

Private Company Directors & Officers Liability Case Studies: U.S.

Directors and officers of private companies face a wide range of management liability exposures, not limited to traditional antitrust and bankruptcy matters. Heightened regulatory scrutiny, an aggressive and extensive plaintiffs' bar representing customers and competitors, and shareholders alleging breach of fiduciary duty have intensified in today's complex, rapidly evolving business environment, underscoring the need for organizations to have robust directors and officers (D&O) liability insurance.

The following case studies illustrate the broad range of risks faced by these leaders and the benefits of comprehensive D&O liability coverage and a commercially minded carrier in responding to these risks.

Non-Profit Executives Face Fraud and Civil Conspiracy Allegations

Industry: Construction

Region: South

Size: \$50,000+ annual revenue

An insured affordable housing developer and its CEO faced claims as third-party defendants in an action between a project owner and general contractor. The general contractor alleged fraud and civil conspiracy, citing an undisclosed relationship between the insured, who was hired as the project developer, and the project's architect. The contractor alleged that the architect inappropriately denied the contractor's repeated change requests to suppress project costs to the benefit of the developer. It also alleged the developer and architect influenced the project owner's decision to wrongly terminate the contractor. AIG worked closely with the insured to understand the nature of the allegations and evaluate the risks and benefits of either settling the claim or proceeding to trial. Confident in their defense strategy, they agreed to litigate. A jury ultimately returned a verdict in favor of the insured, with no damages owed. The AIG policy covered approximately \$900,000 of defense costs.

Competitor Alleges Employee Brought Trade Secrets to New Employer

Industry: Packaging

Region: West

Size: \$1+ billion annual revenue

A competitor filed suit against an insured packaging company and its sales manager for breach of contract, misappropriation of trade secrets, and intentional interference with prospective economic relations, alleging the sales manager stole their confidential information when he left their company for employment with the insured. AIG worked with the insured and defense counsel to develop a mediation strategy to quickly resolve the claim. AIG also coordinated with the other insurers involved to ensure claims handling consistency and cooperation. With AIG's extensive experience in similar claims and counseling the client through the mediation process, the claim ultimately settled for approximately one-fifth the original demand. The AIG policy paid more than \$1 million.

CEO Indicted on Bribery Charges

Industry: Healthcare

Region: Central

Size: \$1+ billion annual revenue

A grand jury indicted the founder and CEO of a healthcare company, alleging he engaged in a quid pro quo relationship with a government official to secure a state medical services contract. AIG worked closely with the insured to understand the circumstances of the claim and develop a defense strategy, exercising diligence and discretion in handling the matter given the sensitive nature of the allegations and their significant implications for the insured. The AIG policy paid approximately \$7 million in defense costs.

Immediate Crisis Response Mitigates Media Exposure

Industry: Non-governmental organization (NGO)

Region: Mid-Atlantic

Size: \$150,000+ annual revenue

An insured NGO learned that a media outlet intended to run a story alleging that the NGO improperly removed children from their homes. The insured immediately notified AIG and within one day the matter was accepted as a crisis event, and thereby covered under the CrisisFund® coverage of the organization's D&O policy. AIG and the insured immediately engaged a leading public relations firm and worked together to develop a strategy to defend the allegations and mitigate exposure, expeditiously and successfully preventing a claim. Within days of notification, the AIG policy paid \$25,000 of crisis services expenses.

Conflicts Alleged by Classes of Creditors

Industry: Manufacturing

Region: Northeast

Size: \$90+ million annual revenue

A lender sued the executives of an insured chemical manufacturer for breaches of duty in connection with a lending agreement, alleging the executives had inappropriately advantaged other creditors of the company and that their actions had created significant financial loss for the company and the lender. Cognizant of potential conflicts between the multiple defendants, AIG ensured that each of the three insured executives was individually represented by experienced defense firms. With extensive experience in similar matters, AIG worked closely with the defendants and counsel to achieve a settlement of one-fourth the initial demand amount and within a short time frame. This expedient resolution enabled the insured to complete a pending acquisition transaction that had been on hold due to the litigation. The AIG policy paid more than \$3 million towards the settlement.

AIG has more than six decades of experience providing management liability solutions for private companies and their directors and officers. Our extensive knowledge, resources, and data enable us to tailor solutions to our client's individual needs, and our financial strength, integrated claims model, and proven claim expertise ensure that we are there, helping to drive optimal outcomes for our clients.

Executives Face Claims in Bankruptcy

Industry: Food Service

Region: Central

Size: \$100+ million annual revenue

An insured specialty food producer faced involuntary bankruptcy after an investment by one of the company's largest lenders fell through. In the bankruptcy proceeding, the trustee filed claims against the company's executives on behalf of the company's unsecured creditors, asserting that they failed to maintain and preserve certain license agreements, which allegedly decreased revenues and led to insolvency. AIG worked expeditiously with the insured towards an early resolution, engaging with the trustee's counsel to quickly resolve the claim. In the process, AIG proactively identified and defended an additional executive who had not previously appeared in the action and faced potential default judgement. Due to AIG's proactive efforts, significant experience with similar matters, and close collaboration with the insured and defense counsel, the claim settled for less than half of the original demand amount in less than four months. The AIG policy provided coverage for the full settlement amount and defense costs, which exceeded \$1 million.

Contact

For more information, please contact your local Financial Lines underwriter or email FinancialLines@aig.com.



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