AIG

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

Directors and officers of public companies today face more pressure than ever in a rapidly evolving litigation and regulatory environment. An aggressive plaintiffs' bar coupled with heightened regulatory oversight has created an increased focus on these entities and their leaders, underscoring the need for organizations to have robust directors and officers (D&O) liability insurance.

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

Startup Impacted by Pump-and-Dump Scheme Faces SEC Probe

Industry: Pharmaceutical

Region: West

Size: $0 annual revenue (developmental stage)

The Securities and Exchange Commission (SEC) requested an interview with an executive of an insured early-stage pharmaceutical company after a fraudster manipulated the company's stock in an apparent pump-and-dump scheme. Initially, the executive considered using the company's own counsel to provide defense and advice regarding the investigation, however AIG recommended an AIG securities claim panel firm with significant experience in SEC investigations. The executive and the company agreed to the recommendation and later learned the company's original law firm was itself under an SEC investigation. As a start-up, the company was unable to pay expenses within its D&O policy's self-insured retention. AIG advanced the amounts within the retention on behalf of the executive. The SEC investigation was ultimately completed with no action brought against the company or its executives.

Tax Inquiry Leads to Costly Investigations and Related Lawsuits

Industry: Packaging

Region: Southeast

Size: $5 billion annual revenue

The SEC, Internal Revenue Service (IRS), and Department of Justice (DOJ) launched an investigation into an insured logistics company after the IRS questioned the insured's tax treatment of money paid to settle litigation. When a national newspaper publicized the investigations, the company's share price crashed, quickly prompting the filing of securities class action and shareholder derivative suits against the company and its executives. Prior to the filing of the suits, the company spent more than $20 million responding to IRS, DOJ, and SEC questions. As the company's AIG insurance policy included investigation response costs coverage with a lookback grant for investigation costs incurred before the filing of a related securities claim, these expenses were insured. The shareholder suits alleged corporate and executive misconduct and named the company and several executives as defendants. Due to significant conflicts between the insureds, AIG retained multiple law firms to ensure each insured had separate and effective legal representation. With AIG's help, the insureds were able to resolve, without admission of wrongdoing, both the securities suit by paying a $10 million settlement and the derivative suit by revising the company's audit, accounting, and financial reporting practices. However, due to the complexity of the regulatory investigations, the insureds spent over $50 million to conclude them.

Aggressive Defense Succeeds in Securities Lawsuit

Industry: Technology

Region: West

Size: $90 billion annual revenue

Shortly after the initial public offering of an insured technology company, a larger, better-known firm announced it would begin competing directly with the insured, leading to a large drop in the insured's share price. Shareholders of the insured filed a lawsuit alleging violations of Section 11 of the Securities Act of 1933, alleging the company should have more forcefully disclosed possible risks of future competition. AIG's claims team, the insured, and its counsel pursued an aggressive defense strategy. The insured incurred more than $3 million in defense costs, but the strategy succeeded, as the court dismissed the suit with prejudice. The AIG policy covered the defense costs that exceeded the policy's retention.

Firm Settles Workplace Misconduct Lawsuit

Industry: Consumer Goods

Region: Midwest

Size: $10+ billion annual revenue

In response to disclosures of alleged egregious mistreatment of an insured consumer goods company's workforce, the company's shareholders brought a derivative action accusing current and former executives of breaching their fiduciary duty through failed oversight, which allegedly allowed a culture of discrimination, bullying, and harassment. Working closely with the insureds, AIG's claims team was able to resolve the case for one-fifth of the plaintiff's original demand and an agreement to implement initiatives for employee training and harassment reporting.

AIG has more than six decades of experience providing management liability solutions for 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.

Contact

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502-03-0425US