

## Directors Be Warned!

We are all aware the environment in which we do business continues to rapidly change. Corporate Governance is greater than ever as is arguably the onus on directors and responsible officer's personal responsibility arising out of their business life. The upshot being every business needs to strongly consider insuring against these changing factors to adequately protect the personal wealth of directors and officers within their businesses.

Your exposure as a director, or responsible manager, is broadly in two categories: (1) Defence costs (legal representation and professional advice in defence of the allegation) and (2) Fines & penalties. In the past it has been accepted that statutory fines and penalties cannot be insured. With modern wordings and correct cover, this is now not always the case.

It will not surprise you to know that there is a vast array of potential litigants against directors, owners and managers of businesses these days:

- **Government Agencies.** Taxation Department, ASIC, ACCC , WorkCover authorities and others.
- **Creditors, Liquidators or Administrators..**
- **Employees.** Remuneration disputes, unfair dismissal claims and sexual harassment
- **Shareholders or investors.** Disagreements over key decisions, alleged mismanagement, dissatisfaction with returns, remuneration disputes etc.
- **Customers.** Allegations of misleading or deceptive conduct and so on.
- **Competitors.** Trade Practices matters. Such actions can be used as a tactic to gain market advantage.

What has been known in the past as directors & officers insurance, is now called management liability insurance. Management liability insurance is far more comprehensive and includes important exposures you need to consider (see the list of potential litigants above).

For businesses engaged in providing activities to participants such as sporting, recreation, adventure leisure and the like, risk of litigation from your State Workers Compensation Authority is a real and major exposure if a participant, an employee or a contractor is seriously injured.

Whilst your public liability or workers compensation insurer covers claims arising out of injury to a participant, an employee or a contractor these policies do not cover defence costs, fines and penalties associated with litigation initiated by State Workers Compensation for things such as an alleged unsafe workplace's that contributed to the participant or worker injury.

Something often misunderstood about management liability insurance is that it operates on a claims-made basis - it's triggered when a claim is made, not when the misconduct (or alleged misconduct) occurred. To maintain protection you must continue the coverage from the time you begin your role and ensure that it stays in place for the period you remain exposed – even after you leave in most circumstances.

Please be aware that the standard policy offered is rarely completely appropriate for every company - there are far too many variables and detailed advice and amendment is usually necessary. Talk with your Phillips professionals about this complex issue.

I strongly recommend you to ask your insurance professional about the protection a Management Liability policy can offer your business.