

# Management Liability Claims Examples

OHS & WHS



## Mining Engineer

- ⌚ 6 staff
- ⌚ \$2.5M turnover

### Background

A mining engineer and geotechnical specialist, contracted by the insured mining company, were inspecting a tunnel for the purposes of deciding how to support the excavations and what type of equipment would be best suited to cutting and drilling the rock mass. During the inspection, they were severely injured when part of the tunnel collapsed on them. The mining contractor was left paraplegic and the geotechnical specialist was left with deep lacerations on his right thigh along with a punctured lung and head trauma. The insured company was subject to a formal Occupational Health and Safety investigation and prosecution.

### Outcome

It was determined that the Insuring clause of the Policy was triggered and indemnity was extended to the Insured. The company vigorously denied all allegations. Despite their attempt at defending the claim, the company was fined.

**Payment:** Although the fine was uninsurable at law, there was cover for \$100,000 in defence costs.

## Manufacturing Company

- ⌚ 9 staff
- ⌚ \$7.1M turnover

### Background

A team of 25 factory hands were contracted by the insured manufacturing company to work on the production line in the build up leading up to the Christmas period. The contractors received a two hour course in safety and procedure. Unfortunately, on the first day of employment, two of the workers were seriously injured. One of the contractors 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 formal Occupational Health and Safety investigation began which eventually led to the company being prosecuted.

### Outcome

It was determined that the Insuring clause of the Policy was triggered and indemnity was extended to the Insured. Following a two day hearing, the company was found liable and was fined.

**Payment:** Although the fine was uninsurable at law, there was cover for \$130,000 in defence costs.

## Carpenter

- ⌚ 6 staff
- ⌚ \$12M turnover

### Background

An apprentice builder on a construction site was inspecting drilling equipment and was severely injured when a pile of debris fell on him. He was airlifted to hospital but unfortunately died two days later. A formal Occupational Health and Safety investigation began which eventually led to the insured construction 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 employees.

### Outcome

It was determined that the Insuring clause of the Policy was triggered and indemnity was extended to the Insured. Following a 1 day hearing, the company was found liable and was fined.

**Payment:** Although the fine was uninsurable at law, there was cover for \$80,000 in defence costs.

## Trades Person

- ⌚ 56 staff
- ⌚ \$20M turnover

### Background

Whilst performing excavation works the Insured ruptured a high-pressure gas main. The Insured were subsequently prosecuted with a claim that its work was conducted negligently and recklessly.

### Outcome

Following the appointment of Counsel, all charges were dropped against the Insured on the basis that each party bears its own costs, which was a great result for the Insured.

**Payment:** \$70,000 legal costs.

## Construction

- ⌚ 12 staff
- ⌚ \$7.3M turnover

### Background

The Insured was engaged to construct a multi-story residence. On the day of the event the Insured's site manager had advised the contractor not to work on the second story without property fall equipment. The contractor proceeded to work on the second floor and fell from the building and died at the scene.

The Insured was subject to a WHS investigation which found that the Insured has failed in its obligation to provide fall protection on the building.

### Outcome

The Insured incurred a reduced penalty by agreeing on a Statement of Facts.

**Payment:** Defence costs only.

### Sub-Contractor

- ⌚ 1 staff
- ⌚ \$800K turnover

### Background

A sub-contractor tiler was seriously injured when a pile of timber fell from a truck crushing his legs. The sub-contractor was hospitalised for three months and was unable to return to work in any capacity.

### Outcome

A formal Occupational Health and Safety investigation was commenced. It was deemed that the Policy was triggered and indemnity was extended to the Insured. Following a two day hearing, the Company was found liable and was fined.

**Payment:** Although the fine was uninsurable at law, there was cover for \$310,000 in defence costs.

### Marketing

- ⌚ 7 staff
- ⌚ \$5M turnover

### Background

The Insured marketing company sent an advertisement for a dating agency which was deemed to be “unsolicited commercial electronic messaging”. The emails were sent over 10 times to approximately 400 recipients.

The ACMA prosecuted the insured company under the Spam Act. Penalties of up to \$1.1 million a day apply to repeat corporate offenders. The penalty units referred to in the Spam Act are equal to \$110 each.

### Outcome

DUAL appointed solicitors to defend the charges against the insured, on the basis the multiple emails were the result of a ‘technical glitch’.

After a lengthy hearing, the insured received a favourable outcome, with charges being dismissed.

**Payment:** Defence costs were indemnified under the policy, with total incurred \$275,000 paid to the Insured.

### Manufacturing

- ⌚ 14 staff
- ⌚ \$9M turnover

### Background

Manufacturer worker was fatally injured when they came into contact with plant equipment. WHS commenced prosecution against the Insured Entity.

### Outcome

The industrial Manslaughter Charge was downgraded to a category 2 penalty for the entity and fined \$250,000. The CEO was fined \$60,000. As Fines and Penalties are not insurable, only the investigation and defence costs were covered.

**Payment:** \$160,000 in investigation and defence costs.

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