Sample Side A Claim Payments

Spring 2020

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The following briefly summarizes examples of Side A losses under a D&O insurance policy, categorized first by the nature of the Side A payment (i.e., shareholder derivative settlement, DIC payment, bankruptcy, etc.) and then by the Insured's industry sector.

This summary is not an exhaustive list of all Side A payments or potential types of Side A claims.

Shareholder Derivative Lawsuits

Communications

a. A $25 million Side A payment in settlement of shareholder derivative litigation arising out of insider trading and fraudulent accounting, which ultimately required the company to restate its financials. A related shareholder class action lawsuit settled for $400 million.

b. A $6.65 million Side A payment in settlement of shareholder derivative litigation alleging the company's directors and officers 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. The derivative litigation was settled in exchange for the company's enactment of corporate governance reforms and the payment of a $9.5 million fee and expense award to the plaintiffs' lawyers. Of that amount, $6.65 million was paid by the primary Side-A DIC insurer after the underlying ABC insurance was exhausted as part of the $200 million settlement of a related securities fraud lawsuit.

Consumer Products/Services

a. A $54 million Side A payment in settlement of shareholder derivative litigation arising out of accounting irregularities, including improper recognition of fictitious revenues and the manipulation of merger reserves. Ultimately, ten D&Os resigned from the company, the company restated its financial statements for three years, and certain D&Os were criminally convicted, and ordered to pay $3.28 billion in restitution. The related shareholder class action lawsuit settled for $2.8 billion.

b. A $40 million Side A payment in settlement of shareholder derivative litigation on behalf of a retailer against its directors and officers alleging that those persons breached their fiduciary duties in causing the Company to sell valuable real estate holdings to an unaffiliated company controlled by the Company's CEO.

c. A $26 million Side A payment in settlement of shareholder derivative litigation on behalf of a wood flooring company alleging breaches of fiduciary duty related to the discovery of high levels of dangerous chemicals found in the company's products manufactured in China and imported for sale in the U.S. The proceeds of the settlement were used to fund, in part, a $36 million settlement of parallel securities class action litigation.

d. A $21 million Side A payment in settlement of shareholder derivative litigation arising from allegations that the company's founder and chairman made unwanted sexual advances on employees and that the company's directors did nothing to stop this pattern of sexual misconduct despite their knowledge of its existence. Of the $41 million total settlement, the Side A policy contributed $21 million and the company's chairman agreed to pay $20 million.

e. A $7.25 million Side A payment to a Delaware corporation in settlement of a shareholder derivative lawsuit arising out of stock option backdating practices by the directors and officers of the corporation. In addition to that Side-A payment, the Delaware corporation separately paid a $2.5 million fee award to the plaintiffs' attorneys.

f. A $6.4 million Side A payment in settlement of shareholder derivative litigation alleging the company's directors and officers breached their fiduciary duties by failing to properly manage the company, failing to prevent an alleged pyramid-type scheme based on the overpricing of "global collectibles" (e.g., coins, precious metals, art, etc.) and related-criminal conduct by certain of the company's employees. A related securities class action lawsuit settled for $10 million.

g. A $1.3 million Side A payment in 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.

Energy

a. A $90 million Side A payment in settlement of shareholder derivative litigation alleging breaches of fiduciary duty in connection with a catastrophic pipeline explosion. The Company was also fined $1.6 billion by its state regulator and agreed to pay $565 million to settle lawsuits by those harmed in the explosion.

b. A $60 million Side A payment in settlement of a shareholder derivative lawsuit against the directors of an automobile manufacturer alleging that they breached their fiduciary duties when they approved the purchase of a solar energy company controlled by the automobile company's CEO and Chairman at an excessive price for pretextual business reasons. The settlement will resolve the claims against all individual defendants except the automobile company's CEO.

c. A $38 million Side A payment in 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.

d. A $27 million Side A payment in settlement of shareholder derivative litigation arising out of an energy company's merger with another large energy provider. Plaintiffs alleged that the Company's directors breached their fiduciary duties in connection with removing the post-merger Company's CEO immediately after the deal closed, departing from the management structure that had been communicated previously to shareholders of both companies and to the government regulator.

e. A $25 million Side A payment in 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 black-out; and (iii) alleged concealment of problems at one of its nuclear power stations. The company allegedly concealed those problems to complete a stock-for-stock acquisition of another energy company. The related shareholder class action lawsuit settled for $89.5 million.

f. A $20 million Side A payment in settlement of shareholder derivative litigation brought on behalf of a solar energy company against certain of its former independent directors alleging breaches of duty in allowing the company to enter into a large business deal that was purportedly imprudent and served the primary purpose of providing an immediate cash infusion for the company's corporate parent. The proceeds of the settlement were used by the Company to fund settlements of related securities litigation.

g. $12.5 million Side A payment in 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 was concealed from investors through the issuance of false financial statements. A related securities class action lawsuit settled for $30 million.

