deemed that the Insuring clause was triggered and indemnity was extended to the Insured. The total loss to the company amounted to \$850,000. In this instance, there was no chance of recovery from the fraudster as he had no assets and had effectively gambled away the stolen funds.

**Payment:** \$850,000 and \$150,000 in defence and investigation costs.

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## Statutory Liability

## Transport Company

- ④ 8 staff
- ④ \$6.2M turnover

### Background

An insured charter bus company received a fine for \$25,000 from the Department of Infrastructure for collecting passengers from a section of the terminal reserved for a rival charter bus company.

### Outcome

It was deemed that the Insuring clause (including defence costs) was triggered. The penalty was deemed to be a civil breach as it fell within the cover provided under the Pecuniary Penalties provision and was therefore covered by the Policy.

**Payment:** \$35,000.

## Occupational Health and Safety

### Transport Company

- ④ 5 staff
- ④ \$8M turnover

#### Background

Occupational Health and Safety proceedings were issued against the Insured director of a transport company. This followed the investigation of a fatality involving an employee. It was determined that the Insured director gave a directive that all employees were to drive for no less than 8 hours straight on an overnight trip before they were allowed to stop for more than 30 minutes. Unfortunately, one of the drivers suffered from fatigue and was killed on the road during an overnight

trip.

#### Outcome

A formal Occupational Health and Safety investigation was commenced. It was deemed that the insuring clause was triggered. The director was found liable and was fined

**Payment:** \$150,000 fine plus \$200,000 in defence costs.

### Transport Company

- ④ 12 staff
- ④ \$18M turnover

#### Background

A new employee driver suffered severe injury when he careered off the road during one of his deliveries. A formal Occupational Health and Safety investigation began which eventually led to the company being prosecuted. The prosecution alleged that the company failed to provide adequate training and supervision to the apprentice.

#### Outcome

A full Occupational Health and Safety investigation was commenced. It was deemed that the insuring clause was triggered. The company vigorously denied all allegations. Despite their attempt at defending the claim, the company was fined.

**Payment:** \$45,000 fine plus \$35,000 in defence costs.

### Transport Company

- ④ 9 staff
- ④ \$13M turnover

#### Background

The director and company were charged with four offences under the Environment Protection Act. These are indictable offences and each charge carries a potential maximum fine of \$280,000. The EPA alleged that the driver, (employed by the company) who drove a semi-trailer transport vehicle, careered into a ditch whilst transporting rubble from a mine site. The petrol from the trailer leaked into and polluted a nearby water way.

#### Outcome

It was deemed that the Insuring clause (including defence costs) were triggered. Following a three day hearing, the director was found liable and was fined \$120,000.

**Payment:** \$120,000 fine plus \$60,000 in defence costs.

# Tax Audit

## Transport Company

- ⌚ 12 staff
- ⌚ \$15M turnover

## Background

An Insured transport company received notification from the ATO advising that it intended to audit the insured's income tax and capital gains tax liabilities for the period ending 30 June 2017 and 30 June 2018. The insured engaged a specialist tax accountant to complete the review and report on the information required by the ATO. The whole process took over three months to complete and the insured incurred

Tax Audit Costs totalling \$26,820.

## Outcome

The Tax Audit Costs incurred were deemed to be necessary and reasonable and the insured was reimbursed the amount.

**Payment:** \$26,820 less deductible.