

# Statutory Liability Claims Examples



## Occupational Health and Safety

### Mining Company

- ⌚ 12 staff
- ⌚ \$2.3M turnover

### Background

The insured company contracted a mining engineer and geotechnical specialist. During a tunnel inspection to determine how to support the excavations and what type of equipment would be required, they were severely injured when part of the tunnel collapsed on them. The mining contractor was left a paraplegic and the geotechnical consultant was left with deep lacerations on his right thigh along with a punctured lung and head trauma. The insured company faced a maximum \$150,000 fine and a full Occupational Health and Safety investigation and prosecution.

### Outcome

Successful defence by DUAL's solicitors of the prosecution and avoidance of any penalty.

Cover for all incurred defence costs were paid to the Insured.

No conviction recorded against the Company.

**Payment:** \$20,000.

### Manufacturing Company

- ⌚ 25 staff
- ⌚ \$35M turnover

### Background

The insured company contracted a team of 25 factory hands to work on the production line. The contractors received a 2 hour course in safety and procedure. On the first day, two of the workers were seriously injured - one suffered a deep laceration to his hand, the other lost partial hearing in his left ear (for failing to wear the safety equipment correctly). The insured company faced a Full Occupational Health and Safety investigation and subsequent prosecution against the insured company, as well as a fine for breaches of OH&S legislation.

### Outcome

DUAL appointed solicitors to represent the insured during the investigation, and subsequently avoided prosecution. The insured company agreed to pay \$5,000 administrative fine to avoid a lengthy prosecution.

No cover for the fine (\$5,000) as the fine is uninsurable by law. Cover for all incurred investigation and defence costs (\$20,000) were paid to the insured.

No conviction recorded against the Company.

**Payment:** \$20,000 for defence costs.

## Construction Company

- 29 staff
- \$65M turnover

### Background

An apprentice builder at the insured construction company was inspecting drilling equipment on a construction site when a pile of debris fell on him. He was severely injured and later died. Full Occupational Health and Safety investigation with subsequent prosecution against the company and several of its directors. The basis of the prosecution alleged the company and the directors had failed in their respective duties of care to provide a safe work place for employees. The insured company faced a maximum fine of \$250,000.

### Outcome

DUAL appointed solicitors to represent the insured and the directors during the investigation and subsequent prosecution.

Following a 1 day hearing, the company was found liable, however DUAL's defence helped significantly reduce the fine to \$50,000.

Whilst the fine was not indemnifiable by insurance, the investigations and defence costs were advanced under the policy and amounted to \$120,000.

**Payment:** \$120,000.

## Department of Infrastructure

### Bus Charter Company

- 55 staff
- \$40M turnover

### Background

The insured charter bus company collected passengers from a section of the terminal reserved for a rival charter bus company. Department of Infrastructure investigated and issued a fine.

### Outcome

The charter bus company was found liable and was fined. The penalty was deemed to be a civil breach (and therefore covered by the Pecuniary Penalties provision).

Cover for the fine and all incurred investigation costs were paid to the Insured.

**Payment:** \$45,000.

## Spam Act

### Marketing Company

- 16 staff
- \$12M 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 favorable outcome, with charges being dismissed.

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

**Payment:** \$275,000.