



WOODWORKERS, CABINET MAKERS AND SMALL ENGINEERING MANAGEMENT LIABILITY CLAIMS EXAMPLES

CLAIMS EXAMPLES

Directors and Officers Claims Examples

Background: A Managing Director of a small sized engineering contracting company left to become the CEO of a competing company. After 3 months, his previous employer sued him for allegedly stealing trade secrets, confidential business information and employees.

Outcome: Proceedings were issued in the Federal Court for damages and over \$200,000 were incurred in legal costs of defending the claim. The parties ultimately settled for \$210,000 with the former Managing Director agreeing restrictions on using confidential information and hiring former employees.

Insured Entity Claims Examples

Background: Two engineering companies reached a contractual agreement for the sale and acquisition of Company A by Company B. Several months after the agreement was made, Company B filed legal proceedings against directors of Company A and the Company for breach of contract, fraud, and negligent misrepresentation, alleging them of manipulating its accounts receivable and account payable. The damages claimed were for \$5 million. Company A counter-sued alleging that Company B owed money from earlier dealings with the company.

Outcome: Although both parties withdrew their claims and cancelled the sale of the company, legal fees incurred by the insured company totalled over \$200,000.

Fidelity and Crime Claims Examples

Example 1

Background: The manager of an insured cabinet making company and an employee together manipulated inventory supply numbers of stock to defraud the company. The stock was stolen and on sold by the manager and employee over a two year period.

Outcome: The total loss of the company was in excess of \$1.6 million plus costs of a private investigator to uncover the scheme.

Example 2

Background: A debtor of a small engineering company misappropriated \$200,000 by altering cheques received from debtors. The clerk named themselves as a payee and continued a cycle of paying debtors accounts with funds from other debtors over a period of 18 months. This continued until her absence from work when the fraudulent scheme was discovered.

Outcome: The total loss to the company was in excess of \$250,000 which included the costs of a forensic accountant to uncover the extent of the misappropriation.

Crisis Containment Claims Examples

Background: An insured cabinet making company was thrown into crisis mode with the unexpected death of its Senior Manager. This Manager had management of approximately 50% of the company's business with many long-standing clients who did not wish for any other employee to handle their business.

Outcome: The company incurred \$28,500 in retaining the services of an external crisis management company to effectively take over, contact clients and ensure them that their business would be looked after and overseen the other two equally competent managers. In the circumstances, DUAL deemed that the crisis containment extension of the policy was enlivened and reimbursed the company the amount of \$28,500.

Taxation Investigation Claims Examples

Background: An insured cabinet making company received a notice from the ATO advising that they intended to review their income tax, capital gains tax and superannuation payments tax records for the periods ending 31 March 2007, 31 March 2008, 31 March 2009 and 30 June 2009. The insured then retained specialist tax auditors and accountants to prepare an audit report. The entire process was arduous and took over 9 months to complete. The ATO deemed that all was in order and did not impose any penalties. The insured, however, was left to pay auditors costs totalling \$88,500.

Outcome: Upon the assessing this claim, it was deemed that Section 2.2 (f) was triggered. The costs incurred were deemed to be necessary and reasonable and the insured was reimbursed the amount of \$87,500 net of its deductible.

Occupational Health & Safety Claims Examples

Example 1

Background: An employee woodworker contracted by the insured woodworking company was inspecting shelving on a residential project the company was hired on. During the inspection, the contractor suffered severe electric shock from exposed electrical wiring. It was later discovered that certain accident precaution were not taken. The employee was left with severe burns to his right arm and face. The insured company was subject to a full Occupational Health & Safety investigation and prosecution.

Outcome: It was deemed that insuring clause 3.1 (b) and 3.11 were both triggered. The company vigorously denied and successfully defended all allegations. Despite their attempt, the company was fined \$450,000 and incurred close to \$100,000 in legal defence costs.

Example 2

Background: A team of 3 engineers were contracted to attend an industrial building site in Western Australia to undertake certain tasks in the overall building project. The team consisted of new recruits who were new to the job. Unfortunately, on the first day of the project, two of the novice engineers were seriously injured. One contractor suffered a deep laceration on his hand whilst the other contractor lost partial hearing in his left ear for failing to wear the safety equipment correctly. A full Occupational Health and Safety investigation began which eventually led to the company being prosecuted.

Outcome: It was deemed that insuring clause 3.1 (b) and 3.11 were both triggered. Following a 2 day hearing, the company was found liable and was fined \$120,000. Overall defence costs incurred were \$130,000.

Example 3

Background: A woodworker was completing works on an industrial building site. The employee was severely injured when a pile of debris fell on him. He was airlifted to hospital but unfortunately died two days later. A full Occupational Health and Safety investigation began which eventually led to the company being prosecuted. During the investigation, it was deemed that the company had failed in its duty of care to provide a safe work place for its employee.

Outcome: It was deemed that insuring clause 3.1 (b) and 3.11 were both triggered. Following a 1 day hearing, the company was found liable and was fined \$250,000. Overall defence costs incurred were \$80,000.

Pecuniary Penalties Claims Examples

Background: The director of a cabinet making company and the 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 electrician (employed by the company) dumped hazardous waste into a nearby vacant lot which was not determined to be a legal dumping site.

Outcome: It was deemed that both insuring clause 3.1 (a) and 3.1 (b) (including defence costs) were triggered. Following a 3 day hearing, the director and company were found liable and were fined \$120,000. Overall defence costs of \$60,000 were incurred over the duration of the investigation and prosecution.

Employment Practices Claims Examples

Example 1

Background: A female woodworker was contracted to a building company to provide cabinet making services. Part of her duties involved being on site with a team of other woodworkers, most of whom were male. A complaint was made to the Australian Human Rights Commission where she alleged that her supervisor sexually harassed her over the duration of her employment by touching her inappropriately and making inappropriate comments. She refused to return to work after reporting the incident to the company on the grounds that she is suffering major depression as a result of the alleged sexual harassment. She made a workers' compensation claim due to her alleged inability to return to work. She also lodged a complaint against both the Club and her supervisor with the Australian Human Rights Commission seeking approximately \$160,000 in compensation plus future legal costs.

Employment Practices Claims Examples cont.

Outcome: It was deemed that insuring clause 2.2 (c) was triggered. The matter proceeded to a hearing at the Australian Human Rights Commission. The Commission deemed that the employer failed in its duty of care to the worker and awarded the amount of \$75,000. In addition to the damages paid, the company incurred \$30,000 in legal costs.

Example 2

Background: A claim was made by four former engineers against certain directors, managers and supervisors for bullying, harassment, abuse and sexual harassment. Claims were made against the entity alleging that it failed to respond to those allegations. Employees claim combined compensation of \$500,000.

Outcome: It was deemed that insuring clause 2.2(c) triggered. After protracted litigation, the matter settled for payment by the company of \$80,000 per claimant. In addition to this, the company incurred over \$150,000 in defence costs.