



Private Company D&O Claims Examples

Note that the examples below are illustrative of potential D&O risk exposures; they are not intended to be, nor should they be, interpreted as a guarantee of coverage.

Breach of Contract

Breach of contract alleged against Angel Food Ministries

A breach of contract lawsuit was filed by a vendor against Angel Food Ministries a few weeks after the not for profit shut down. The vendor accused the former ministry of failing to pay for, or return food, that had already been delivered to the ministry before it closed its doors.

<http://www.christianpost.com/news/angel-food-ministries-sued-for-breach-of-contract-57980/>

Creditor, Vendor, Breach of Contract

A Music festival's main investor sued the company that created, booked and ran the three-day festival along with its two partners, for more than \$400,000. The investor alleged breach of contract, nonpayment of a loan and fraud after he was promised he would be the festival's exclusive vendor.

http://www.omaha.com/news/metro/investor-sues-grassroots-music-festival-organizers-vendors-call-for-money/article_30d67bff-67e3-5ec7-80e7-875a192834ee.html

Vendor Lawsuit for Tortious Interference with a Contract

Empire Trucking Co., accused its supplier of tortious interference with a contract. Empire, which was contracted to haul the supplier's coal, subcontracted much of that work to other trucking companies. The rising costs in fuel prices caused Empire to impose fuel surcharges on the coal supplier, who complied with those charges. However, as those surcharges began to rise, the coal supplier allegedly stopped paying Empire. Although Empire reportedly continued to provide services, without revenue from the coal supplier, Empire eventually lost the subcontractors. The coal supplier allegedly solicited the subcontractors to work directly for them and told the subcontractors that Empire was being paid for the work performed. Empire sued the coal supplier for breach of contract and for tortious interference with Empire's contracts with the subcontractors. A jury found in favor of Empire on both counts and awarded over \$2 million in compensatory and punitive damages. <http://www.eckertseamans.com/wp-content/uploads/2015/11/Allen-Kevin-LegalIntelligencer1030131.pdf>

Creditor Breach of Contract Lawsuit

A group of creditors sued a power company that was undergoing restructuring of its debt. The creditors claim that the power company's restructuring plan did not compensate them according to the terms of their debt contracts. <http://www.dallasnews.com/business/business/2014/05/16/creditors-sue-energy-future-for-665-million>





Breach of Fiduciary Duty

Hospital sued for breach of fiduciary duty

North Shore Hospital, a FL hospital, faced a breach of fiduciary duty lawsuit brought by 12 former patients over the theft and dissemination of their private and protected information. The patients claimed they were the victims of identity theft after information contained on their medical records was stolen from the hospital. They asserted that the hospital was negligent in allowing this data to be stolen, and that the resulting breach of fiduciary duty also violated their contracts and is in violation of HIPPA laws. <http://www.payton-law.com/blog/2013/02/hospital-sued-for-breach-of-fiduciary-duty.shtml>

Employment

Negligent Hiring & Supervision

A home health agency was sued by a client for negligent hiring and supervision. According to the complaint, the home health agency reportedly did not conduct a background check before hiring an employee that had an extensive criminal history. The plaintiff alleged that the employee stole belongings from her home, transferred property titles and made “unauthorized expenditures” from her bank account. <http://www.courthousenews.com/2016/09/30/health-care-firm-hired-swindler-for-elder-care.htm>

Negligent Hiring & Supervision

A customer filed a lawsuit against Wal-Mart Stores, Inc., alleging that the store’s employees unlawfully, stopped, detained, searched, and interrogated him. The customer was confronted in the parking lot for allegedly stealing store merchandise. No store merchandise was found in the customer’s possession. A jury determined that Wal-Mart was negligent in hiring, training or supervising its employees which resulted in damages to the customer. The jury awarded the plaintiff \$20k in compensatory damages for past mental pain and suffering and \$30k in punitive damages. <http://caselaw.findlaw.com/wi-supreme-court/1252980.html>

Fraud/Misrepresentation

Lease Lessor Fraud and Misrepresentation

An equipment lessee, Eureka Broadband Corporation, sued a finance lease lessor for fraud, breach of contract and unjust enrichment. Eureka negotiated to lease equipment through a finance lease company. The finance lease company acted as the intermediary between Eureka and the businesses selling the equipment. Eureka alleged that although they made payments on the equipment as agreed, the finance lease company did not pay the funds to the businesses that sold the equipment. The court found in favor of Eureka. <https://www.hklaw.com/publications/Lessor-Under-a-Finance-Lease-Liable-for-Fraud-in-Procuring-the-Finance-Lease-by-Misrepresentation-05-16-2005/>





Vendor Fraud and Misrepresentation

A forklift company sued a lift distributor company for fraud and misrepresentation for allegedly failing and refusing to refund approximately \$100k or deliver the product that it ordered.

