



# Side A Claim Payments

Samples gathered from across the  
insurance industry

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Chubb Insurance

# Sample Side A Claim Payments

## Samples gathered from across the industry

Corporate directors and officers are increasingly vulnerable to claims for alleged wrongdoing in a wide variety of contexts. The following samples, which include examples from Chubb's own paid claims inventory, are illustrative of the types of claim payments made under a D&O insurance policy that are typically not indemnified by the corporation. They are categorized by the nature of the payment and then by the insured's industry sector.

This summary is not an exhaustive list of all Side A claim payments or potential types of Side A claims. These samples are gathered from across the insurance industry and derived from publicly available information.

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## Shareholder Derivative Lawsuits

### Communications

Settlement Summary	Details	Payment
Settlement of shareholder derivative litigation arising out of insider trading and fraudulent accounting.	<ul style="list-style-type: none"> <li>The Company was required to restate its financials.</li> <li>A related shareholder class action lawsuit settled for \$400 million</li> </ul>	\$25 m
Settlement of shareholder derivative litigation alleging the company's D&Os breached their fiduciary duties by issuing false statements about the company's financial results and projections and ability to manufacture new products, and then authorizing a \$75 million repurchase of company stock at an inflated price.	<ul style="list-style-type: none"> <li>Company's enacted corporate governance reforms</li> <li>\$9.5 million fee and expense award to the plaintiffs' lawyers.</li> <li>The underlying ABC insurance was exhausted in the settlement of a related securities fraud lawsuit.</li> </ul>	\$6.65 m

### Consumer Products & Services

Settlement Summary	Details	Payment
Settlement of shareholder derivative litigation arising out of accounting irregularities, including improper recognition of fictitious revenues and the manipulation of merger reserves.	<ul style="list-style-type: none"> <li>Ten D&amp;Os resigned</li> <li>Company restated its financial statements for multiple years</li> <li>Certain D&amp;Os were criminally convicted</li> <li>The related shareholder class action lawsuit settled for \$2.8 billion.</li> </ul>	\$54 m
Settlement of shareholder derivative lawsuit arising out of stock option backdating practices by the D&Os of the corporation.	In addition, the corporation separately paid a \$2.5 million fee award to the plaintiffs' lawyers.	\$7.25 m
Settlement of shareholder derivative litigation alleging the company's D&Os breached their fiduciary duties by failing to properly manage the company, failing to prevent alleged fraud and criminal conduct by certain company employees.	A related securities class action lawsuit settled for \$10 million.	\$6.4 m
Settlement of shareholder derivative litigation arising from the company's alleged failure to comply with regulatory requirements, which raised concerns about the company's internal controls.		\$1.3 m

### Energy

Settlement Summary	Related Details	Payment
Settlement of shareholder derivative litigation alleging, among other things, wrongdoing by directors and officers in connection with the former CEO's self-dealing, misappropriation of the Company's assets and usurpation of the Company's corporate opportunities.	Proceeds of this settlement will be used to fund the settlement of a related securities class action lawsuit.	\$38 m
Settlement of shareholder derivative litigation arising out of an energy company's: (i) restatement of its financials; (ii) alleged failure to maintain its transmission lines, thereby causing a massive electrical black-out; and (iii) alleged concealment of problems at one of its facilities.	A related shareholder class action lawsuit settled for \$89.5 million.	\$25 m
Settlement of shareholder derivative litigation alleging the company's directors breached their fiduciary duties by failing to prevent certain officers from looting company assets, which resulted in the company filing false financial statements.	A related securities class action lawsuit settled for \$30 million.	\$12.5 m

