

PRIVATE CHOICE PREMIERSM – D&O LIABILITY CLAIMS SCENARIOS

**D&O claims can be costly.
We can help.**



LEARN ABOUT DIRECTORS, OFFICERS & ENTITY LIABILITY (D&O) CLAIMS AND HOW THE RIGHT INSURANCE CAN HELP PROTECT YOUR BUSINESS

Through our Private Choice Premier product, The Hartford offers comprehensive Directors, Officers & Entity (D&O) liability insurance for privately-held companies.

The following D&O liability claims scenarios are designed to:

- Show the types of complex situations, and resulting expenses, that a privately-held organization and their directors and officers can face
- Emphasize the importance of having adequate management liability coverage that addresses D&O liability exposures, specifically The Hartford's Private Choice Premier

CLAIM 1

Type of claim	Interference with a contract
Type of insured	Private organization – flooring installation company
Total employees	15
Total revenue	Approximately \$20 million
Situation	A competitor sued the insured for conspiracy to divert a potential contract from their company. Allegations included interference with a contract and a knowing participation in a breach of duty. The plaintiff sought direct and consequential damages, including lost profits, punitive damages and attorney's fees.
Resolution	The case was resolved after mediation. Defense costs incurred to defend the claim amounted to over \$193,000.

CLAIM 2

Type of claim	Breach of fiduciary duty owed to the company
Type of insured	Private organization – printing company
Total employees	Less than 200
Total revenue	Less than \$35 million
Situation	The bankruptcy trustee brought charges against the insured's former directors and officers, claiming they had devised a strategy to disguise the insured's precarious financial position. The insured allegedly participated in a transaction allegedly causing the overstatement of stockholders equity.
Resolution	The parties successfully mediated the case. Approximately \$225,000 was paid to defend the claim.

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CLAIM 3

Type of claim	Fraudulent inducement, negligent misrepresentation, consumer fraud violation
Type of insured	Private organization – distributor
Total employees	Unknown
Total revenue	Less than \$1.5 million
Situation	An investor brought suit against the insured, alleging misrepresentation and omissions in the private placement memorandum and unit purchase agreement.
Resolution	Over \$265,000 was spent in providing a defense for the insured.

CLAIM 4

Type of claim	Misrepresentation and fraud
Type of insured	Private organization – manufacturer
Total employees	5
Total revenue	Start-up
Situation	An investor sued the insured's chairman and director, asserting that he was misled regarding how his investment would be used. Allegedly he was told his \$525,000 investment would be used for capital improvements, but his investment was instead used to pay operational expenses and existing debt. The investor sought recession and damages based upon the alleged misrepresentations.
Resolution	The case was resolved after mediation for \$285,000 on behalf of the insured. Approximately \$262,500 was paid in defending the claim.

CLAIM 5

Type of claim	False advertising, interference with a contract, federal and state unfair competition claims
Type of insured	Private organization – technology company
Total employees	Less than 40
Total revenue	Less than \$10 million
Situation	The insured filed a patent infringement lawsuit against a competitor, and, as a result, the competitor brought claims against the insured CEO and company, alleging that they had embarked on a scheme to discredit the competitor and its products.
Resolution	Prior to settling for nonmonetary relief, approximately \$615,000 was paid in defending the claim.

CLAIM 6

Type of claim	False advertising, misappropriation of property, unfair competition under federal, state and common law
Type of insured	Private organization – pharmaceutical company
Total employees	Approximately 370
Total revenue	Approximately \$130 million
Situation	A competitor sued the insured, claiming it was the only company approved to market and sell a certain type of drug and alleging that the insured misled the public and the medical industry by claiming that their product is the same as the competitor's.
Resolution	The plaintiff agreed to dismiss the action. However, prior to the dismissal, over \$1 million was spent in defense costs.

CLAIM 7

Type of claim	False claims act brought on behalf of the government by former employee of insured
Type of insured	Private organization – manufacturer
Total employees	Less than 150
Total revenue	Approximately \$20 million
Situation	A former employee of the insured alleged that the insured company knowingly manufactured a defective product, which caused injury to patients and was eventually recalled. He also brought numerous claims under the Federal False Claims Act.
Resolution	This matter was resolved successfully via motion practice. However, over \$380,000 was incurred to defend the claim.

CLAIM 8

Type of claim	Violations of the Sherman Act and various state laws
Type of insured	Private organization – technology company
Total employees	Less than 10
Total revenue	Less than \$1 million
Situation	The plaintiff alleged that numerous companies, including the insured, developed standards for technology while failing to disclose that our insured held the patent for such technology, in violation of an agreement.
Resolution	The Hartford reimbursed \$1 million in defense costs, the applicable policy limit.

CLAIM 9

Type of claim	Breach of fiduciary duty, interference with existing and prospective business, negligent misrepresentation, fraudulent misrepresentation
Type of insured	Private organization – petroleum equipment supply, service & construction
Total employees	Approximately 250
Total revenue	Approximately \$66 million
Situation	Allegedly, the insured, an equity owner in the plaintiff company, breached its duty of loyalty by engaging in double dealings with customers and potential customers. It was further alleged that the insured prejudiced the plaintiff company’s ability to protect its patent by retaining counsel that drafted letters invalidating the patents.
Resolution	The insured won on summary judgment. Defense costs totaled close to \$150,000.

CLAIM 10

Type of claim	Common law commercial disparagement, antitrust conspiracy in violation of the Sherman Act, and state law in regard to unfair and deceptive practices
Type of insured	Manufacturer
Total employees	Approximately 100
Total revenue	Approximately \$25 million
Situation	Charges were brought against our insured and other defendants for allegedly participating in a scheme, using their positions in national and international organizations, to cause standards-making organizations to shut the plaintiff company out of the testing market. As a result, the plaintiff company claimed it was unable to fairly compete.
Resolution	The insured won on motion to dismiss. The defense incurred approximately \$190,000 in legal fees.

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The scenarios summarized herein are offered only as examples. Coverage depends on the actual facts of each case and the terms, conditions, and exclusions of the issued policy. Please refer to the issued policy to determine all terms, conditions and exclusions of coverage. Coverage is provided by the property and casualty companies of The Hartford Financial Services Group, Inc. and may not be available to all insureds in all states. All information and representations herein are as of August 2017.

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