Financial Services

a. A $240 million Side A payment in settlement of shareholder derivative litigation alleging that the bank's directors breached their fiduciary duty by knowingly or consciously disregarding a widespread practice of cross-selling by the bank's employees.

b. A $90 million Side A payment in 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.

c. An $88.5 million Side A payment in settlement of shareholder derivative litigation alleging that certain company executives devised a series of transactions engineered to siphon money away from the company into private affiliates controlled by those executives.

d. A $62.5 million Side A payment in 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.

e. A $53 million Side A payment in settlement of a shareholder derivative lawsuit alleging that the company's directors and officers breached their fiduciary duties by engaging in a self-dealing transaction. The ABC Policy contributed $51 million toward the settlement and the Base Side A policy contributed the remaining $2 million after the ABC policy was exhausted.

f. A $50 million Side A payment in 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.

g. A $35 million Side A payment in settlement of shareholder derivative litigation against a bank's officers and employees. The litigation arose from losses resulting from the bank's purchase of approximately $200 million of energy-related loans, a large portion of which were later written-off by the bank, and the bank's inability to collect $270 million in interest due from the sale of certain securities.

h. A $30 million Side A payment in 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.

i. A $4 million Side A payment in 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.

j. A $2.5 million Side A payment in 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.

k. A $775,000 Side A payment in 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.

Healthcare

a. A $60 million Side A payment in settlement of shareholder derivative litigation alleging breaches of fiduciary duty against the Company's directors and officers who purportedly caused the Company to implement an unlawful patient admissions policy, which resulted in artificially inflated reimbursement payments from Medicare and other payors. The Company previously agreed to pay $98 million to resolve a related government investigation.

b. A $14 million Side A payment in settlement of shareholder derivative litigation alleging that the company's directors and officers breached their fiduciary duties by permitting the company to engage in a massive healthcare fraud scheme. A related securities class action lawsuit settled for $49.5 million.

Industrial Goods

a. A $137.5 million Side A payment in 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. D&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. The settlement amount, net of attorneys' fees and costs, will ultimately be paid to the company's shareholders as a special dividend.

b. A $15 million payment by an Excess Side A DIC insurer in settlement of shareholder derivative litigation alleging that the company's directors and officers permitted the company to engage in improper accounting practices and filed false and misleading financial statements with the U.S. Securities and Exchange Commission. As a result of those accounting improprieties, the company restated its financial results, which reduced prior earnings by 10%. A related securities fraud class action lawsuit was settled before the derivative litigation settlement for $220 million, thereby exhausting the underlying ABC insurance.

c. A $3.25 million Side A payment in 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.

d. A $2.7 million Side A payment in settlement of shareholder derivative litigation alleging that the company's directors did not exercise proper oversight with respect to the company's compliance with environmental and worker safety laws and regulations.

Media

A $139 million Side A payment in 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. 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.

Pharmaceuticals

a. A $175 million Side A payment in settlement of shareholder derivative litigation alleging that the company's directors breached their fiduciary duties when they allowed the illegal distribution of highly addictive opioid painkillers.

b. A $75 million Side A payment in 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.

c. A $29 million Side A payment in 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.

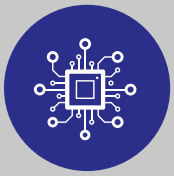
d. A $19.5 million Side A payment in settlement of shareholder derivative litigation alleging that a pharmaceutical company's directors and officers caused the company to hire a stock promotion firm whose efforts artificially increased the company's stock price, thereby allowing the directors and officers to sell their company holdings and obtain substantial profits. $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' attorney fee payment.

e. A $10.45 million Side A payment in 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.

f. A $4.5 million Side A payment in 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.

g. A $2.5 million Side A payment in settlement of shareholder derivative litigation arising from the company's alleged improper payments to foreign officials in violation of the Foreign Corrupt Practices Act.

h. A $2.2 million Side A payment in 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.



