

Directors & Officers Liability – Claims Examples

One of the most complex problems facing business today is the liability of corporate directors and officers. In performing their duties the individual directors and officers face personal and professional risks with every decision they make. These decisions are subject to significant scrutiny from shareholders, financial partners, stakeholders, customers, employees and even their competition. This coupled with the complex web of UK legislation and the ever-increasing burden of European Union directives.

Good corporate governance can mitigate the risks but can never eliminate their potential liability. It must always be remembered that although a company's liability may be limited its directors and officers are not. It is plain to see that directors and officers have a complex and challenging job. This job has been made even more difficult in the following ways:-

- The range of those falling within the scope of the term directors and officers is widening. • The continuing legislative environment and the fine tuning of the Companies Act 1989 and other such statutes.
- The development of the 'whistle blower' culture which has been confirmed by the Public Interest Disclosure Act 1999.
- Finally the tendency when financial or physical disaster strikes for the injured parties to seek not only damages but personal scapegoats has grown. Public attitudes continue to harden toward errant individuals. Even in the face of these grim facts many directors and officers think they will never become target of a claim. With this in mind just look at the following examples:- Creditors
- A Company went into liquidation shortly after one of its directors ran up a bill with a vehicle repairer for the cost of repairs carried out to a company vehicle. The cost was incurred on behalf of the company. The vehicle repairer brought an action for the outstanding invoices and there was a suggestion that the director was liable personally in view of the provisions of the Insolvency Act.
- A Director who signed a company cheque whilst the company was in receivership, found that the cheque was dishonoured and he was held personally liable to the payee.
- Breach of health and safety regulations
A construction company suffered a near miss when a huge pane of glass fell from the fifth floor of a redevelopment project onto the pavement. Miraculously, no one was injured but the Health & Safety Executive made a site visit the following day. This revealed a number of legislative breaches. A variety of actions were subsequently brought against the directors resulting in costs of £45,000
- A director made a speech at a conference stating that his company was making a bid for another company and that his company's merchant bankers had disclosed details of the bid to another bidding company. A claim was brought by the bankers refuting that they acted as described.
- A bank has taken action against the directors of a retail company for failure to disclose material facts when they entered into a financing agreement worth £8.5M with the bank. The projected cash flow for the subsidiary showed that the loan was un-sustainable. The bank accused the directors of providing misleading information Competitors

- A former director of a company was sued for alleged misappropriation of trade secrets which he obtained from the company.
- A company is suing the directors of one of its competitors for allegedly breaching trade practices