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## Financial Services

Settlement Summary	Related Details	Payment
Settlement of shareholder derivative litigation alleging that the directors and officers breached their fiduciary duties in connection with accounting problems at the company and bonus payments made to the company's executives.	A related securities class action lawsuit settled for \$725 million.	\$90 m
Settlement of shareholder derivative litigation alleging that certain company executives diverted money away from the company into private affiliates controlled by those individuals.		\$88.5 m
Settlement of shareholder derivative litigation arising out of a company's alleged failure to conduct adequate due diligence in connection with a corporate acquisition and failure to disclose potential weaknesses in the acquired company's financial condition. Shortly after the acquisition, the acquired company reported over \$15 billion in losses, which caused a 50% decline in the price of the acquiring company's stock.	A related securities class action lawsuit settled for \$2.43 billion.	\$62.5 m
Settlement of shareholder derivative litigation alleging that certain company directors and officers allowed other executives to loot the company of hundreds of millions of dollars.	A related securities class action lawsuit settled for \$37.5 million.	\$50 m
Settlement of shareholder derivative litigation against a bank's officers and employees. The litigation arose from losses resulting from the bank's purchase of certain loans, which were later written-off by the bank, and the bank's inability to collect monies due from the sale of certain securities.		\$35 m
Settlement of shareholder derivative litigation alleging that the directors of an insurance company failed to oversee the company's claims handling practices, which resulted in the unlawful denial of disability insurance claims and subjected the company to governmental inspections and investigations, as well as policyholder litigation.		\$30 m
Settlement of shareholder derivative litigation arising out of administrative investigations in numerous states concerning allegations that the company's agents used fraudulent and deceptive sales practices.		\$4 m
Settlement of shareholder derivative litigation alleging that the company's directors and officers breached their fiduciary duties by permitting the company to engage in improper conduct in connection with foreclosure proceedings.		\$2.5 m
Settlement of shareholder derivative litigation alleging the company's directors and officers were responsible for the regulatory fallout that followed the collapse of the auction rate securities market.		\$775,000

## Healthcare

Settlement Summary	Related Details	Payment
Settlement of shareholder derivative litigation alleging that the company's directors and officers breached their fiduciary duties by directing or enabling the company to commit a massive healthcare fraud scheme.	A related securities class action lawsuit settled for \$49.5 million.	\$14 m

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## Industrial Goods

Settlement Summary	Related Details	Payment
<p>Settlement of shareholder derivative litigation alleging the company's directors and officers breached their fiduciary duties in approving the acquisition of another company owned by the CEO for an allegedly excessive amount.</p> <p>D&amp;O insurers contributed \$115 million to the settlement, and the company's investment bank contributed an additional \$10 million to the settlement, bringing the total settlement amount to \$147.5 million.</p>	The settlement amount, net of legal fees and costs, will ultimately be paid to the company's shareholders as a special dividend.	\$137.5 m
Settlement of shareholder derivative litigation alleging that the company's directors and officers caused or permitted the company to engage in improper accounting practices and file false and misleading financial statements.	A related securities fraud class action lawsuit was settled before the derivative litigation settlement for \$220 million, thereby exhausting the underlying ABC insurance.	\$15 m
Settlement of shareholder derivative litigation alleging that the company's directors and officers failed to maintain adequate internal accounting controls over a foreign company subsidiary, entered into self-interested transactions, and attempted to cover up their misconduct by terminating the company's independent auditor and conducting a sham special committee investigation.		\$3.25 m
Settlement of shareholder derivative litigation alleging that the company's board failed to exercise proper oversight with respect to the company's compliance with environmental and worker safety laws and regulations.		\$2.7 m

## Pharmaceuticals

Settlement Summary	Related Details	Payment
Settlement of shareholder derivative litigation alleging that the company's directors and officers breached their fiduciary duties by failing to detect and prevent the company's improper marketing of its products, which ultimately resulted in massive criminal fines and civil penalties.		\$75 m
Settlement of shareholder derivative litigation alleging that the company's directors breached their fiduciary duties by failing to correct certain problems that resulted in a regulatory fine and the removal of a substantial number of the company's products from the market.		\$29 m
<p>Settlement of shareholder derivative litigation alleging that a pharmaceutical company's directors and officers caused the company to hire a stock promotion firm whose efforts artificially increased the company's stock price, thereby allowing the directors and officers to sell their company holdings and obtain substantial profits.</p> <p>\$15 million of the total amount paid was used as a "pass through" payment to fund a portion of a \$20 million settlement of related securities class action litigation. \$4.5 million of the total amount paid was a separate plaintiffs' legal fee payment.</p>		\$19.5 m
Settlement of shareholder derivative litigation alleging that the company's directors and officers ignored various red flags about misconduct being committed by certain of the company's subsidiaries.		\$10.45 m
Settlement of shareholder derivative litigation arising from allegations that the company's directors and officers breached their fiduciary duties in omitting material information from the company's SEC filings about the financial prospects of the company's principal pharmaceutical product.	A related securities class action lawsuit settled for \$40 million.	\$4.5 m

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Settlement of shareholder derivative litigation arising from the company's alleged improper activity in a foreign country in violation of the Foreign Corrupt Practices Act.		\$2.5 m
Settlement of shareholder derivative litigation alleging that the company's directors and officers breached their fiduciary duties by causing or allowing the company to conceal negative information about products in development and improperly market other products that the company produced.		\$2.2 m

