



Private D&O Claims Examples

Private companies are exposed to a wide spectrum of claims that can prove extremely costly and possibly expose the personal assets of their officers and directors. Employment related litigation is a huge exposure, but it's not the only one. Suits against private companies can arise out of many facets of conducting business. Consider a couple of examples....

M&A Claim

Claim: Shareholders of privately held company sue former board of directors of a recently acquired company. Complaint alleges that directors and officers of the acquired company conspired to commit fraud, made material misrepresentations and breached the terms of the merger and acquisition agreement when they provided the acquiring company with financial information which did not accurately disclose certain revenue booking procedures thereby misrepresenting the true financial condition of the company.

Defense: All information requested was provided in the due diligence process. Since the acquiring company did not specifically ask for information on how revenue was booked, and all requested information was provided, the directors of the acquired company were not at fault.

Beazley Policy Response: Ultimately the claim was settled for \$500,000 in damages after \$125,000 in defense costs were incurred. The acquired company's BeazleyOne policy paid the entire loss of \$625,000.

Antitrust Suit

Claim: A class action suit is brought by purchasers of a private company's products alleging that its sales practices violated antitrust laws by impeding competition and inflating the cost of its goods. The complaint states that the manufacturer engaged in a practice whereby it would only supply its product to retailers who agreed not to sell cheaper competitor brands, allowing it to inflate the cost of its own goods.

Defense: The defendant answers that its goods are intended to compete with high end outdoor furniture and therefore it only sells its goods to retailers specializing in such goods and that no such agreement existed.

Beazley Policy Response: Although the complaint survived a motion to dismiss by the defendant, a verdict ultimately was awarded in the defendant's favor. Costs to defend the suit, including fees in connection with lengthy discovery, were \$465,000 and were covered by the policy.

This information is intended to be illustrative only and does not guarantee coverage under an individual policy. Coverage for actual claims depends on a number of factors including the terms and wording of the policy involved including endorsements as well as compliance with reporting requirements. These claims examples are hypothetical and are based on possible scenarios, not actual cases.