Management (Directors & Officers) Liability

Thursday, June 26, 2008

Directors & Officers Liability

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Directors & Officers (D&O) Liability

- **Management Liability**

What is D&O (Management) Liability?

Legal responsibility borne by organisations' directors, senior managers & officers *arising* **from decisions and actions taken (or not taken) whilst managing the organisations' business.**

Sources of Management Responsibilities

- Statutes
- Regulations
- Case Law (Largely Common Law)

Responsibilities (Duties) of Management

- **Duty of Care & Skill**
- **Fiduciary Duty**
- **Statutory Duty**

Aggrieved Parties in Management Liability Claims?

Organisations' Stakeholders, i.e.,

- Shareholders
- Creditors
- Government & regulatory bodies
- Employees
- Auditors
- Liquidators
- Customers
- Suppliers

Aggravating Factors, the Changing Environment…

- Increasing regulation
- Increasing stakeholder awareness
- Soaring shareholder demands
- Elevated employee awareness
- Success stories
- Global village
- ? … our learned friends, the lawyers! "No win, no fee" deals…

Risk Management for D&O Liability

- **Identify** – stakeholder expectations
- **Avoid** – training, consulting, hiring, …
- **Control** – comply, document & comply!
- **Transfer** – Insurance; "small loss today for an unknown future titanic loss"

Aggravating Factors…

- Principle of separate or joint responsibility between directors & officers; and the organisation itself
- Personal responsibility of directors & officers for any decisions made and/or actions (or lack of) taken on behalf of the company
- Risk to directors & officers personal assets
- Prohibitive defence costs even where a claim fails

Liability Categories…

1. **Awards, judgments, Damages, Settlements - against any director / officer / employee for liability for any** Wrongful Act

2. **Defence Costs**

Wrongful Act...

Actual or alleged breach of

care & skill, statutory and fiduciary duty, trust, neglect, error, misstatement, omission or breach of authority

committed by a director, officer or employee.

Reasons to Buy/Demand Protection Against Management (D&O) Liability

- Personal responsibility for directors & officers
- Unlimited personal liability
- Risk of personal assets
- Defence costs are expensive
- Protection of company assets
- Regulatory requirements
- Operating environment is more litigious
- No protection in bankruptcy/insolvency
- The organisation may refuse to protect you
- Attraction of The Right directors & officers
- Multitude geographical & regulatory jurisdictions
- Listing on securities exchanges

False Security Myths…

Directors have limited liability...

NO THEY DO NOT!

I don't have a title director, so I can't be held liable...

YES YOU CAN!

The company can defend me...

HOW & WHY?; & NOT IF IT GOES BUST!

We are only a small company...

THE SAME LAWS APPLY!

They cannot touch my personal assets...

YES THEY CAN!

Historical examples of incidents where management could be held liable…

Collapse of banks & insurance companies

Collapse of industries - airlines, manufacturing, etc

Skewed & overpriced development contracts

Destruction of institutions & life, e.g., by fire…

Loss of shareholder (stakeholder) value

Negligent shortage of public services & goods

Import of substandard items

Inflation issues & currency devaluations

Thank You & End