



DIRECTORS & OFFICERS LIABILITY CLAIMS EXAMPLES

Shareholder Claim

A Midwest domiciled home products company retained an independent research firm to evaluate its new home product. Based on favorable review by the outside firm, the company raised in excess of \$10 million for the production and marketing of the new product. Prior to releasing the product, the company's internal evaluation team discovered, after extensive testing, that the new product did not work properly. Shareholders brought suit against the company, directors and officers for misrepresentation in the offering memorandum. The plaintiffs asserted causes of action for violation of various state securities laws. **Damages alleged in the lawsuit exceed \$15 million**

Foreclosure/Unfair Competition

A shareholder commenced a derivative action against the president of a company which develops and markets chemical compounds, after all its assets were sold. The company entered into an agreement to allow a corporation to test and evaluate its compounds. The corporation subsequently received various patents for the compounds. However, it refused to enter into a licensing agreement with the company. The plaintiff concludes that the company can assert causes of action against the corporation for: breach of contract; breach of fiduciary duty; misappropriation of trade secrets; unfair competition; fraudulent concealment; and intentional misrepresentation. The plaintiff also alleges the company series B shareholders did not approve certain loans. Subsequently, after the company defaulted on the loans, the president decided to execute a foreclosure sale of the company's assets and he advised the shareholders that he is resigning. The plaintiff alleges that the president did not promptly advise the shareholders of the foreclosure sale and he breached his fiduciary duties when failed to have the Company commence litigation against the corporation that was retained to test its compounds. The complaint is comprised of four causes of action, including: (1) negligence, (2) breach of fiduciary duty; (3) concealment; and (4) unfair competition. **Total defense costs and settlement exceeded \$750,000**

Competitor Disputes

The plaintiff filed a complaint against their competitor alleging that a former employee, now working at the competition, engaged in unauthorized use of confidential information and committed acts of unfair competition. As a result, the plaintiff alleges it has suffered irreparable and immediate injury. In addition, the plaintiff alleges that the defendant has possession of its confidential information and intellectual property. The causes of action included: misappropriation of trade secrets, violations of the Computer Fraud and Abuse Act and unfair competition. **Total defense costs and settlement exceeded \$350,000**

Government Agency

The Department of Justice brought suit against the owner, Chief Financial Officer of an east coast manufacturing company for price fixing. After an extensive trial, the allegations were dismissed due to lack of evidence, but the **defense costs exceeded \$750,000**

Inaccurate Disclosure

A suit was commenced by various investors who participated in a start-up company's private placement that raised approximately \$5 million to fund expansion. An investigation made by the plaintiffs, primarily from corporate records and documents showed that the Private Placement Memorandum contained numerous materially misleading statements and material omissions of certain facts. **Total defense costs and settlement exceeded \$500,000**

Loan Default

A diversified sports product company received a lawsuit against the President, CEO, and Chairman of the Board for not honoring a promissory note. The plaintiff alleges that it lent \$1 million to the company. The company allegedly agreed to pay the funds back within a month pursuant to the promissory note. Despite requests for return of the money, plus interest, the company has not returned the funds to the plaintiff. **Total defense costs and settlement exceeded \$250,000**

Inadequate Financial Reporting

A technology company received a complaint from an investor who alleges the company improperly induced the plaintiff to issue a note payable to the company. The plaintiff specifically alleges the company made false representations and other false statements regarding the company's forecasted rate of growth and failure to disclose its tax lien. The company defaulted on the promissory note when it failed to make the required principle and interest payments. The plaintiffs issued a demand letter and filed suit against the company. **Plaintiff agreed to accept the company's offer to convert the promissory note to stock in the company, but the defense costs exceeded \$100,000**

Deceptive Trade Practices

A private company that manages and runs a major natural resource receives a claim against the company and various members of the board of directors. The plaintiff alleges that the board of directors have used their position for their own private benefit and personal advantage, and for the benefit and advantage of their private employers. The plaintiff also alleges that the board of directors assigned a valuable

contract without receiving any consideration. The plaintiff further alleges that such assignment also constitutes misappropriation of valuable assets for the benefit of private party in violation of state codes. **Total defense costs exceeded \$250,000**

Misrepresentations/Deceptive Trade Practices

A private software company represents that it can write software for a major corporation according to the corporation's specifications; provide maintenance services for four years; and execute updates and upgrades to the software. The private company misses key delivery dates. The software fails key functionality tests and ultimately crashes and becomes inoperable. The corporation decides to withhold payments until certain milestones are met. The private software company allegedly indicates to the corporation that it needs the payments in order to remain solvent. The plaintiff alleges that the private software company represented that it could produce the software and that it was a financially stable company. The plaintiff alleges the following causes of action; misrepresentation and deceptive trade practices; and breach of covenant of good faith and fair dealing. **Defense costs and settlement exceeded \$1,000,000**

NOTE: THESE SCENARIOS ARE NOT INTENDED TO BE INTERPRETED AS COVERAGE POSITIONS. COVERAGE FOR ANY GIVEN CLAIM IS BASED UPON ITS FACTS AND THE SPECIFIC TERMS AND CONDITIONS OF THE POLICY.