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What is Statutory Liability insurance and why do I need it?

A Q&A PREPARED BY FEE LANGSTONE

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What is a Statutory Liability policy?

Statutory Liability Policies provide cover against unintentional breaches of particular New Zealand laws (regulatory offences). For example, the Health and Safety at Work Act 2015 and the Resource Management Act 1991.

What does a Statutory Liability policy cover?

Depending on the policy, the cover provided will usually include defence costs in relation to any charges laid by a regulator and the fines and reparations (where permissible by law) if the insured is convicted and sentenced in relation to the charges laid against them.

Some additional costs may also be covered. For example, legal costs for assisting with regulators' inquiries and investigations may be covered. While some policies don't include this, it's a very useful addition because regulators will generally request documents, information and interviews before formally laying charges.

If cover is not triggered until that point, significant costs can be incurred without being covered by the policy.

Legal costs for preparing applications for enforceable undertakings may also be covered under a statutory liability policy cover.

No cover is provided for civil liabilities.

Who does a Statutory Liability policy cover?

Statutory policies will generally cover the insured entity, company/companies, directors, officers and employees.

Do you need to pay an excess?

Depending on the policy wording, an excess will be payable in relation to the insured entity/company. However, with respect to individual directors, officers and employees, an excess is often not imposed. Excesses may vary for prosecutions under different Acts due to the particular risk exposure of each individual insured.

What does a 'regulatory offence' involve?

Regulatory offences are a breach of a regulation, such as an Act of Parliament. Most offences covered by statutory liability policies are ‘strict liability’ offences. This means that the person or party who is alleged to have committed the offence did not intend to commit the offence.

It is enough that the prohibited act or omission was committed.

Intentional offences by an insured are not covered by statutory liability policies.

Who can charge you with a regulatory offence?

Most industry regulators can lay charges. This includes:

- WorkSafe (and other regulators, such as Maritime New Zealand) can lay charges regarding health and safety;
- The Commerce Commission can lay charges in regards to competition law, consumer services and products;
- Local Councils can lay charges regarding the Resource Management Act and the Building Act
- Maritime New Zealand can lay charges regarding maritime related issues; and
- The Financial Markets Authority can lay charges regarding financial markets matters.

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What are the potential penalties?

It depends on the circumstances, the offender and the Act that has been breached.
For example, the Health and Safety at Work Act 2015 provides for a maximum fine against a company of up to $1.5m for exposing an individual to the risk of death or serious injury.

The Act prevents insurance cover for fines, but defence costs are insurable. However, if an insured is charged with recklessness (which requires intentional conduct) such a claim will be fully excluded from the coverage. For that charge there is a maximum fine of $3 million.

Why do I need a specific statutory liability policy given I already have cover for such events under other policies?

Generally, other policies will not provide cover for your defence of regulatory offences and the fines and/or reparations imposed because of a successful prosecution.

Some other insurance policies can include parts of the cover available under a statutory liability policy. For example, Directors and Officers Liability Policies often include cover for defence costs for directors and company officers in relation to health and safety prosecutions. However, they do not usually cover fines (even where permitted) and/or reparations that might be payable by an insured.

Also, Directors and Officers Liability Policies do not usually provide any cover to the company itself. It is usually the company that receives the largest fine.

Conclusion

Regulators are becoming increasingly aggressive in their approach to investigations and prosecutions of individuals and companies with respect to possible, or actual, breaches of Acts of Parliament.

Statutory Liability policies offer unique coverage and benefits that provide for these situations and will assist you to be prepared, advised and represented should a regulator come knocking at your door.

About Fee Langstone

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