



## Directors & Officers Liability

### Claims from Employees

Personal claims against individual directors and officers can be brought by staff who may allege that they were discriminated against (age, gender, religion etc) or had their employment terminated unfairly.

The insured, an energy company was forced to reduce staff numbers. Redundancies were announced and several of the affected employees began an unjustifiable dismissal action against the company and the individual directors responsible for their dismissal. VL accepted a claim under a D&O policy and successfully defended the allegations against the individual directors.

At the same time the claim against the company was avoided. The company had no Employment Disputes cover but it was agreed that the same lawyers would conduct the defence of both parties with an allocation of the substantial legal costs being agreed between VL for the defence of the insured directors and the company (not itself insured under the D&O policy).





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### Claims from Shareholders

The insured company was a small/medium sized manufacturer. The company sold a significant portion of its product to a single customer who failed to pay for the goods supplied over a period of five months.

The insured's finance director committed the company to substantial legal fees in a debt recovery vendetta against the debtor. He should have known the fees were beyond the company's resources and ability to pay, particularly in view of the unpaid debt.

The bills from the lawyers who were engaged to pursue the debts went unpaid and they sued for their fees. As a result the company went into liquidation. A successful claim was made by shareholders against the director concerned.

The claim was indemnified under the D&O policy because it was established that there was no dishonesty involved.





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### Liquidation

The director of an insured company applied funds received, to himself personally when it was subsequently determined that the funds should have been applied to the company. There was good reason that he believed that he was acting correctly. The company subsequently went into liquidation. A claim was brought against the director under the Companies Act Section 301 which gives the court, in the course of liquidation of a company, the power to require persons to repay money or return property.

The insured's D&O policy unsuccessfully defended the claim and judgement was found against the director in the sum of \$69,000.

If the court had found that the director was "deliberately dishonest" then there would be no indemnity.





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### Non-executive Directors

The principal shareholder and director of a small retail company died and the shareholding was left to his widow. The widow's son took over the management of the company whilst the widow continued to be the sole shareholder and director of the company but with no active day to day involvement.

The company became insolvent and went into liquidation. A substantial supplier brought an action against the widow, as the sole director, for the amount owed of \$165,000.

The Court found that it was no defence that the widow did not know about the company's affairs and made her personally liable for the debts. The claim was indemnified by the company's D&O insurance.





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### Prosecutions by Regulatory Authorities

The insured directors of a company involved in logging operations were prosecuted (along with the company) under the Resource Management Act following the release of sediment into a nearby stream. The prosecution involved allegations or 'wrongful acts' by the directors.

The VL Directors & Officers Liability policy responded to successfully defend the directors although the company as an entity was convicted and fined.

VL defended and indemnified the company under a Statutory Liability policy engaging a separate legal firm.