Technology

a. A $275 million Side A payment in 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.

b. A $118 million Side A payment in settlement of shareholder derivative litigation arising from the company's directors and officers engaging in an alleged options backdating scheme. $43.3 million of the $118 million settlement payment reimbursed the company for defense costs advanced to the directors and officers, $11.5 million consisted of an award of plaintiffs' attorneys' fees, and the remaining $63.2 million was paid to the company as damages. A related securities class action lawsuit settled for $160.5 million.

c. An $83 million Side A payment in 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.

d. A $29 million Side A payment in settlement of a shareholder derivative lawsuit alleging breach of fiduciary duty, insider trading, unjust enrichment and waste by the company's board of directors in connection with its 2014 data breach. A related Securities Class Action lawsuit settled for $80 million.

e. A $24 million Side A payment in settlement of a shareholder derivative lawsuit arising out of stock option backdating practices by the directors and officers of the company. As part of the settlement, the defendant directors and officers waived their right to certain option grants, agreed to the repricing of option grants and made cash contributions to the settlement, which increased the total value of the settlement to $42 million. A related securities class action lawsuit was settled for $65 million.

f. A $22 million payment under a Side A Policy in 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 data storage 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, which was fully indemnified by the company.

Difference in Conditions (DIC) Coverage

Aerospace

A $6 million payment under an Excess DIC Side A Policy in 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 lawsuit was settled in exchange for the company's adoption of corporate governance reforms and the payment of a $11.9 million plaintiffs' attorney fee award. 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 pay a portion of the fee award.

Construction

A $2 million defense 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 defense costs in a criminal proceeding in which one officer pled guilty to conspiracy to make false statements in an SEC filing and another insured was tried and found guilty for mail fraud and having made false statements in an SEC filing. The underlying insurers denied coverage for part of the defense costs based on a fraud exclusion, and the company relied on the guilty plea and the finding of guilt to deny indemnification for part of the defense costs.

Energy

a. A $50 million Side A DIC payment in settlement of a direct action by a solar energy company against certain of its former directors alleging breaches of duty in causing the company to enter into a large business deal that was purportedly imprudent and served the primary purpose of providing an immediate cash infusion for the company's corporate parent. The underlying ABC carriers denied coverage, pursuant to an insured v. insured exclusion, creating a DIC event that required the Side A DIC carriers to drop down to fund the settlement.

b. A $290,000 Side A payment from a Side A-only DIC policy to settle 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 defense costs, and the company was financially unable to indemnify the director and officer defendants.

Financial Services

a. A $42 million Side A DIC payment in 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 defense 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.

b. Multiple Excess Side A DIC insurers paid approximately $12 million in settlement of allegations that the directors and officers breached their fiduciary duties by allowing customers to invest in certain financial products despite knowing the customers would be unable to recoup their investments. The Excess Side A DIC insurers agreed to pay defense costs and fund a settlement of the litigation after the underlying ABC insurers denied coverage pursuant to a broad professional services exclusion.

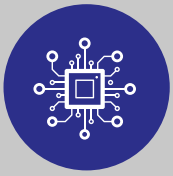
c. A $1.15 million payment from a Side A-only DIC policy to settle a cross-complaint against a former officer of an insurance company that was placed into liquidation by a state regulator. The former officer was alleged to have breached his fiduciary duties by contacting the liquidator of the insurance subsidiary and providing a tip that the parent company planned to sell certain artworks that belonged to 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.

Industrial Goods

A Side A DIC payment in excess of $600,000 for a portion of the Insureds' costs to defend a counterclaim filed by a subsidiary of the Named Insured (an oil and gas products company) that had purportedly been taken over by a senior lender following a loan default. The subsidiary and lender alleged that the Named Insured, its private equity owners, and 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 defense costs based on a number of coverage defenses, including a contract exclusion, a prior acts exclusion, and the insured v. insured exclusion. The Insureds sought coverage from their DIC carrier for the portion of defense costs that the ABC carrier did not recognize as covered.

Pharmaceuticals

A $2.5 million payment from a Side A-only DIC policy to fund defense 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. The Side-A insurer was required to pay those amounts after the company's "B/C" insurers denied coverage pursuant to an "insured v. insured" exclusion.



Technology

A $1 million settlement payment under a Side A Excess DIC Policy for a portion of a plaintiff's fee award in a shareholder derivative lawsuit alleging that the company's directors and officers misrepresented the company's financial results by, among other things, recording revenue in violation of GAAP. The litigation was settled in exchange for corporate governance reforms and the insurers' agreement to pay a $6 million fee award. 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. The Side A Excess DIC carrier then sought subrogation from the underlying Side A insurer.

Financial Insolvency

Construction

A $1.16 million Side A payment to settle 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 in order to realize personal gains.

