

Private Company D&O Claims

How Much Could It Really Cost Me?

The following examples illustrate some of the situations private companies could face which may result in claims being brought against the companies and the people who manage them. When you **CONSIDER** the cost of defending these claims plus the **RISK OF A SUBSTANTIAL JUDGMENT OR SETTLEMENT**, you should ask yourself if you and your company can afford not to carry a D&O policy.

\$2,500,000

The vice president of a manufacturer determined that diversification into a different product line presented tremendous sales potential for his company. Instead of presenting that opportunity to his employer, the VP shared it with his brother who formed a new company to produce that product. On behalf of the company, a **SHAREHOLDER SUED THE VP** alleging that he **WRONGFULLY TOOK ADVANTAGE** of an opportunity belonging to the corporation. The suit eventually settled for \$2.5 million.

\$850,000

A company recruited a top sales executive who had an employment contract with a competitor company. The **COMPETITOR SUED** the company for damages suffered as a result of losing its top sales producer on the grounds that the **COMPANY INTERFERED WITH THE COMPETITOR'S CONTRACTUAL RELATIONSHIP** with its employee. Defense expenses were in excess of \$250,000 and the competitor was awarded damages of \$600,000.

\$2,500,000

After reporting multiple incidents of repeated **SEXUAL HARASSMENT** by a supervisor, an employee alleged the supervisor began a systematic campaign to force the employee to resign. The jury award in this retaliation/wrongful termination complaint was \$210,000 for mental anguish, \$330,600 in lost income and **\$1,956,240 IN ATTORNEYS' FEES**.

\$1,800,000

An employee of a small business convinced the board of directors that he was qualified to step into the role of president of the company, and he was appointed. Under his leadership, the company's financial position substantially weakened. On behalf of the company, a shareholder sued the **BOARD OF DIRECTORS** alleging that they used poor judgment and **DID NOT ACT IN THE BEST INTERESTS OF THE COMPANY** when they appointed the new president. The case eventually settled for \$1,500,000 and legal fees totaled \$300,000.

\$500,000

A retailer advised one of its suppliers that it ought to increase inventory because business was expected to increase significantly. Business did increase for the retailer but it decided to use a different supplier for the increased inventory. The original **SUPPLIER SUED** the retailer alleging that he relied on the retailer's promise of more business and suffered damages **AS A RESULT OF HAVING RELIED ON THAT PROMISE**. The matter was eventually settled for \$500,000.

\$497,711

An employee sued a northeastern water treatment company alleging **NATIONAL ORIGIN DISCRIMINATION** in violation of Title VII. The plaintiff was awarded a total of \$265,000 in damages, comprised of \$150,000 in compensatory damages and \$115,000 in back pay. In addition, the court awarded attorneys' fees and interest in the amount of \$232,711. The **COMPANY ONLY HAD 15 EMPLOYEES**.

\$1,065,000

A jury awarded **DAMAGES OF \$1,000,000** to a terminated employee after she sued a privately owned service company for **WRONGFUL TERMINATION** and breach of employment contract, as well as an implied covenant of good faith and fair dealing. Attorneys' fees totaled \$65,000.

\$1,250,000

A **SHAREHOLDER DERIVATIVE ACTION** against a wholesaler and its directors alleged breach of fiduciary duty. The plaintiff alleged the **DIRECTORS** breached their fiduciary duties and **WASTED CORPORATE ASSETS** in connection with certain business transactions with affiliated companies. The case settled for \$1,100,000 and attorneys' fees amounted to \$150,000.

\$1,650,000

Investors filed a \$5 million derivative lawsuit against a private company alleging breach of fiduciary duty. The investors claimed that some of the company's officers had personal connections to the third party contractor hired to re-tool the company's assembly line and hired that contractor to further their personal interests, not the interests of the company. Other **OFFICERS AND DIRECTORS** were alleged to have either **KNOWINGLY COLLUDED WITH ONE ANOTHER**, or at least breached their duty of care in undertaking the project without properly investigating the qualifications of the contractor. The suit settled for \$1.5 million with an additional \$150,000 for attorneys' fees.

\$2,150,000

During a press conference the president of a service company stated that the success of his company was due in large part to a competitor's lack of customer service and inferior product. The competitor filed suit alleging that the **PRESIDENT HAD NEGLIGENTLY INTERFERED WITH BUSINESS RELATIONS**. The jury agreed and awarded the competitor \$2 million in damages. The attorneys' fees for this case amounted to \$150,000.

\$2,300,000

A federal judge approved a **\$2 MILLION SETTLEMENT** of a lawsuit filed by current and former employees who alleged that they were **VICTIMS OF RACE DISCRIMINATION**. Plaintiffs' attorneys' fees amounted to an additional \$300,000.