

Insurance:

Protect yourself against management risk



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HOTELS ALONG WITH THEIR DIRECTORS AND SENIOR MANAGERS ARE BECOMING MORE EXPOSED THAN EVER BEFORE TO LITIGATION FOR WRONGFUL ACTS.

What many people do not realise is that their personal assets are being put at risk by these claims. The insurance industry has historically provided directors and officers cover for such risks, covering corporate entities and protecting the personal assets of their directors.

Recently, however, the industry has seen a need for non-corporate businesses and their managers/directors to be covered in the same way as larger corporate bodies have been in the past. Consequently we have seen the advent of management liability insurance which is available to almost all types of business and covers a wider range of risks than those normally associated with directors and officers cover.

The benefits of having management liability over in today's business world are obvious and have been highlighted by many high profile cases in the media recently. A management liability policy will help with the legal costs associated with defending allegations of misconduct in areas such as occupational health and safety or sexual discrimination. Such allegations may have no truth in them whatsoever but, as many companies have found in recent times, the cost of defending them can easily run into hundreds of thousands of dollars.

Some of the covers offered by management liability policies in today's insurance market are as follows:

- **Crime cover** – This section is designed to protect the company for dishonest acts by its employees, including theft of stock.
- **Employment practices** – Protection against claims arising out

of employment practices (harassment and unfair dismissal being two common claims).

- **OH&S Investigations and Defence Costs** – This cover protects the entity and the directors against costs associated with occupational health and safety and workers compensation investigations.
- **Statutory liability** – Designed to protect the directors against costs associated with any regulatory body.

There have been many cases highlighted in the media of corporate and small to medium enterprises suffering losses which could have been adequately covered by a management liability policy. A few memorable examples are as follows:

- **David Jones (sexual harassment)** - In August 2010 a major and unprecedented lawsuit was launched against one of Australia's biggest retail outlets, David Jones. The plaintiff, Kristy Fraser-Kirk, brought a \$37 million punitive claim for sexual harassment against the retail giant, nine of its directors and the former CEO, Mark McInnes.

The claim was settled out of court two months later with a confidential payment estimated at around \$850,000. It was reported that the company paid \$470,000 while Mr McInnes had to pay the rest. Although the eventual settlement fell well short of the \$37 million mark, this is still one of the largest sexual harassment settlements in Australian legal history.

- **Café Vamp (workplace bullying)** - Melbourne Magistrates Court fined a Hawthorn café company \$220,000 over a workplace bullying case that resulted in a waitress committing suicide. Brodie Panlock, a 19 year old waitress, took her own life in 2006 after enduring persistent bullying by her colleagues at Café Vamp in Hawthorn. The company director and three of his employees pleaded guilty to charges under the

occupational health and safety act. The total fines given to the company and all those involved was in the region of \$335,000.

- **New South Wales Hotel (OH&S claim)** - A “grossly intoxicated” man who suffered significant injuries when he fell from a hotel roof under construction in 2001 succeeded in his negligence claim in the NSW Supreme Court. Although there was significant contributory negligence on account of the plaintiff's intoxication, the court ruled in his favour. The hotel and its building contractors were found negligent for failing to properly secure the site and putting all patrons, including those affected by alcohol, at risk. Significant damages were paid.



Dominic Maratos

These examples clearly illustrate the importance of having a management liability policy in force.

In today's increasingly litigious society the need to protect your business and your personal assets has never been greater. You may think a claim is completely baseless or without merit but it will cost time and money to defend successfully. ■

Dominic Maratos - Accounts Manager, Bruce Insurance

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