

Securities Lawsuits Are Not Your Only Risk — Are Your Directors and Officers Protected?

During the economic downturn, there has been a surge of claims against companies' directors and officers for improper disclosures, misrepresentation, wrongful conduct and other violations of federal or state laws. Companies of all sizes have been subject to corporate and securities litigation. Defending such claims is expensive — awards and settlements averaged \$32 million in 2009.¹ Escalating defense costs continue to be a concern for public companies, particularly those in the small to midsize capitalization sector. A significant factor in rising defense costs is the complexity of these types of claims.

Your business could be at risk. Protect it with superior Directors and Officers insurance provided by Monitor Liability Managers, LLC. Here are a few claims examples companies like yours have faced.

Directors and Officers Liable — Former CEO Indicted

Wrongful Conduct / Misrepresentation

A specialty foods company filed for Chapter 13 bankruptcy. During the proceedings, the bankruptcy trustee alleged wrongful conduct against the company's directors and officers. He claimed that they were responsible for the company's insolvency. In addition, the Securities and Exchange Commission (SEC) indicted the former CEO for allegedly causing the company to issue a press release which contained materially false and misleading information. The press release was allegedly used to engage stock promoters to disseminate the false and misleading information. The settlement and defense costs exceeded \$500,000.

Defense Costs \$3 Million

Misrepresentation and Zone of Insolvency

Three lawsuits were filed against a drug manufacturer after filing for bankruptcy. The first complaint alleged violation of federal securities laws. The second was a consumer fraud class action alleging the directors and officers made misrepresentations about the product the company sold. In the final complaint, the bankruptcy trustee alleged waste of corporate assets, fraudulent conveyance and sought return of salaries paid to the directors and officers of the company. The case settled for nearly \$2 million, but Monitor paid more than \$3 million in defense costs.

SEC Sues Software Development Company

SEC Investigation

The SEC issued an order for the investigation of a software development company. Allegations included failure to maintain books, records and accounts in reasonable detail, failure to have sufficient internal account controls, and falsifying books and records. The SEC filed suit against the directors and officers of the company. Monitor has paid approximately \$2 million in costs to defend our insured.

Customer Sues Company

Anti-Kick Back

A defense contractor sued its provider of data storage and document imaging solutions in response to their own lawsuit from the government. The government alleged that the defense contractor defrauded the military under the Anti-Kickback Act. The provider obtained a dismissal of the defense contractor's lawsuit. This case cost the insurer \$457,000 in settlement and defense costs.



¹Advisen Report, "Securities Suites Abound in 2009"