Side-A DIC Insurance Claim Scenarios

Today's directors and officers face ever greater risks of personal liability in executing their corporate responsibilities. The following claim scenarios illustrate the benefits of Side-A DIC (difference in conditions) coverage in responding to these risks.

Derivative Settlement Triggers Side-A Coverage

Shareholders of a Delaware corporation commenced a derivative action against the company's directors, alleging that they had breached their fiduciary duties by authorizing the acquisition of certain affiliated entities at exorbitant prices. After the defendants' motion to dismiss on demand futility grounds was denied, the parties reached a settlement. Among other things, the settlement required a large payment to be made to the company on behalf of the settling defendants. Delaware law prohibits indemnification of amounts paid to corporations in settlement of derivative suits because such payments would be circular. Therefore, the settlement amount was paid under the Side-A coverage of the company's ABC and Side-A towers.

Financial Insolvency Leads to Non-Indemnifiable Loss

A bankruptcy trustee filed an action against the board of directors and insured executives of an energy company, alleging improper transfer of nearly $100 million prior to the company's insolvency. The trustee alleged fraud against several of the defendants arising out of their participation in the transfer of the funds and alleged negligence and breach of fiduciary duty against the remaining defendants arising out of their failure to prevent the transfer. Coverage under the Side-A policy was triggered because the company's underlying ABC policy limits were exhausted by numerous legal actions and the company was unable to provide indemnification due to its insolvency. Ultimately, the entire Side-A policy limit was exhausted by defense costs and settlement payments.

Professional Services Exclusion Triggers DIC Provision

A former insured executive of a consulting company was alleged to have engaged in a scheme to defraud and obtain money and property through false and fraudulent conduct, including the issuance of false invoices for professional services rendered. A federal criminal indictment was served against the executive. The claim was submitted to the company's ABC D&O carrier, but coverage was not available under this policy based upon the professional services exclusion in that form. Given the basis of the denial under the primary policy, coupled with the company's refusal to indemnify the executive, the Side-A policy dropped down to pay the executive's defense costs based on the DIC feature in the form.

Minority Investor Claim Triggers IvI Exclusion

An early investor in a Silicon Valley start-up company filed suit against the company's former CEO for fraud and breach of fiduciary duty arising out of the defendant's alleged gross mismanagement of the company. Based on the nature of the allegations in the complaint, the company refused to indemnify its former CEO. The claim was submitted to the primary ABC D&O carrier, but the plaintiff in this case held a board seat at the company and qualified as an insured under this policy, triggering the Insured vs. Insured ("IvI") exclusion. The claim was ultimately covered under the Side-A policy based on the DIC feature and the lack of an IvI exclusion in the form.

Drop Down Coverage for Wage and Hour Claim

Claimants filed suit against the CEO of a public company, alleging wage and hour violations under the Fair Labor Standards Act ("FLSA"). The company had filed for bankruptcy protection and was not named as a defendant. The ABC tower of insurance denied coverage based on the FLSA exclusion in the primary policy. In addition, company indemnification was not available due to the bankruptcy proceedings. As a result, the Side-A DIC policy dropped down to provide coverage for defense and settlement costs.

TCPA Claim Triggers DIC Coverage

The insured company and its former CEO were sued for alleged violations of the Telephone Consumer Protection Act ("TCPA"). The former CEO had been ousted by the company's board in an acrimonious battle for control of the company. As a result, the company refused to indemnify the former CEO in connection with the TCPA suit. In addition, the ABC D&O carriers denied coverage on the grounds that the primary policy barred coverage for any claim alleging a violation of a person's right to privacy. Since the Side-A DIC policy did not follow the primary policy's privacy exclusion, coverage was provided on a drop down basis for the former CEO's defense costs.

Reputational Issues Lead to Refusal to Indemnify

Senior executives at a large non-profit organization were indicted for their alleged roles in a criminal conspiracy involving the misuse of federal funds. Based on the criminal nature of these allegations, the organization refused to indemnify these executives and the ABC portion of the tower was insufficient to cover all of the legal fees incurred in the defense of the criminal cases. As a result, these fees were covered under the Side-A policy.

For more information please contact your underwriter or visit www.aig.com/side-a

The scenarios described herein are offered only as examples. Coverage depends on the actual facts of each case and the terms, conditions and exclusions of each individual policy. Anyone interested in the above product(s) should request a copy of the policy itself for a description of the scope and limitations of coverage. American International Group, Inc. (AIG) is a leading global insurance organization. Founded in 1919, today AIG member companies provide a wide range of property casualty insurance, life insurance, retirement products, and other financial services to customers in more than 80 countries and jurisdictions. These diverse offerings include products and services that help businesses and individuals protect their assets, manage risks and provide for retirement security. AIG common stock is listed on the New York Stock Exchange and the Tokyo Stock Exchange. Additional information about AIG can be found at www.aig.com | YouTube: www.youtube.com/aig | Twitter: @AIGinsurance www.twitter.com/AIGinsurance | LinkedIn: www.linkedin.com/company/aig. These references with additional information about AIG have been provided as a convenience, and the information contained on such websites is not incorporated by reference into this material. AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. For additional information, please visit our website at www.aig.com. All products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Products or services may not be available in all countries, and coverage is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. Certain property-casualty coverages may be provided by a surplus lines insurer. Surplus lines insurers do not generally participate in state guaranty funds, and insureds are therefore not protected by such funds.

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