

# The Risk is Real

Many biotechnology company executives consider their largest exposure to litigation as a privately held company to be employment related. Monitor Liability Managers' claims experience over the past couple of years has proven otherwise.

To date, over a quarter of the claims received by Monitor on the Management Liability policy form have been brought against the Directors and Officers or the Corporate Entity and have not included allegations of a Wrongful Employment Act.

Allegations being charged against companies in the biotechnology field cover a broad spectrum including antitrust, breach of fiduciary duty, deceptive trade practices, unjust enrichment, fraud, misrepresentation and securities violations.

Here are some examples of situations where Monitor Liability Managers is helping its insureds defend and resolve actual actions filed against them.

## Unfair Competition

The claimant, a biotechnology and engineering company, developed a significant process for treating cancer, dermatologic and pulmonary diseases, viral infections and wound healing. The company holds a patent for the process and its use and claimed our insured obtained a license from another company to reproduce the product using a different process. The claimant filed five counts against our insured.

Allegations ranged from: false and misleading description of fact (violation of Lanham Act), libel and slander, tortious interference and unfair competition. The insured denies the claimant's allegations. Possible damages could be in the millions.

## Unfair Business Practices

In a class action suit in California, plaintiffs alleged that an herbal supplement produced by the insured causes serious health problems. The suit seeks disgorgement of profits and restitution for fraudulent acts and unfair business practices. Several international health agencies, including the FDA, have issued warnings that the supplement has been linked to severe liver damage. The damages sought are for 75 percent of California sales spanning four years.

## Fraud/Misrepresentation

A medical research company that we insure entered into a partnership agreement with a doctor for the development of a potential product that our insured had identified and was planning to patent. The doctor filed suit against our insured alleging that the company misrepresented the product and its potential for patent. The doctor also claimed that after he invested several hundred thousand dollars, he discovered that the product was not what the insured claimed it to be and that it could not be patented. Monitor is alleviating the insured's financial burden by assisting in the payment for both defense and potential indemnity expenses.

These cases all can be very costly and Monitor's duty to defend obligation is alleviating our insureds from the significant legal costs associated with defending corporate lawsuits. These insureds are now able to focus on their day-to-day business activities and use their money and resources for the good of the company as opposed to defending themselves against a corporate lawsuit.

