



News Story
08.12.05

Question. Are you either: -

- A company Director?
- A non-executive Director?
- A Manager?

If the answer is yes to any of these then you can be held personally liable for your actions in that capacity. Anyone who is director or officer of a company, charity or other institution run by a board or committee is at risk.

The Government is wholly committed to greater 'Director Accountability', which will inevitably lead to an increased number of civil and criminal actions being brought by "aggrieved" parties.

What are your responsibilities?

The duties of a director have been established through statutes, regulations and case law.

There is a common law duty that requires Directors to act with 'the care an ordinary man would take in the same circumstances on his own behalf' and with the skill expected from someone with his 'particular knowledge and experience'.

Where duties are delegated the Director is responsible for ensuring that the person to whom the duties are delegated is sufficiently experienced, reliable and honest.

Directors must act honestly, in good faith and in the best interest of the company and must ensure that he does not have any conflict of interest.

There are many statutes that affect the conduct of Directors and Officers and you need to be mindful of the following list of exposures, which frequently lead to claims or legal proceedings for which you can be held personally liable:

- Companies Act (over 200 offences)
- Insolvency Act ("Wrongful Trading")
- Health & Safety at Work Act
- Data Protection Act
- Consumer Protection Legislation
- Company Directors Disqualification Act
- Financial Services Act
- Company Securities (Insider Dealing) Act

- EC Directives and Regulations
- Racial & Sexual Discrimination Legislation

How Can Claims Arise?

If a Director is perceived to have failed in any of his duties then a claim could come from any one of a number of scenarios including:

- Sale of Assets/Divestments
- Acquisitions/Investments
- Poor performance
- Share Issues/Change of share ownership
- Expansion Plans or Rationalisation
- Liquidation
- Failure to supervise
- Adverse publicity
- Dishonesty of fellow directors
- Safety and emergency regulations

If a Director is perceived to have failed in any of his duties then a claim could come from any one of a number of third parties including:

- Shareholders
- Creditors
- Government and Regulatory bodies
- Employees
- Auditors
- Liquidators
- Customers
- Suppliers

So how can you protect yourself, given the compensation culture prevailing within the UK today?

Directors and Officers Insurance

In essence **Directors and Officers Liability Insurance** cover protects companies' directors, officers and senior managers against claims arising from breach of duty of care and their decisions and actions taken whilst managing their business.

Why Buy Directors and Officers Liability Insurance?

- In a claim situation the Director's personal assets are at risk.
- Directors cannot rely on the company indemnifying them.
- Often such an indemnity from the company will be in contravention of the Companies Act!
- Regardless of the stipulations of the Companies Act in the event of insolvency there will be no prospect of the company indemnifying the Directors and Officers.

The Directors and Officers Liability Insurance Policy will pay on behalf of the Director his legal costs and expenses and any civil damages awarded against him.

Some Typical & Actual Claims Examples

Mergers and Acquisitions

Following takeover the acquired company's shareholders commence legal action against its former directors alleging that they were misled about the terms of the acquisition.

Following the sale of a division of the company the acquirer commences legal action against the Directors alleging that some aspect of the activities and performance of the former division had been misrepresented to them.

Environmental

Following the spillage of a pollutant proceedings are brought by the Environment Agency against the Directors.

Health and Safety

Following an accident resulting in the death of an employee it is established that there were breaches of Health and Safety procedures, as a consequence the Managing Director, who has been identified as the 'Controlling mind and will' of the Company, is prosecuted for Corporate Manslaughter.

Employment Practices

An employee takes action against a supervisor for harassment and discrimination.

Human Resource Issues

Claim for unfair and constructive dismissal against the finance director of a distribution company by a former employee alleging sexual harassment and other inappropriate activity (sending text messages out of working hours, inviting her on nights out etc) – Costs £21,000

Health & Safety

Actions against Directors of a manufacturing company by the health and Safety Executive following their refusal to respond to a notice to control dust emission. Directors responsible had failed to adhere to deadline so action taken against both the company and the directors responsible. Incurred over £110,000 in defence costs with a further £60,000 outstanding,

Unfair Dismissal

Director of a glazing manufacturer named personally in an unfair dismissal claims from a former employee.

Insolvency

Following the insolvency of furniture company charges were brought against two directors alleging Wrongful Trading. Although charges were ultimately dropped substantial legal defence costs had already been incurred and paid for by the Directors and Officers Policy

Site Maintenance

A manufacturing company's cooling systems became contaminated resulting in several employees contracting Legionnaires disease and dying. The MD of the company was accused of negligently failing to implement the correct maintenance procedures and was prosecuted in connection with Corporate Manslaughter. The director's legal costs amounted to several hundred thousand pounds, which were paid in full by the D&O policy.

Some Points to Consider

Directors and Officers Insurance should now form an essential part of your insurance purchase and the following are points to consider all of which increase your exposure as a Company Director

- Increasing Regulation
- Increased third party awareness of your duties and responsibilities
- Shareholders and other third parties are becoming more aware of their rights
- Lawyers are now able to act on behalf of plaintiffs on a no win no fee basis

This premium is relatively inexpensive for the cover provided and for any Limited Company this is a cover that they shouldn't be without.

For further advice or information regarding Directors and Officers Insurance Cover please contact Nathan Walton at JSW Insurance Services Limited on 0870 0270363