

D&O Claims Examples

Example 1

Two directors were held liable for payments made to another director. The payments took place shortly before the company went into liquidation. It was successfully argued by the firm's creditors that they should take precedent over the director and an award of £800,000 was made. Directors have a fiduciary duty to take the correct course of action. It is also an established part of the UK legislative framework that directors should not profit from their position.

Example 2

Non-executive directors can also be held liable. This was highlighted in a case where a full-time director defrauded the company and the non-executives were found to be negligent. The negligence was due to insufficient attention being paid to the operation of the firm. The claim was settled for an undisclosed sum and was paid out of the non-executives personal assets. Non-executive directors on the UK are principally involved to ensure that there is a second pair of eyes on the company's executive management. Non-executives are often as exposed to liability as executives, which is not something that they always recognise.

Example 3

On the takeover of a firm the new owners sued the outgoing Chairman and Managing Director for statements and representations made regarding the financial stability of the firm. The assets had been overstated and misleading profit-forecasts had been made which had induced the new company to purchase the firm at an inflated price. An award of £2,500,000 was made. In the D&O policy indemnity is provided in respect of a Wrongful Act (which is always defined) and this usually includes negligent misstatements.

Example 4

The director of a firm that had failed with losses of £1.5m was sued by the liquidators. The director had genuinely believed the firm to be profitable but the case was still found in the liquidators favour. This was due to the directors' negligence in failing to ensure accurate financial records were kept. This highlights again that the directors' principal duties in the UK are owed to the company rather than the shareholders which is often the case in the USA.