

# Life Science Executive Liability Risks Examined

Many executives believe their largest exposures come from industry-specific issues, such as product safety or efficacy. While this may have been the case prior to 2009, a stronger focus on allegations of financial improprieties now exists. Allegations against life science companies include antitrust, breach of fiduciary duty, deceptive trade practices, unjust enrichment, fraud, misrepresentation, securities violations and wrongful employment actions.

Both public and private companies should be aware of the unique exposures that exist in the life science industry. For nearly two decades, Monitor has insured diverse life science companies and understands the risks they face.

To follow are some examples of actual situations where Monitor has defended and resolved claims filed life science companies.

## Fraud/Misrepresentation

Shareholders filed a class action lawsuit alleging that a manufacturer of therapeutics for human and veterinary use engaged in insider trading and made false and misleading public statements concerning the commercial viability of its product. As a result, of the false statements, the stock price traded artificially high. After the FDA announced it had halted clinical trials of the product due to safety concerns, the stock price dropped more than 15%. In addition, Monitor worked with the defense counsel and other insurers to negotiate a settlement. Monitor paid the defense costs and a portion of the settlement costs.

**Defense costs exceeded \$658,000. The case settled for more than \$9 million.**

## SEC Investigation

The shareholders of a biological manufacturing company filed a class action lawsuit. They alleged that the company used improper revenue recognition policies and practices; failed to properly account for and value inventory; failed to prevent certain board members from exerting unwarranted influence on the financial reporting process during the audit process; and failed to maintain adequate internal controls.

The Securities and Exchange Commission (SEC) commenced the investigation, with a subpoena for documents. The grand jury also issued a subpoena to the Corporate Secretary for documents.

The company filed bankruptcy, leaving only directors and officers as defendants. The policy provided coverage to both the company and the directors and officers. Monitor paid the defense costs and settlement costs.

**Defense costs totaled \$1.4 million. The case settled for \$3 million.**

## Misappropriation of Trade Secrets

The plaintiff, an East Coast biotechnology company, alleged that it developed a patented process for manufacturing specific biopharmaceutical therapies. They asserted that the defendant company developed a similar process and by doing so misappropriated trade secrets, engaged in unfair competition, false advertising and interference with a business relationship. After a four-month trial in federal court, the jury awarded the plaintiff several million dollars. The defendant filed numerous post-trial motions and eventually the judge overturned the jury verdict. The plaintiff filed an appeal that was denied.

**Monitor paid more than \$2 million in defense costs.**

