

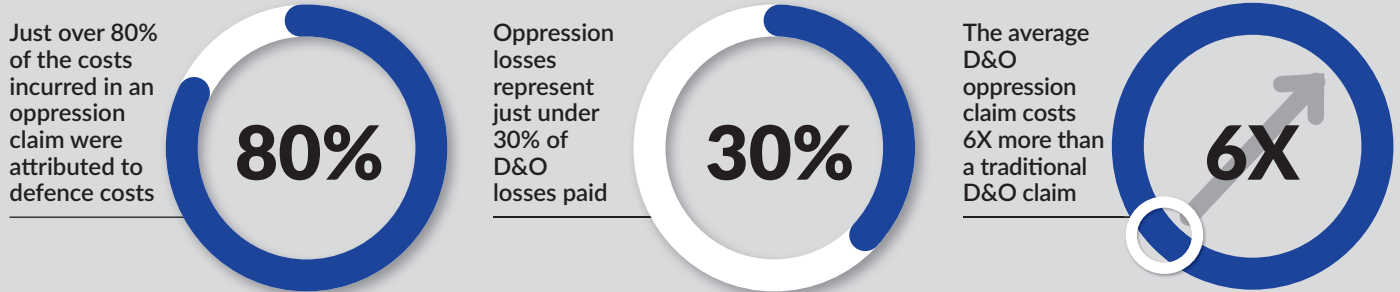
Industry Insights: Private Company D&O Claims and The Oppression Remedy

The oppression remedy is a personal remedy available to complainants, where a corporation, any of its affiliates, or its directors or officers acted in a manner that is oppressive or unfairly prejudicial to, or which unfairly disregards, the complainants' interests.

Private Company D&O Oppression Remedy Loss Trends

The oppression remedy is one of the broadest shareholder remedies available in the common-law world, including Canada, and is an appealing way to bring a claim as it gives courts immense flexibility and discretion in determining how to remedy the oppression. As such, it is a powerful tool available to security holders, creditors, directors and officers, and other complainants to bring a claim.

Chubb Canada conducted a study on the impact of oppression on our private company D&O claims and found the following surprising statistics:



Key Findings from the Oppression Study

Plaintiffs

While minority shareholders are especially vulnerable to oppressive conduct by controlling or majority shareholders, oppression claims were brought by different classes of shareholders. Plaintiffs included minority shareholders, majority shareholders, directors and/or officers, creditors, and debtors.



Number of Shareholders

The number of shareholders was not a factor in the frequency or severity of claims.



Transactions

A majority of the claims analyzed involved some form of transaction. Share offering/ share redemption/share valuation/acquisitions/ proposed acquisitions and reorganizations have all lead to oppression claims as a single person or group was ignored.



Family Ownership

Family dynamics can be complicated, and arguments can lead to infighting and abusive/ oppressive conduct.



Self-Dealings

Conduct that is self-serving and only benefits a set of individuals, at the expense of other stakeholders, can be considered oppressive in nature. This was a common allegation in the oppression claims studied.



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