

Insurers taking the Lion's share?



CLYDE & CO

The latest UK case on corporate manslaughter will be of interest to insurers whose general liability policies provide cover for defence costs. Huge fines for the insured can translate to correspondingly large defence costs (and prosecution costs) for insurers.

Lion Steel Equipment Ltd became the third company to be sentenced for corporate manslaughter when it was fined £480,000 (\$748,474) plus prosecution costs of £84,000.

Following the death of an employee who fell through a skylight, the prosecution argued the directors of Lion Steel breached their duty of care to protect the employee's safety.

According to the court, the office of director does not of itself create a duty of care to every employee. The fundamental question was the measure of control and responsibility exercised by the director in relation to the task and the systems of work in operation.

their fiduciary duties to the company. They could be exposed to future civil action especially if the level of the fine causes the company to go into liquidation.

The threat of imprisonment will be a real consideration for small and medium-sized enterprises where the directors are also the decision-makers within the business. If charging directors with gross negligence becomes a feature of corporate manslaughter cases then adequate cover will be essential.

The amount of defence costs should not be underestimated.

A recent paper on corporate manslaughter issued by the International Underwriting Association's (IUA) Liability Underwriters' Group working group predicts defence costs for corporate manslaughter are likely to be significantly higher than any equivalent health and safety prosecution or civil liability claim.

Questions might be raised as to whether it was in the company's best interest to plead guilty and whether the directors breached their fiduciary duties to the company. They could be exposed to future civil action especially if the level of the fine causes the company to go into liquidation

It was important to establish if the director had a responsibility for addressing safety in relation to the work being carried out at the time of the accident.

A defendant could only be guilty of gross negligence manslaughter for an omission if he was under a duty to act.

Charges were dismissed against two of the three directors for lack of evidence.

Following the dismissal, Lion Steel agreed to admit corporate manslaughter on the basis all remaining charges against the third director were withdrawn.

The case demonstrates the extent to which the Crown is prepared to bring charges against individual directors and the subsequent pressure on the corporate entity to protect their liberty.

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Policies typically provide cover for defence costs but what about prosecution costs? Policies are often unclear. Given the level of such costs in corporate manslaughter cases, policies should be unambiguous.

Many insurers cap liability, typically applying a limit of around £1m. This can have the effect of protecting the employers' liability minimum statutory limit as well as the insurer.

However, insurers should be aware covering regulatory/criminal proceedings is likely to require compliance with the Insurance Companies (Legal Expenses) Regulations 1990. ■

James Roberts is a partner and Benjamin Craven an associate at Clyde & Co. Roberts assisted the International Underwriting Association with its paper on legal expenses insurance published in 2011