<http://www.forkliftaction.com/news/newsdisplay.aspx?nwid=15194>

Recruiter Fraud

A recruiter was sued for fraud and misrepresentation by a medical group. The complaint alleged that the recruiter, who solicited the plaintiff's business to recruit staff for their operation, collected a 'finder's fee' for all personnel hired by plaintiff. The defendant was allegedly told that the staff hired had to conform to certain Medicare regulations in order to bill and receive payments. However, the physician that was hired through the recruiter's service, did not comply with the stated regulations. The medical group sought damages in excess of \$600k plus court costs. <http://setexasrecord.com/stories/510622342-medical-recruiter-sued-for-fraudulent-business-practices>

Unfair or Deceptive Trade Practices, Infringement

Trade Secrets

An equipment rental company alleged that key executives took confidential trade secrets, including the rental company's pricing, customer and salary information, along with some employees and moved to a competing company. The key former employees were named as individual defendants in this action. According to the lawsuit, the defendants were able to help the competing company gain market presence in the plaintiff's territory that the competing company previously did not have. The rental company was awarded damages of \$5 million, which were trebled to \$15 million, as well as attorney fees of \$1.2 million. <http://caselaw.findlaw.com/nc-court-of-appeals/1150153.html>

Misappropriation of Trade Secrets

Maxum Petroleum, an oil company, filed a lawsuit for misappropriation of trade secrets alleging that a former employee, wrongfully accepted a position with a competing company that would inevitably cause him to disclose insider knowledge about Maxum. The employee worked for 25 years as the Vice President of Sales in the energy department and was hired by a competing oil company. Maxum alleged misappropriation of trade secrets and breach of contract. <http://tsi.brooklaw.edu/cases/maxum-petroleum-inc-v-hiatt-et-al/filings/oil-company-files-federal-lawsuit-after-former-emplo>

Vendor Lawsuit

Halifax Health was sued by a spinal implant distributor who accused the hospital of violating bidding rules and improperly showing favoritism toward another longtime vendor. The lawsuit was settled with Halifax paying a \$550,000 settlement to the implant distributor. <http://www.news-journalonline.com/news/20141129/halifax-health-settles-vendor-lawsuit-for-550000>





Regulatory

Regulatory Action & Fraud

The U.S. Government sued a business man, and his medical device company, for violations of the False Claims Act, a federal law that prohibits people from submitting false or fraudulent claims for payment to the federal government. The civil suit claimed that the offenders defrauded the government by submitting false claims about the business' personnel, facilities and accounting systems. The government alleged that they received federal grants worth over \$600,000 to support the development of medical devices, but that the grant funds allegedly were spent on personal expenses, meals, entertainment and other disallowed business expenses. According to the complaint, the medical device company also falsified entries in its accounting ledgers and created false invoices in order to hide from the government that the federal grant funds had been misused. If the defendants are found liable, they would be responsible for paying three times the amount of loss proven at trial, plus additional penalties for each false claim. <https://www.justice.gov/usao-edky/pr/lexington-man-and-his-medical-device-company-sued-grant-fraud>

SEC Action

The SEC accused a company's owners of withholding important information about the company and cheating the former employees out of millions of dollars. A private company allegedly allowed employees to acquire shares of the company's common stock that were valued by a third-party consultant annually. Employees, typically upon retirement, death, or termination of employment, sold their stocks back to the company because of the lack of marketability of the shares. According to the SEC, when the company was valued for a proposed sale, the valuations were significantly higher than the valuations that were done for the employee repurchasing of shares. These higher valuations were allegedly not disclosed to the company's stockholders. Purportedly, the company did not disclose the ongoing negotiations for the potential sale of the company. http://www.martindale.com/corporate-law/article_Stites-Harbison-PLLC_1412878.htm securities law obligations.

http://dealbook.nytimes.com/2011/12/12/s-e-c-accuses-stiefel-scion-of-cheating-former-employees/?_r=0

<https://www.sec.gov/news/headlines/wastemgmt6.htm>

Shareholder / Investor

Medtronic shareholder sues over merger tax hit

Shareholders filed a lawsuit against medical device maker, Medtronic, over their purchase of a health care products company. The suit alleged that long-time investors would be hit with substantial near-term taxes. They argued that the "reverse merger" structure of the deal, would result in a substantial loss to Medtronic shareholders who would be forced to pay taxes on any gains in the new stock.

<http://www.twincities.com/2014/07/16/medtronic-shareholder-sues-over-merger-tax-hit/>





Minority Shareholders Lawsuit

A group of Capital Brewing minority shareholders alleged misconduct against the brewery's majority ownership. The minority shareholders claimed that they were left out of important decisions, including an offer to purchase the business. The lawsuit claimed that the brewery's president and director were running Capital Brewery for their "personal gain" at the expense of the minority shareholders' interests. The suit asked the court to dissolve the brewery, with a forced buyout and to distribute company assets. Compensatory and punitive damages were also being sought. <http://www.ibmadison.com/In-Business-Madison/July-2014/Capital-Brewery-minority-shareholders-file-suit-against-majority-owners/>

Corinthian Colleges (COCO) Shareholder Derivative Lawsuit

A shareholder derivative action was brought against certain officers and directors of Corinthian Colleges (COCO). The CA Attorney General filed an action against the college alleging that they misrepresented important metrics about their college programs to potential students and investors. The shareholder derivative action sought damages from officers and directors for violating their duties to shareholders for personal gain. <http://www.classactionsnews.com/investments/corinthian-colleges-coco-shareholder-derivative-lawsuit>

