

## Canadian Claim Examples

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Included is a list of Directors' & Officers' (D&O) Liability Insurance claim examples, including claim examples under the Employment Practices Liability Insurance (EPL) coverage part. Note that these claim examples are not an indication of what might or might not be covered under any policy issued; the policy itself determines what coverage each insured has or does not have.

**Non-Entity EPL:** Plaintiff agreed to help form and work for the Company as its COO. He alleged that his employment was terminated without cause. Further, it is alleged that the Company hindered his attempt to find new employment by telling third parties that the plaintiff is prohibited from using trade secrets and intellectual property that allegedly belongs to the Company. A complaint was filed against the Company and a director and officer which included causes of action for breach of contract, and unfair and deceptive trade practices. Defence costs and settlement for the individually named defendant exceeded \$180,000.

**Creditor Claim:** Plaintiff filed a complaint against individual directors and officers of a company alleging that its CEO, CFO, and COO conspired to use the plaintiff's services to furnish, install and repair the company's equipment knowing that it was insolvent and was planning to file for bankruptcy protection. Causes of action included: fraud, misrepresentation and non-disclosure; deceptive trade practices; and civil conspiracy. Total settlement and defence of the individually named defendants exceeded \$100,000.

**Class Action Complaint:** Plaintiffs represent a class of non-insider stockholders who invested in the Company. Plaintiffs alleged that certain directors and officers failed to disclose material facts and provided them with inaccurate and misleading information. It is alleged that the materials did not disclose the high turnover of management and that the company's website had not yet been developed. The Company later went bankrupt. The complaint included causes of action for: common law fraud; negligent misrepresentation; and breach of fiduciary duties. Settled for over \$1 million and defense costs exceeding an additional \$1.4 million.

**Competitor Disputes:** The plaintiff filed a complaint against their competitor alleging that a former employee, now working at the competition, engaged in unauthorized use of confidential and proprietary information and committed other acts of unfair competition. As a result, the plaintiff alleged it had suffered irreparable and immediate injury. In addition, the plaintiff alleged that the defendant has possession of its confidential information and intellectual property. The plaintiff asserted causes of action for: misappropriation of trade secrets and confidential information; violation of the Computer Fraud and Abuse Act; unlawful access to stored information; and unfair competition. Total defence costs and settlement exceeded \$350,000.

**Shareholder:** The plaintiff alleged that certain directors exerted complete domination and control over the Company and used the Company as a vehicle for their own business purposes at the expense of the Company and minority shareholders. Specifically, the plaintiff alleged that certain directors helped to renegotiate a service contract and booked all of the revenue during one quarter instead of over the three year life of the contract. The plaintiff also contended that this service contract received steep discounts and would cause other customers to request similar discounts resulting in lost revenue to the company. The defence and settlement of this case exceeded \$500,000.

**Breach of Investment Agreement:** A company entered into an investment agreement with a third-party and agreed not to negotiate with the other entity regarding financing or a potential acquisition for a two week period. During the exclusivity period the Company engaged in negotiations with another investment group. The third party alleges breach of investment agreement and intentional and negligent misrepresentation. Total defence costs and settlement exceeded \$350,000.

**Shareholder Derivative Action:** A shareholder derivative action was taken against a company for breach of fiduciary duties on behalf of the directors. The plaintiffs contended that the defendants failed to provide them with certain information, such as shareholder listings, financial data and other corporate records. They also alleged that certain directors borrowed money from the Company without the Board's approval and subsequently these loans were forgiven. Total defence costs and settlement exceeded \$500,000.

**Breach of Fiduciary Duty:** A private company agreed to perform market research for a start-up company in the material management industry. In exchange for their services, the Company allegedly agreed to pay the private company \$20,000 in cash and 5% of the privately placed issued shares in the Company. The Company denied that they explicitly or implicitly agreed to pay the private company in stock. The plaintiffs allege several causes of action, including breach of fiduciary duty. Total defence costs and settlement exceeded \$800,000.



## Canadian Claim Examples Continued

**Deceptive Trade Practices:** A private company that managed and ran a major state-owned natural resource facility received a claim against the Company and various members of the Board of Directors. The plaintiff alleged that the Board of Directors used their position for their own private benefit and personal advantage, and for the benefit and advantage of their private employers. The plaintiff also alleged that the Board of Directors assigned a valuable contract without receiving any consideration. The plaintiff further alleged that such assignment also constitutes misappropriation of valuable assets for the benefit of private party in violation of state codes. Total defence costs exceeded \$250,000.

**Inaccurate Disclosure:** A class action suit was commenced by various investors who participated in an internet start-up company. The Company raised approximately \$5 million in a private placement to fund capital expenses, to provide working capital and to cover operating losses. An investigation showed that the private placement memorandum contained an unaudited year end balance sheet and statement of profits and losses which were materially misleading. Total defense costs and settlement exceeded \$500,000.

**Loan Default:** A diversified sports product company received a lawsuit against the President, CEO, and Chairman of the Board for not honoring a promissory note. The plaintiff alleges that it lent \$1 million to the Company. The Company allegedly agreed to pay the funds back within a month pursuant to the promissory note. Despite requests for return of the money, plus interest, the Company has not returned the funds to the plaintiff. Total defence costs and settlement exceed \$250,000.

**Foreclosure/Unfair Competition:** A shareholder commenced a derivative action against the President of a company which develops and markets chemical compounds, after all its assets were sold. The Company had entered into an agreement to allow a corporation to test and evaluate its compounds. The corporation subsequently received various patents for the compounds; however, it refused to enter into a licensing agreement with the Company. The plaintiff concluded that the Company can assert causes of action against the corporation for: breach of contract; breach of fiduciary duty; misappropriation of trade secrets; unfair competition; fraudulent concealment; and intentional misrepresentation. The plaintiff also alleged the Company's series B shareholders did not approve certain loans. Subsequently, after the Company defaulted on the loans, the President decided to execute a foreclosure sale of the Company's assets and he advised the shareholders that he was resigning. The plaintiff alleged that the President did not promptly advise the shareholders of the foreclosure sale, and he breached his fiduciary duties when he failed to have the Company commence litigation against the corporation that was retained to test its compounds. The complaint was comprised of four causes of action, including: negligence, breach of fiduciary duty; concealment; and unfair competition. Total defence costs and settlement exceeded \$750,000.

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