

## LEGAL LIABILITY FOR DIRECTORS DUE TO CORONA-RELATED BUSINESS EVENTS



Just as Corona virus has impacted the global communities, shattered economies with all business and trading activities shut down, resulting in death and confining billions of people in their homes, the pandemic has its own impact on the insurance sector especially what customers get as insurance coverage.

Even as the debate regarding business interruption losses due to corona shutdown, cargo lost or spoiled in transit due to logistics disruptions, workers compensation claims due to workplace infections etc are still raging, **the new concern** is about legal liability faced by CEOs, top management, Directors etc for any alleged business losses or setbacks resulting in multi-million dollar court cases.

Allegations that businesses were ill-prepared to address virus-related operational risks, staff well-being, manage business disruption or deter cyberattack or data theft are expected to form the basis of many claims against companies and their directors.

Several key cases in claims have already come up in court blaming companies and individual directors for lack of preparedness, poor contingency planning and general mismanagement where claimants have blamed directors of the Companies for causing losses to the company and also for **fall in share price** or valuation due to the alleged errors or wrong decisions.

## AMONG THE NOTEWORTHY CASES ARE THE FOLLOWING:

### LIABILITY OF DIRECTORS OF NORWEGIAN CRUISE LINE



A class action was filed against the Chief Executive and Chief Financial Officer of Norwegian Cruise Line Holdings claiming the company made misleading statements about the virus to encourage customers to book cruises even as the cruise ships with passengers were stranded in several ports.

### INOVIO PHARMA CEO FACING LIABILITY DUE TO MISSTATEMENT ABOUT CORONA VACCINE DISCOVERY



A group of individual shareholders of Inovio Pharmaceuticals filed a class action complaint against the company and its chief executive, J. Joseph Kim citing "misstatements" that the company had developed a coronavirus vaccine in three hours, when actually they could not accomplish. A Twitter message posted by an activist investment company raising doubts about the vaccine discovery, led to the crash of share prices resulting in loss to the investors who had invested in the company.



## LIABILITY MAY ZOOM IN ON ZOOM APP



A class action has also been commenced by investors against the communication platform, Zoom, accusing the company and its senior managers of concealing shortcomings in the App's software encryption, negatively impacting its share price. Zoom later made so much of improvement in the security features and the market is still unsure of using the App.

## IN INDIA



Though Class action suits are allowed as per Companies Act, it has still not caught on in a relatively calm legal market like India. There could be mushrooming cases for alleged Corporate misdemeanours with linkage to Corona. Corporates who face disruption due to bad investment decisions, employee related issues like retrenchment, closure of units etc, disputes in commercial activities resulting in disputes with suppliers and customers, breach or deviation from regulatory provisions resulting in Government actions or regulatory fines and penalties, product or project related failures resulting in business outcomes are all classic reasons for legal action on the directors or officers.

Behind every major Corporate event reported in public domain like Banks facing large NPA, organisations like NBFCs which collapsed due to discovery of major business or stock market failures, management level frauds or misdemeanours, discovery of undisclosed liabilities after merger or acquisitions are examples of where civil or criminal allegations will fall on directors or officers.

In a much changed world after Corona struck, Corporates and Insurers are taking guarded positions in whatever they do – whether in paying premium for a liability insurance policy by client and offering wide coverage in Insurance policy by the Insurers.

It would be advisable for Indian Corporates to

- Review all public statements, press campaigns, disclosures to Stock exchanges to ensure the public and investors are fully informed of any important developments.
- Review their contracts to make the obligations and indemnity provisions are carefully written.
- Review their Directors & Officers Liability Insurance policy to ensure that the coverages are updated and limits are adequate.
- Those who have not taken a D&O Liability policy at all, well it is time you give it a serious thought in order to avoid surprise legal claims against the Key Management Person (KMP) and top management.

We could see increasing underwriting scrutiny when it comes to pandemic risk, business continuity plans, impact and response plans – it has become a new feature of insurance companies asking customers the following questions:

1. How has the virus outbreak affected operations and related work-force issues?
2. Whether the company has furloughed employees or plans reduction in force as of now or in the future?
3. How stay-at-home orders have affected the company's operations and finance.
4. How the company is positioned in terms of cash resources, cash flow, liquidity, and credit.



## THESE ARE CORONA RELATED QUESTIONS ABOUT THE BUSINESS, WHETHER SUCH FACTORS WILL RESULT IN LEGAL LIABILITY TO THE COMPANY OR ANY OF THE DIRECTORS OR OFFICERS.

It is still to be seen whether there will be specific exclusions for pandemic or communicable diseases related liability exposures, whether premium rates will harden and if the Indian Liability insurance underwriters will be offering all the coverage extensions that are being given now. The only small relief is India still continues to be a less litigation-driven country where Individuals and small business firms are not rushing to courts for everything they want as a legal right, unlike Western countries.

### WHY BHARAT RE FOR YOUR D&O LIABILITY COVER



We are taking a leadership role in advising Corporates in India to cover their Management liability by tailor made Directors and Officers Liability insurance to ensure that the coverage, add-ons and extensions relevant to the customers are incorporated into the policy. In doing this, Liability Insurance experts in Bharat RE, who bring in decades of experience from Legal, Secretarial, Management, Risk Management and Dispute resolution domain, give a lot of focus and attention to understand the unique aspects of the customers' business and any extraordinary legal exposures the directors or officers may face like pharma industry facing FDA approval challenges or disputes on API discoveries, Banks and finance firms facing NPA challenges, Manufacturers facing government investigation or regulatory intervention in product or tax issues or as seen frequently IT firms facing employment or sexual harassment allegations.