

Directors and officers claims examples.

Vehicle defects results in fatal road traffic accident

One of our insured's vehicles was involved in a fatal road traffic accident. Initially it was believed that the claim was due to breach of regulations in relation to tachographs. As such, the motor insurers thought this would not have a bearing on the motor claim so would not instruct solicitors.

The client appointed their own solicitors and various directors and employees were interviewed by the police. These interviews were in relation to breach of the EC Working Rule Directive. This is when we got involved and agreed to cover costs involved.

Things developed further and it was found that there were a number of defects present in the vehicle that had contributed to the collision. These defects were known to the Transport Manager when the vehicle took to the road. The driver of the vehicle was also found to be talking on his mobile phone.

The directors were investigated in relation to the offence of manslaughter by gross negligence (directors and officers section) and the company for corporate manslaughter (entity defence section). The police obtained evidence to prosecute the transport manager.

The fatality was reported in the local press and there was press coverage throughout the trial. The cover available in the Markel policy triggered the use of PR crisis management assistance. The insured appreciated this help as essential assistance with intrusive press interest.

Markel was closely involved in helping the insured with the official investigation. There were also expenses incurred defending the prosecution of the transport manager who was charged with aiding and abetting dangerous driving.

The total claims costs and expenses exceeded **£200,000**. The premium paid for the period of insurance was only £600.

There are some important messages from this claim:

- Employees do not always stick to the rules
- Directors are exposed to the consequences of employees making mistakes
- Sometimes even the best systems of check breakdown

A robust insurance package protects the policyholder from serious financial and reputational risk.

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**.

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. Our investigations demonstrated the board were provided with adequate information in terms of this particular transaction. Simply put this was a fallout between personalities with axes to grind, however, the insured still incurred legal costs to investigate allegations. Markel defended the legal action until common sense prevailed with total legal costs of nearly **£750,000**.

A complicated dismissal revealed breach of the Data Protection Act

A trailer rental and leasing company needed help with a claim brought against the company and its directors by the former company solicitor and company secretary for discrimination and constructive dismissal. The situation was further complicated by the fact that some of the directors of the insured were involved in procuring phone records from a third party to help substantiate their claims against the claimant and in doing so, breached the Data Protection Act 1998. Settlement and legal costs in negotiating acceptable outcomes for all parties came to over **£75,000**. Directors and officer's claims are rarely straight forward, either in terms of size and or circumstance. Insurance protection gives peace of mind from the unforeseeable.

Disagreement following management buy out

The insured designs, manufactures and installs computer control systems for the oil, gas and petrochemical sectors. The company was formed by a management buy out. Two separate claims were brought, one against the company itself, and one against the individual directors in response to the alleged breaches of two clauses in the agreement governing the buy out. The claimant was pushing hard for a court hearing. Our investigations and legal support eventually led to an out of court settlement of just under **£340,000**.

Company directors questioned over fatality

Our 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. Markel's claims team provided support and legal services. The case progressed to trial, but in view of the director's health proceedings were stayed. While this meant the director was never tried, Markel still incurred defence costs of over **£118,000** and legal expert's costs of over £3,000.

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**.