

Chubb's D&O Liability Insurance

CREATING CERTAINTY FOR CANADIAN PRIVATE COMPANIES



Directors and Officers of privately held companies in Canada face increasing risk. Take a look at these loss scenarios and then ask whether your customers have the proper insurance protection.



Smith, Jones and White Claim

COVERAGE SECTION Directors and Officers Liability

Claim Breach of Contract

Company Privately Held

Number of employees 650

Annual Revenue \$115 Million

Smith, Jones and White, as a partnership, sought to purchase two properties owned by ABC Company. The properties were valued at between \$250M and \$300M.

Negotiations were entered into and a due diligence investigation was conducted during which Smith, Jones & White obtained confidential information. White, one of the partners, elected to drop out of the partnership but continued to receive confidential information from ABC Company in hopes that he would be enticed to rejoin the partnership. Smith & Jones made an offer to ABC Company that was subsequently rejected. Two weeks after the offer expired, White successfully acquired a 50% interest in the properties. Smith & Jones not only sued White, but also sued ABC Company and its CEO alleging breach of contract and that ABC Company and its CEO knowingly assisted White in breaching his fiduciary duties; failed to negotiate in good faith; and, knowingly provided confidential information to White contrary to the term sheet.

Chubb is providing coverage to ABC's CEO and has incurred costs of \$500,000 for this breach of contract claim.



Bob's Hotel Management Company and XYZ Properties Claim

COVERAGE SECTION Directors and Officers Liability

Claim Inadequate Disclosure

Company Privately Held

Number of employees 520

Annual Revenue \$21 Million

Bob's Hotel Management Company Ltd. ("Bob's Hotel") was retained by XYZ Property Development Ltd. ("XYZ") to provide hotel management services for a hotel project that was being developed by XYZ. As part of the service agreement, Bob's Hotel was also responsible for preparing disclosure documents which included budget, expense and return information to entice the investment community to invest in this new development project. Based on this document, shareholders invested in XYZ's project. Unfortunately, as development progressed unforeseen costs were incurred and expected returns were not met. This led investors to commence a class action suit against XYZ. The investors alleged that they were enticed to invest in the project by disclosure statements provided to them by XYZ. When promised investment returns were not met the plaintiffs alleged that XYZ had made misrepresentations and had breached the terms and conditions of the investment purchase agreements. XYZ then turned around and commenced a third party claim against Bob's Hotel and its officers alleging that the information contained in the disclosure statement was prepared by Bob's Hotel and that as the hotel management company it was responsible for setting budgets and controlling expenses. Thus, XYZ's allegations were that Bob's Hotel and its officers were negligent in the preparation of parts of the disclosure statement, misrepresented financial information and mismanaged the hotel project. Chubb is providing coverage for the officers of Bob's Hotel's.

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Bankruptcy Claim for Company X

COVERAGE SECTION Directors and Officers Liability

Claim Misrepresentation/Omission

Company Privately Held

Number of employees 175

Annual Revenue \$105 Million

Company X becomes insolvent and falls into bankruptcy. Claims are commenced by various creditors against the company's directors and officers alleging that they made misrepresentations regarding the company's creditworthiness and its ability to pay contracts. Claims totaling \$18.5 million are commenced throughout Canada and the US. One US claim is settled for \$826,000. The claims in Canada continue to be litigated. As the litigation proceeds the Directors of the company begin to bring claims against each other alleging some had knowledge of the misrepresentations. Recently one action has been reconstituted as a derivative action which will effectively re-start the litigation process.

Chubb is defending the company's directors and officers. The total cost of the litigation to date is approximately \$400,000 in Canada and \$800,000 in the US. However, with the recent derivative action the litigation process has now re-started. The costs associated with this are currently undeterminable.

In general, this is the most common type of claim against private company directors and officers – the company becomes insolvent and the creditors sue the Directors & Officers alleging that they have misrepresented the status of the company in order to continue to gain credit. Further, in the case of insolvency, the Directors & Officers are also going to have personal exposure for all of the statutory liabilities that can arise including sales tax, vacation pay, unpaid wages and possible pension contributions.

For more information about Chubb Private Company D&O Liability Insurance, contact your Chubb Broker or contact us at one of our regional offices.

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Facts may have been altered for confidentiality or editorial purposes. These scenarios are provided for purposes of general information only and do not infer coverage for any particular claim. Whether and to any extent a particular loss is covered depends on the facts and circumstances of the claim and the wording of the policy issued.

This literature is descriptive only. Whether or not to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy as issued. Claims examples are based on actual cases, composites of actual cases, or hypothetical situations. Actual coverage is subject to the language of the policies as issued.

