

## Claims Examples

# Directors' & Officers' Liability Insurance

The following real life cases show how directors and officers can be exposed to the risk of personal liability for damages and legal costs arising from regulatory inquiries and court actions, whether legitimate or frivolous. They also demonstrate why every director and officer in Asia is in need of a high quality and comprehensive Directors' & Officers' Liability (D&O) Insurance policy.

### Setting up Competitive Business

The plaintiff was a company providing business management consultancy services. The first defendant was a director and shareholder of the plaintiff and the second defendant was the Chief Executive Officer.

The plaintiff sued the defendants for breach of fiduciary duties. The thrust of the plaintiff's action was that the defendants conducted activities in conflict with their duties to the plaintiff. It was alleged that the defendants had established another consulting company to directly compete with the plaintiff. The defendants allegedly had also taken steps to persuade the plaintiff's staff to join the new company whilst at the time still acting as officers of the plaintiff.

In May 2008, the Singapore High Court found that the departing director and officer (the two defendants) had breached their fiduciary duty to the plaintiff. The Court took the view that they were obliged not to conduct activities that they ought to have known would be detrimental to their employer.

### Multiple Directorships

The Singapore Court of Appeal has recently dealt with a director's conflicting interests. Mr. T was a director of both a parent ("Parent") and a subsidiary company ("Subsidiary A"). At the same time, he also served as a director on the board of a company unrelated to the Parent and Subsidiary A ("Unrelated Co"). Mr. T was a corporate representative of the group of companies of Unrelated Co. At the direction of Mr. T payment was made by Subsidiary A to the holding company of Unrelated Co.

Parent was later put into liquidation and the liquidators brought legal proceedings against Mr. T for breach of fiduciary duties as a director of Parent in procuring Subsidiary A to forward payment to the holding company of Unrelated Co. What was at issue was the conflict between Mr. T's duties owed to the group of Parent and the duties owed by him to the group of Unrelated Co. It was held that Mr. T had preferred the interests of Unrelated Co over the interests of Parent. The Court of Appeal found against Mr. T and adjudicated that he was in breach of his fiduciary duties owed to the Parent.

### Oppression by Majority Shareholders

The plaintiff, Mr. P, established a construction consultancy company together with Mr and Mrs. G. Mr. P was the managing director of the company, and was subsequently appointed the CEO of the company. Mr. P held 25.3% of the shares whilst Mr and Mrs. G held 50.6% of the shareholding. The company was then publicly listed.

Shortly after the listing, Mr and Mrs. G. attempted to remove Mr. P from the management of the company. Mr. P’s access to the company accounts and human resources records was refused. The couple also appointed two new directors to gain control of the board. Mr. P was summarily dismissed at a board meeting. Mr. P alleged he was victimised by the oppressive behaviour of the majority shareholders and brought an action under s.216 of the Companies Act for the winding up of the company.

In 2009, the Singapore High Court found that Mr. P acquired shares of the company with a legitimate expectation that he would be the company’s director and CEO, and the attempts by the couple to renege on this arrangement without just cause would be regarded as oppressive conduct against him. The majority shareholders had abused their voting power to advance their own hidden agenda to the detriment of the company and the minority shareholders. The court held that Mr. P was entitled to relief under s.216 of the Act.

The court made an order for the defendant directors to purchase the shares of Mr. P within 30 days of the judgment, failing which the company was to be wound up.

### Alleged Conspiracy by a Director

The claimant in this case was a company carrying on the business of organising conventions and events. The first defendant, Mr. L, was the then managing director of the claimant who owned shares in the claimant. He also held a certain amount of the shares in trust for the second defendant. Another shareholder of the claimant was Mr. G. The claimant purchased a property and subsequently decided to sell the property to the second defendant and his son.

The claimant alleged that the resolutions of the board of the claimant company in regard to the sale were invalid. The claimant alleged that Mr. L was in breach of his fiduciary duty as director of the claimant in that he had conspired and assisted the second defendant to cause the claimant to sell the property without the consent or approval of the board of directors or shareholders in a general meeting. The court found the claim in this action to be unmeritorious and lacking in proof. The court found that the resolution was validly made and there was no misrepresentation in regard to the sale of the property. The claim was thus dismissed by the High Court of Singapore in September 2008.

Whilst there was no settlement monies paid the legal fees incurred in defending this claim were covered by the directors’ and officers’ liability policy.

#### Want to Know More?

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