## Media

Settlement Summary	Related Details	Payment
<p>Settlement of shareholder derivative litigation alleging the company's directors breached their fiduciary duties in approving the acquisition of another company through an unfair process and at an unfair, inflated price.</p> <p>The plaintiffs also alleged the directors did not implement controls that would have prevented the company's misuse of certain private electronic data, which in turn resulted in significant negative publicity and harm to the company.</p>		\$139 m

## Technology

Settlement Summary	Related Details	Payment
Settlement of shareholder derivative litigation alleging the company's directors and officers breached fiduciary duties in negotiating and approving a deal in which a majority owner of the company's stock would sell a large block of company stock to the company and to two senior officers of the company at a discount off of the market price. The plaintiffs alleged the two officers usurped a corporate opportunity by not allowing the company to purchase all of the shares being sold at a discounted price.		\$275 m
<p>Settlement of shareholder derivative litigation arising from the company's directors and officers engaging in an alleged options backdating scheme.</p> <p>\$43.3 million of the \$118 million settlement payment reimbursed the company for defence costs advanced to the directors and officers, \$11.5 million consisted of an award of plaintiffs' lawyers' fees, and the remaining \$63.2 million was paid to the company as damages.</p>	A related securities class action lawsuit settled for \$160.5 million.	\$118 m
Settlement of shareholder derivative litigation alleging that the company's former CEO and its directors misled shareholders about the value of the company and its future success in order to profit from their own stock sales.	A related securities class action lawsuit settled for \$34.3 million.	\$83 m
Settlement of a shareholder derivative lawsuit arising out of stock option backdating practices by the directors and officers of the company.	A related securities class action lawsuit was settled for \$65 million.	\$24 m
Settlement of a shareholder derivative lawsuit arising out of the company's alleged false and misleading statements to investors about the company's development of a product, which was touted by the defendant directors and officers to be a key part of the company's future financial growth.	A related securities class action lawsuit was settled for \$55 million.	\$22 m
Settlement of a shareholder derivative lawsuit filed against a company's directors and officers. Plaintiffs generally alleged that the directors and officers breached their fiduciary duties, committed corporate waste, and were unjustly enriched in connection with the integration of assets received in a merger.		\$150,000

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## Financial Insolvency

### Construction

Settlement Summary	Related Details	Payment
Settlement of an adversary proceeding filed by the litigation trust of a bankrupt company against the company's directors and officers. The trust generally alleged that the directors and officers breached fiduciary duties owed to certain of the bankrupt entities by saddling those entities with debt for their own personal gain and by misappropriating funds from the entities for their personal use.		\$1.16 m

### Consulting Services

Settlement Summary	Related Details	Payment
Settlement of a lawsuit by a litigation trust against the former directors of a bankrupt company for breaches of fiduciary duty in failing to oversee the sale of certain of company assets, which was purportedly necessary to avoid bankruptcy.		\$55 m

### Consumer Goods

Settlement Summary	Related Details	Payment
Settlement of an adversary proceeding filed by a bankruptcy trustee against the former directors and officers of a national car dealership based on allegations the company made improper payments for the benefit of insiders before filing for bankruptcy.	The insurer also paid \$900,000 in defence costs under a Side A insuring agreement.	\$644,000
Settlement of a claim against a former officer of a bankrupt apparel company by a state tax authority seeking payment by that individual of several million dollars in sales and use taxes that the company purported owed but did not pay. The tax authority alleged that the individual officer was a "responsible person" under the relevant tax statute and was therefore jointly and severally liable for the company's tax obligations.		\$150,000

### Financial Services

Settlement Summary	Related Details	Payment
Settlement of class action securities fraud lawsuits against a financial institution's directors and officers alleging that they made material misstatements about the company's financial health. The company ultimately collapsed, prompting a number of lawsuits filed against the company's directors and officers, in addition to lawsuits filed against certain investment banks that underwrote the company's securities offerings and the company's auditor.	The investment banks and auditor agreed to pay \$74 million and \$65 million, respectively, in separate settlements.	\$64.5 m
Settlement of a series of class action and "opt-out" securities fraud lawsuits arising from a financial institution's exposure to subprime-related products and other high-risk collateralized debt obligations.	The Side-A coverage applied because the financial institution filed for bankruptcy and there were no underlying ABC policies.	\$25 m
Settlement of a securities class action filed by shareholders of a bank holding company. The bank had been closed by its regulators, and the holding company later filed for bankruptcy protection.		\$7 m
Settlement of an adversary proceeding filed by a bankruptcy trustee against the former directors and officers of a bankrupt company. The trustee generally alleged that the directors and officers breached their fiduciary duties to the company by misappropriating and fraudulently transferring company assets before the company filed for bankruptcy.		\$475,000

