

Builders' Insurance Services

NEWS FLASH

PROTECTING YOUR PERSONAL AND COMPANY ASSETS

A private company director would not think twice about buying property and public and products liability insurance, but has that company director given serious consideration to personally protecting his/her assets against claims arising from the management of the company?

Any person who holds the office of director within a company exposes themselves to personal liability simply by virtue of their position. Even if not a director by title, anyone involved in the management of a company can be personally exposed. Directors and Officers Liability cover is designed to protect directors and officers from the financial consequences of being involved in a claim.

Company directors are today finding that they are increasingly under the microscope from regulatory authorities, shareholders, customers, and other third parties in respect of their overall management of a company's affairs.

As the law has developed, it has now become apparent that private company directors are just as vulnerable as their counterparts in the public company arena.

The standard Directors and Officers Liability Policy, does not provide the private company with the breadth of cover required to fully protect the personal assets of its directors and officers. This is because most claims commenced against the company and its directors are in the company's name, with its directors being listed as co-defendants. In this scenario, the standard Directors and Officers Liability Policy will only respond to that part of the claim which has been specifically made against the directors and not to that part of the claim which has been made against the company.

Under these circumstances, the public company directors will be indemnified either under the Directors and Officers or the Company Reimbursement section of the Directors and Officers Liability Policy and, in effect, the shareholders will be liable for any damages, judgments, settlements and defence costs made against the company itself. The obvious problem arises where the shareholders are in fact the "owner" directors as is the case with most private companies, because whilst their personal liability will be protected, their assets, in the form of equity in the company, will not be, for that part of the claim which has been made against the company itself.

Specialised packaged products have recently come onto the market that are designed to overcome this problem whilst, at the same time, offering additional coverages not normally found in the standard Directors and Officers Liability Policy such as insurance against breaches in Employment Practice, breach of Trustee Liability for the Company Superannuation Fund and Crime Insurance.

In addition to the range of exposures covered by these new products, these insurance products also provide significantly broader cover than the standard Directors and Officers Liability Policy

Traditionally, Employment Liability, Trustee Liability, and Crime Insurance had to be purchased on a stand-alone basis which made it too expensive for smaller private companies to fully protect themselves against the ever-widening net of potential litigants. These new products now provide the private company with the comfort of broader insurance coverage for a wide range of exposures at competitive premiums.

Summary of Covers Available*

Directors and Officers and Company Reimbursement Insurance

This policy is designed to cover an actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the Insured while acting in their capacity on behalf of the Company or of any Outside Organisation to which the Outside Directorship Extension applies.

Employment Liability Insurance

This policy is designed to cover Employment Practice Breaches, with respect to any past, present or prospective Employee of the Company or of any employee of any Outside Organisation. An Employment Practice Breach is any actual or alleged:

- employment-related sexual or other unlawful harassment;
- termination of employment which is against the law;
- employment-related unlawful discrimination;
- employment-related denial of natural justice;
- false or misleading advertising or representation involving terms or conditions of employment with the Company or any Outside Organisation;
- employment-related defamation;
- failure to employ, promote or grant tenure;
- unfair deprivation of career opportunity;
- unfair discipline or evaluation of employment performance;
- failure to provide or adhere to adequate employment policies or procedures;
- violation of any Federal, State or Local statute or regulation governing employment practices;

- breach of employment contract;
- employment-related invasion of privacy.

Company Liability Insurance

This policy is designed to cover an actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the Company.

Superannuation Trustees Liability Insurance

This policy is designed to cover an actual or alleged Breach of Trustee Liability.

Crime Insurance

This policy is designed to cover Direct Financial Loss sustained by the Company in connection with or consequent upon a single act or series of related, continuous or repeated acts of:

- fraud;
- dishonesty;
- Theft;
- Computer or Funds Transfer Fraud;
- Counterfeiting;
- Forgery; or
- criminal damage committed by an Employee, acting alone or in collusion with others.

Please refer to the policy wording for a full description of the covers available along with the conditions, limitations, extensions, exclusions and excesses that may apply.