

# What is Management Liability Cover and do I really need it?

## What is Management Liability?

There are three key areas to a management liability policy:

### 1) Directors and Officers Liability –

This section of cover **protects the personal wealth of you, the director** and any other management staff from the legal costs and awards in defending against civil, criminal and regulatory claims or investigations.

### 2) Employment Practices Liability –

This covers both **you, the directors** and the business from claims from potential, current and former employees alleging breach of contract/employment law.

### 3) Corporate Legal Liability –

Claims can be made against the directors and officers and also the business itself in tandem. This cover protects the legal entity (business) from defence costs incurred relating to civil, regulatory claim or investigation.

## What could happen to you without Management Liability cover:

Your company assets/funds will not be able to help you defend claims made against you and it is very unlikely that your standard commercial insurance policy will have any protection for you either. So the ramifications for you, your family and subsequently the business can be catastrophic.

Possible outcomes of not being able to defend a claim -

- Disqualification as Director
- Criminal Prosecution
- Custodial Sentence
- Personal Bankruptcy
- Loss of Job and business reputation
- Family trauma and financial hardship

## How, why and who?

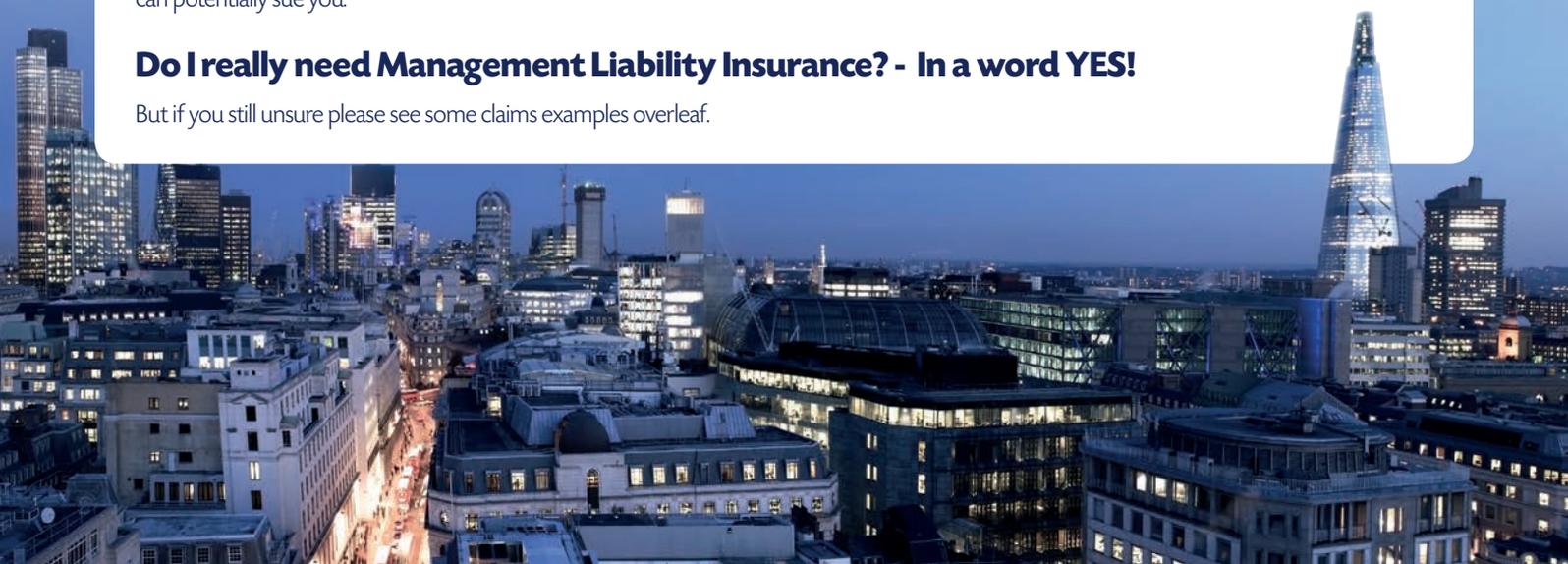
Claims can arise from a wide range of circumstances and it is important to remember that a claim does not have to be justified and factual to initiate costly legal defences:

- Mismanagement
- Negligence
- Unfair dismissal or discrimination
- Libel and slander
- Breach of fiduciary duty to the company (common law) Breach of statutory duties (legislative breaches, including The Companies Act), Misrepresentation/Misstatement
- Trading whilst insolvent Acting outside a manager's authority/powers
- Sexual harassment
- Anti-competitive behaviour
- Regulatory Investigations such as the Health & Safety Executive and HM Revenue & Customs or the relevant regulatory body by industry

Litigation can come from anywhere - Employees, shareholders, your company, creditors, regulators, customers, competitors, the Government, other directors and suppliers or anyone else who feels that they have suffered a loss arising from the Director wrongly acting in their position, can potentially sue you.

## Do I really need Management Liability Insurance? - In a word YES!

But if you still unsure please see some claims examples overleaf.



### Breach of contract

A company was accused of breaching an exclusive distribution agreement. The pleadings included international interference with the contract, tortious interference with business relations, and misappropriation of trade secrets. Defence costs had already exceeded £200,000 by the time the Director involved was eventually removed from the action.

### Breach of fiduciary duty

A claim alleging breach of fiduciary duty was made against the Directors of a private company by a group of shareholders. The action claimed that the company was not being run for the benefit of shareholders. This is because when the company was performing well the directors received substantial bonuses, and only small dividends were paid.

### Charges of corporate manslaughter

Two motorists were killed when a driver employed by a family-run haulage firm fell asleep at the wheel. The court held that the employee's operations manager should have ensured that the driver adhered to the relevant driving regulations and that the Director to whom he reported failed to exercise sufficient control. Both incurred substantial defence costs before the organisation was convicted of corporate manslaughter.

### Claims of sexual harassment

A claim was brought against two Directors for sexually harassing an employee. The Directors were found innocent, however this demonstrated that even if a claim is spurious, Directors still have to defend themselves and personally fund their legal representation.

### Divorced team take director vs. director action

A husband and wife team equally owned a successful contract cleaning company. Following a messy divorce, the wife accused her husband of deliberately mismanaging the finances to distort the true worth of the business. This is commonly known as a director vs. director action and is on the increase as business pressures mount. Total costs amounted to **£75,000**

### Breach of warranty of authority

A claim was brought against a Director of a building company for breach of warranty of authority. Payment of the claim exceeded **£500,000**

### Property developer agreement to purchase land for development without shareholder approval

A property developer claim demonstrates director vs. director action concerning breach of fiduciary duty plus two former directors acting outside their authority. They committed the company to an agreement to purchase land for development without approval of shareholders (fellow directors). The evidence established that the claim was unlikely to succeed.

Simply put this was a fallout between personalities with axes to grind, however, the insured still incurred legal costs to investigate allegations. Insurers defended the legal action until common sense prevailed with total legal costs of nearly **£750,000**.

### 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**

### Company directors questioned over fatality

A client operated road sweeping services using motorised vehicles. Unfortunately, one of these vehicles was involved in a fatal accident. This resulted in police investigation of two company directors. One of the directors was accused of aiding and abetting the causing of death by dangerous driving. The case progressed to trial, but in view of the director's health, proceedings were stayed. While this meant the director was never tried, insurers still incurred defence costs of over **£118,000** and legal expert's costs of over £3,000.

For further information please contact your Towergate Adviser



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