

Management and Professional Liability Claim Scenarios

Directors and Officers Liability

Minority shareholder oppression

- **The Facts:** ABC Corp. is a privately-held family business engaged in the distribution of lamps and lighting equipment. When ABC experienced an upswing in profits due to high production and sales, the majority shareholders voted to approve a large compensation package for the CEO, who is the family patriarch and founder of ABC Corp. Mr. Jones is a 20% shareholder in ABC Corp. and is a distant cousin of the CEO. Mr. Jones was upset as he felt that the majority shareholders, the three children of the CEO, were siphoning off the recent corporate earnings through the high compensation package and left Mr. Jones with little reward. Mr. Jones filed a lawsuit against them alleging breach of fiduciary duty and minority shareholder oppression.
- **The Bottom Line:** After incurring \$75,000 in defending the lawsuit, ABC agreed to pay Mr. Jones \$200,000 representing a percentage of the increased profits.

Officer accused of misappropriation of trade secrets

- **The Facts:** XYZ Corp. is a computer software company. They recently recruited a new Chief Technology Officer from a competitor given his great reputation in the industry. Shortly after he started with XYZ, his former employer filed a lawsuit against him alleging that he was using trade secrets and confidential information to assist XYZ Corp. In addition, the former employer sued XYZ Corp. alleging tortious interference with contract alleging that XYZ interfered with the employment contract it had with its former Chief Technology Officer.
- **The Bottom Line:** Defense costs totaled \$200,000 given the need for computer experts to analyze software and hard drives. In the end, the parties settled after XYZ agreed not to use certain systems/programs.

Dispute over valuation of shares

- **The Facts:** XYZ, LLC is a privately held company which owns several small restaurants in Colorado. Jane Smith is Vice President of Operations and owns 25% of the shares of XYZ. After the restaurants saw a slump in profits, the Board of Directors decided they needed a shake up in personnel and terminated several individuals, including Ms. Smith. XYZ paid Ms. Smith for a buy-out of her shares using a current valuation based on the company's declining profits. She filed a lawsuit alleging that this was not a fair valuation of the shares and was in breach of the shareholder agreement.
- **The Bottom Line:** The court found that XYZ had a right to value Jane Smith's shares as it did under the terms of the shareholder agreement and found in favor of XYZ. However, XYZ spent \$175,000 in defense costs defending the litigation.

Misrepresentation

- **The Facts:** ABC Corp. is a company which distributes medical supplies. It needed to raise capital and told an interested investor that it was close to securing contracts with several large hospitals. ABC Corp. also met with the investor on several occasions to discuss ABC's financial condition and plans for future expansion. As a result, the investor agreed to provide funding. When the contracts were not finalized and expansion plans were not fulfilled, ABC experienced a significant profit loss for three consecutive quarters. The investor filed a lawsuit against ABC Corp. and its Board of Directors alleging that they made several misrepresentations to induce the investor to provide funding.
- **The Bottom Line:** The matter went to trial and the investor was awarded \$4 million.