Consulting Services

A $55 million Side A payment to settle 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.

Consumer Goods

a. A $950,000 Side A payment to settle a claim against the managing executive of a restaurant franchise business for alleged breaches of fiduciary duty in mismanaging the company and causing it to collapse into bankruptcy.

b. An $800,000 Side A payment to settle a claim alleging that the company and its directors breached their fiduciary duties by making materially false statements in order to avoid a positive economic relationship with an acquiring company. After the company was found to be bankrupt, the Side A carrier paid $800,000 to settle the matters.

c. A $644,000 Side A payment to settle 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 defense costs under a Side A insuring agreement.

d. A $150,000 Side A payment to settle 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.

Financial Services

a. A $64.5 million payment by Side A insurers to settle 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.

b. A $25 million payment by Side A insurers to settle 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.

c. A $7 million Side A payment to settle 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. The bankruptcy court allowed the class action to proceed against the Insured directors and officers, and the Court later approved the payment of the $7 million settlement of that litigation from the available insurance proceeds.

d. A $750,000 Side A payment in settlement of a securities lawsuit alleging that a bankrupt company's directors and officers made material misrepresentations regarding the control and independence of the company. The Side A carriers began advancing defense costs when the ABC policy limits were exhausted by a related SEC investigation and lawsuit. The Side A carriers advanced $4.25 million in fees and expenses related to the defense of the matters.

e. A $475,000 Side A payment to settle 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.

Education

A $15 million Side A payment to settle breach of fiduciary claims against directors and officers of a bankrupt for-profit higher education provider. A bankruptcy litigation trustee generally alleged that the company's management violated U.S. Department of Education funding and reimbursement rules for funds obtained through federal Title IV programs.

Energy

a. A $32 million Side A payment to settle a demand issued by the official committee of unsecured creditors of a bankrupt solar energy company alleging that the Company's directors and officers breached their fiduciary duties in mismanaging the Company and ultimately causing it to fail.

b. A $23.5 million Side A payment in settlement of a securities class action alleging that the company's directors made material misstatements about the company's financial status in connection with a preferred stock offering. The total settlement amount was $74 million, but $50.5 million of that total was funded by solvent underwriter defendants. The settlement agreement provides for up to a $2 million additional Side A reverter payment that will be funded if any Side A insurance is available after certain other reported matters are resolved.

c. A $6.5 million Side A payment in settlement of "opt-out" shareholder claims alleging that the company's directors made material misstatements regarding the company's financial state in relation to a preferred stock offering. The Side A carriers contributed $6.5 million to the total $15 million settlement, while solvent underwriter defendants paid the remainder.

d. A $5 million Side A payment to settle litigation by a bankruptcy liquidation trustee alleging that the company's directors and officers breached their fiduciary duties in connection with operating an oil and gas exploration and production company. The trustee generally alleged that the company's management caused the company to expend many millions of dollars on projects without conducting the proper due diligence, causing the company to sustain significant losses.

Healthcare

A $6.6 million Side A payment to settle 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 closing of the transaction, the company filed for bankruptcy, which resulted in the insurers funding the settlement under Side A.

Industrial Goods

a. A $100 million Side A payment in 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. The total settlement was $110 million, but $10 million of that amount was funded by personal contributions from the defendant directors and officers.

b. An $85 million Side A payment of defense 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.

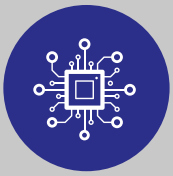
Media

A $15.5 million Side-A payment to settle 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 "devastated" the company's balance sheet and later caused the company's bankruptcy. The primary insurer also funded $4.2 million of defense costs under a Side-A insuring agreement.

Pharmaceuticals

a. An $8 million Side A payment in settlement of a qui tam lawsuit arising after a pharmaceutical company settled securities and derivative litigation and was found to be bankrupt. The Side A carriers also contributed approximately $3 million toward the defense of the underlying matters.

b. A $4.25 million Side-A payment to settle 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.



Technology

A $3.75 million Side A payment in settlement of a securities and a mismanagement lawsuit brought by a bankruptcy trustee against former company executives, alleging that those individuals breached their fiduciary duties by engaging in reckless and irrational spending and by then materially misrepresenting the company's financial status to investors during the company's second public offering.

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.

1. A $40 million payment by Side A insurers 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.
2. A $33 million payment by Side A insurers 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.
3. $17.4 million in 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.

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For additional information about Chubb Bermuda's insurance products please contact your Bermuda or non US-based broker.

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