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## Industrial Goods

Settlement Summary	Related Details	Payment
Settlement of claims against a bankrupt company's directors and officers by the company's unsecured creditors' committee alleging that the defendants were responsible for substantial fraudulent transfers and breaches of fiduciary duty in connection with a leveraged buy-out transaction that purportedly left the company insolvent.	Total settlement was \$110 million, but \$10 million of that amount was funded by personal contributions from the defendant directors and officers.	\$100 m
Payment of defence costs and a settlement in claims by creditors of a bankrupt company against the company's directors and officers. The plaintiffs alleged the defendants breached their fiduciary duties by delaying the liquidation of the debtor company after they learned the company's restructuring effort would fail. The delay was allegedly part of a plan by certain directors to personally acquire the company's most profitable assets before the assets were liquidated in bankruptcy.		\$85 m

## Healthcare

Settlement Summary	Related Details	Payment
Settlement of a shareholder class action against a company and its directors and officers arising from a "going-private" transaction. The plaintiffs alleged the company's directors allegedly breached their duties by approving the merger and issuing a false proxy statement about the merger.	Approximately two years after the transaction closed, the company filed for bankruptcy, which resulted in the insurers funding the settlement under Side A.	\$6.6 m

## Media

Settlement Summary	Related Details	Payment
Settlement of a lawsuit filed by a litigation trustee against the former directors and officers of a media company. The lawsuit arose from a transaction pursuant to which certain shareholders liquidated their interests in the company and the company borrowed significant amounts to fund that transaction. The trustee alleged the transaction caused the company's bankruptcy.	The primary insurer also funded \$4.2 million of defence costs under a Side-A insuring agreement.	\$15.5 m

## Pharmaceuticals

Settlement Summary	Related Details	Payment
Settlement of an "opt-out" securities case against the former directors and officers of a pharmaceutical company. A previous securities class action settled for \$40 million, but a group of shareholders opted out of the settlement and filed their own lawsuit. Meanwhile the company filed for bankruptcy protection. The bankruptcy court approved the \$4.25 million settlement of the opt-out litigation from the available insurance proceeds.	Related shareholder derivative litigation had previously settled for a Side-A payment of \$4.5 million	\$4.25 m



## FDIC Claims against the D&Os of Failed Banks

The following Side A payments were made to settle allegations by the FDIC in its capacity as receiver of various failed banks. In each matter, the FDIC alleged that the targeted directors and officers breached their fiduciary duties to the respective banks and negligently managed the institutions, ultimately causing the banks to fail.

Settlement Summary	Related Details	Payment
Side A payment in settlement of allegations by the FDIC that a bank's directors and officers mismanaged the bank by allowing it to engage in high risk lending to subprime borrowers.	The Side A payment was in addition to \$150 million paid by underlying ABC insurers to defend and settle related class action securities litigation.	\$40 m
Side A payment in settlement of allegations by the FDIC that a bank's directors and officers committed gross negligence in approving several loans that ultimately defaulted.	Certain directors agreed to pay personally an additional \$1 million to the FDIC as part of the settlement.	\$33 m
Side A payments to the FDIC and shareholders to settle claims asserted by the FDIC in a demand letter against a failed bank's directors and officers and by shareholders in a securities fraud lawsuit against the directors and officers of the bank's holding company.	\$11.9 million was paid to the FDIC and \$5.5 million was paid to shareholders.	\$17.4 m

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## DIC Coverage

The following Side A Difference in Conditions (DIC) payments were made to settle allegations against directors and officers where the underlying insurers were unable or unwilling to provide indemnification or simply did not provide coverage.

