



A VL real life claim example

Statutory Liability

Brief Scenarios #1

Building Act

A property owner changed the use of his premises without obtaining proper consent. Although the building was situated in a commercial zone and was used partially for commercial purposes, the local authority discovered that part of the building was being let out for residential purposes. The property owner was prosecuted and fined for breaches of the Building Act.

Credit Contracts Act

A finance company pleaded guilty to 17 breaches of the Credit Contracts and Consumer Finance Act 2003, resulting from inadequate disclosure of the terms and conditions of its loans. The contracts were unenforceable because of this. The finance company also pleaded guilty to further charges of breaching the Act by telling the customers that the contracts were enforceable. The Court found that documents provided by the finance company had been faxed and photocopied, and in some cases were so distorted that they were impossible to read. The company was fined \$60,000.

Fair Trading Act

A clothing importer and retailer was prosecuted and fined \$15,000 for failing to affix country of origin labelling to clothing sold in New Zealand.

CEG 048-102019/000



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Brief Scenarios #2

Historic Places Trust Act

Whilst preparing a new property development, historic bones were uncovered by a contractor. The contractor continued to work on the site causing damage to the remains before the Historic Places Trust had an opportunity to investigate. The contractor was prosecuted and fined \$55,000 under the Historic Places Trust Act for knowingly damaging and destroying a burial area.

Medicine Act

A number of unsubstantiated representations were made in the course of marketing a new pharmaceutical product. An investigation was undertaken and as a result fines of \$90,000 were imposed under the Medicine Act.

Sale of Liquor Act

A liquor store owner sold alcohol to a young woman whom he thought to be over 18. However, he failed to ask for identification. It transpired that she was only 16 years of age and the owner was prosecuted and fined \$1,000 under the Sale of Liquor Act for breaching the terms of his licence by selling liquor to minors.

CEG 049-102019/000



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Fair Trading Act

The Insured, an insurance company, engaged a marketing company to deliver a scheme whereby prizes were offered in relation to the sale of units. The prize scheme had a draw date. However, as the prizes were not in place, the draw did not occur as scheduled.

The Insured who had been unaware that prizes had not been given out as promised, rectified the matter promptly. Nevertheless, the Commerce Commission prosecuted the Insured for violating the Fair Trading Act 1986.

VL appointed a lawyer who mounted a successful defence citing abstruse provisions of the Act. The High Court found that the Insured's lack of care in supervising its agent to fulfil the obligation to hold the draws did not demonstrate an intention *not* to provide the prizes *at the time the offer was made*.

Similarly, additional charges under s11 – (misleading conduct in relation to services) and s9 – (misleading or deceptive trade practices) were successfully defended. Legal fees were \$100,000.

CEG 050-102019/000



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Health and Safety #1

The Insured ran a carpet-laying business. An employee was laying flooring in the premises which had a gas fired water heating cylinder in a cupboard. The water heater had a naked flame pilot light burning. Volatile fumes from the flooring adhesive built up and an explosion resulted causing the employee to suffer burns and bruising.

The Insured was prosecuted under Health and Safety legislation and the matter was reported under the Insured's Statutory Liability policy. In the course of investigations, the VL appointed lawyer uncovered the fact that there had been an earlier similar occurrence (not resulting in injury) in the same premises.

The prosecution was dropped on the grounds that the Insured had no knowledge of the hazard and the property owner should have warned about it. The policy paid for legal defence costs.

CEG 051-102019/000



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Health and Safety #2

The Insured is a large commercial bakery. Its employee caught his arm in a pastry rolling machine causing fractures and bruising.

The Insured was prosecuted under both Section 49 and Section 50 of the legislation. Section 49 – exposing the worker to a known hazard has the more serious penalties. Section 50 – failing to ensure the workers safety – is the more common basis for prosecution.

Due to the potentially serious outcome for the Insured under Section 49, a highly experienced barrister was engaged to manage the defence. Upon further investigation, the Section 49 charge was eventually dropped.

In pre-sentencing submissions, the appointed barrister was successful in reducing the fine sought by WorkSafe from \$60,000 to \$45,000. Reparations were set at \$17,000. Legal costs were around \$25,000.

CEG 052-102019/000



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Maritime Safety / Health and Safety

The Insured is in the marine industry. Its workboat hit an anchored vessel in good weather conditions. Six employees were on board, two died, three others sustained serious physical injuries, and one suffered mental trauma after seeing his co-workers dead and injured. The skipper's operator licence was a week out of date, as was the vessel's sea-worthiness certificate.

The company was charged under the Maritime Safety Act for its employee operating a ship in a manner which caused unnecessary danger or risk to others, operating a ship without a current Safe Ship Management Certificate, and its employee driving the vessel without a current operating licence.

Under the Health and Safety in Employment Act, the employer was charged with failing to take steps to ensure the safety of its employees. The skipper's own unlawful and negligent acts were imputed to the company resulting in its pleading guilty to all charges. Total costs for the claim exceeded \$225,000.

CEG 053-102019/000



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Resource Management Act

The Insured, a local bus operator, had a diesel fuel facility in its yard. The tank was owned by the fuel supplier but the Insured was responsible for its upkeep. The fenced and gated yard was broken into at night and amongst other things, an unsecured valve on the tank was maliciously turned on. Fuel ran into a bunded area surrounding the tank.

Unfortunately, the drain hole in the bund had been left open by an employee of the Insured after he had cleared rubbish from it the previous day. 18,000 litres of fuel ran into a nearby stream.

A massive clean-up operation was undertaken, largely paid for under the policy at a cost of around \$300,000. Fortunately, an oyster farm located in a downstream estuary was unaffected as the remedial action meant that the fuel dissipated upstream. The Council brought action against the Insured and its supplier under the RMA.

The Insured was convicted and fined just \$14,250 plus prosecution costs of \$243. Defence costs were \$60,000.

Footnote: the outlet valve on the tank was replaced by a lockable device – cost \$370!

CEG 054-102019/000



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Sale of Liquor Act

The Insured operated a tavern. It was prosecuted after a local authority inspector, acting under the Council's powers as the District Licensing Authority, discovered it was selling liquor on Good Friday in contravention of the Act. The Act permitted sale of liquor on Good Friday only to patrons who were dining on the premises.

The VL appointed lawyer assisted the Insured in preparing for an appearance to answer the charge in the District Court. The Insured argued that by buying hot pies and/or sandwiches patrons were 'dining'.

The court was unimpressed and the Insured was convicted and fined \$3,000, which the policy paid along with lawyers' fees.

Note: since this claim, the Hospitality Organisation has issued guidelines to its members which spell out parameters for, inter alia, Good Friday trading. Breaches such as in this claim are unlikely to be covered because they would be deemed to be 'deliberate' actions.

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