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Industry Insights

Private Equity Portfolio Firms – our claims case studies demonstrate a complex, threatening risk environment

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Private equity portfolio firms and their directors are involved in a lot more deals than most executives and face a uniquely challenging and exposed role as a result. Their task of sourcing new companies to buy, then sell for an above average return can take years, leaving plenty of opportunity for issues to arise; from minority stakeholders and employees through to poor decision making that can lead to financial claims or even class actions resulting in bankruptcy.

Our claims experts have provided a selection of scenarios demonstrating the complex challenges and issues facing Private Equity Portfolio firms and their directors:

Claims scenarios

- **Company affairs causing prejudice**

A claim was brought by the founder and former CEO, a minority shareholder, under section 994 of the Companies Act 2006 seeking relief on the grounds that the company's affairs were being conducted in a manner that was prejudicial to him.

The private equity company appointed directors and the private equity company were named as defendants in the litigation.

It was alleged that the defendant directors withheld information including company accounts, excluded him from the management of the company in breach of a shareholders agreement and used company assets for the benefit of the private equity company, to the detriment of the insured portfolio company.

- **Former alleged whistle-blower CEO lost job**

A claim was brought by the former CEO of a company acquired by a private equity firm. The former CEO alleged that he lost his job and suffered various other losses by reason of being a whistle-blower. He sued not only the portfolio company but also the private equity company. His claim was for over GBP 200 million, although this was heavily exaggerated.

- **Breach of warranty & director duties against portfolio company directors**

A claim was brought by the purchaser of the insured portfolio company, seeking recission of the share purchase agreement. Also alleging misrepresentation, breach of warranty and breach of director duties against the private equity company directors appointed to the board of the portfolio company.

- **Fines handed out to portfolio firm directors & PE firm directors due to Enforcement action**

A regulatory investigation into the marketing and pricing of the portfolio company's flagship product. Five directors were called to attend an investigation requiring legal representation. Enforcement action was commenced and a significant fine was handed down against both the insured portfolio company and private equity company.

- **Alleged mismanagement due to insolvency**

The insured, a once successful private equity owned footwear retailer, was forced to declare insolvency following a sharp fall in revenue. Claims were subsequently brought against the private equity company and the directors appointed to the board of the insured portfolio company. The claims alleged mismanagement and the claimants were seeking to claw back dividends distributed from the insured portfolio company to the private equity company.

Our new solution for Private equity portfolio firms covers the whole life cycle of an investment portfolio, from purchase to exit and everything in between. In addition to our new solution, our Mergers & Acquisition team offer specialist cover at the buying and selling stages. With transparent pricing, automatic faster renewals and reduced admin, we offer client certainty for the long term.

Find out more on our new solution: Private Equity Portfolio Liability | beazley

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