Settlement Summary	Related Details	Payment
Side A Excess DIC settlement of a shareholder derivative lawsuit alleging, among other things, wrongdoing by directors and officers in connection with the company's alleged theft of a competitor's trade secrets.	The underlying insurers denied coverage for the claim based on a prior notice exclusion, resulting in the Excess DIC Side A policy dropping down to the individual defendant's contribution to the settlement payment.	\$6 m
Defence costs reimbursement to a company under a Side-A Excess DIC Policy, which attached excess of \$100 million of ABC insurance.	The insured officers incurred those defence costs in a criminal proceeding, which resulted in the underlying insurers denying coverage for part of the defence costs based on the fraud exclusion, and the insured company refusing to provide indemnification for part of the defence costs.	\$2 m
Side A Excess DIC settlement of a securities class action lawsuit against the former directors and officers of a bankrupt company. The plaintiffs generally alleged that the insured directors and officers improperly withheld information from a securities purchase agreement about the planned transfer of certain company assets to another company.	The primary ABC policy was exhausted through payment of defence costs, and the company was financially unable to indemnify the director and officer defendants.	\$290,000
Side A DIC settlement of several proceedings against a director of an investment bank for insider trading, including an SEC civil lawsuit and a criminal prosecution. Verdicts against the director in both proceedings were upheld on appeal. In addition to civil penalties, restitution, and a criminal fine, the director incurred approximately \$42 million in defence costs, which the investment bank's board voted not to indemnify.	The underlying Side A-only insurance carriers denied coverage, based on a conduct exclusion, prompting the Insured to seek coverage from the lead DIC carrier.	\$42 m
Payment by multiple excess Side A DIC insurers in connection with the defence and settlement of class action litigation and governmental investigations that followed the bankruptcy of an investment company.	The Side A DIC insurers agreed to pay defence costs and fund a settlement of the litigation after the underlying ABC insurers denied coverage pursuant to a broad professional services exclusion.	\$12 m
Side A-only DIC policy settlement of a cross-complaint against a former officer of an insurance company that was placed into liquidation by a state regulator. The former officer was alleged to have breached his fiduciary duties by contacting the liquidator of the insurance subsidiary and providing confidential information about the parent company's intentions regarding an asset of the insurance subsidiary, prompting the liquidator to file a lawsuit against the parent company.	The underlying insurers denied coverage based on an "insured v. insured" exclusion.	\$1.15 m
Side A DIC payment for a portion of the Insureds' costs to defend a counterclaim filed by an subsidiary of the Named Insured that had purportedly been taken over by a senior lender following a loan default. The subsidiary and lender alleged that the subsidiary's private equity-appointed directors and officers mismanaged the company and caused it to lose millions of dollars in enterprise value.	The Named Insured was purportedly insolvent, and its primary ABC carrier allocated defence costs based on a number of coverage defence, including the insured v. insured exclusion. The Insureds sought coverage from their DIC carrier for the portion of defence costs that the ABC carrier did not recognize as covered.	In excess of \$600,000

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<p>Side A-only DIC payment to fund defence costs and settle direct claims by a company against certain of its former directors and officers based on allegations of self-dealing and misappropriation of corporate assets.</p>	<p>The Side-A insurer was required to pay those amounts after the company's ABC insurers denied coverage pursuant to an insured v. insured exclusion.</p>	<p>\$2.5 m</p>
<p>Settlement payment under a Side A Excess DIC Policy for a portion of a plaintiff's fee award in a shareholder derivative lawsuit. The lawsuit was settled for, among other things, the underlying insurers' agreement to pay a \$6 million fee award.</p>	<p>After one of the underlying Side A insurers refused to pay a portion of the fee award, a Side A Excess DIC insurer dropped down to satisfy the disputed part of the award.</p>	<p>\$1 m</p>

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## About Chubb

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Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. As an underwriting company, we assess, assume and manage risk with insight and discipline. We service and pay our claims fairly and promptly. We combine the precision of craftsmanship with decades of experience to conceive, craft and deliver the very best insurance coverage and service to individuals and families, and businesses of all sizes.

Chubb is also defined by its extensive product and service offerings, broad distribution capabilities, exceptional financial strength and local operations globally. The company serves multinational corporations, mid-size and small businesses with property and casualty insurance and risk engineering services; affluent and high net worth individuals with substantial assets to protect; individuals purchasing life, personal accident, supplemental health, homeowners, automobile and specialty personal insurance coverage; companies and affinity groups providing or offering accident and health insurance programs and life insurance to their employees or members; and insurers managing exposures with reinsurance coverage.

Chubb has more than \$160 billion in assets and \$35 billion of gross premiums written in 2016. Chubb's core operating insurance companies maintain financial strength ratings of AA from Standard & Poor's and A++ from A.M. Best.

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