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Loss Scenarios for Privately Owned Businesses

In their day-to-day operations, privately owned businesses have exposures that have the same potentially devastating financial impact as those faced by publicly traded companies.

Directors & Officers Liability

D&O Liability insurance provides coverage for the directors and officers. This coverage protects the individual directors and officers against losses that may result from alleged errors in judgment, breaches of duty or wrongful acts in the course of their work for the organization.

Sale of Subsidiary

A manufacturer of medical devices offered to sell one of its subsidiaries to another corporation. The officers of the manufacturer prepared financial information for the buyer's review. After reviewing the information, the buyer decided to forgo other investment opportunities and purchase the subsidiary. After the sale, the buyer filed a lawsuit against the manufacturer and its officers alleging that they had made false and misleading statements to the buyer in connection with the sale. The buyer charged that the financial condition of the subsidiary was much worse than the seller had represented at the time of the sale, and that the buyer would have made more money if it had pursued one of its other investment opportunities. Following a trial, a jury determined that, while the seller did not knowingly make any deliberate misrepresentations, the officers negligently failed to exercise reasonable care in communicating accurate information to the buyer. While on appeal, the case settled for \$500,000 and defense costs reached \$625,000, for a total cost to the manufacturer of more than \$1.1 million.

Loss of Profits

A retail company filed a lawsuit against its competitor and its CEO, alleging that the competitor's new agreement with the retail company's most important supplier made it impossible for the supplier to satisfy its obligations to the retail company, causing them to lose profits. Ultimately, the competitor wins its motion for summary judgment, and that "win" is upheld on appeal. Defense costs, however, totaled \$500,000, and these costs could not be recovered from the retail company that sued.

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 had 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 defense costs and settlement exceeded \$350,000.

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 alleged that it loaned \$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 defense costs and settlement exceeded \$250,000.

Inadequate Financial Reporting

A technology company received a complaint from an investor who alleged the company improperly induced the plaintiff to issue a note payable to the company. The plaintiff specifically alleged the company made false representations and other false statements regarding the company's forecasted rate of growth and failure to disclose its tax lien. The company defaulted on the promissory note when it failed to make the required principle and interest payments. The plaintiffs issued a demand letter and filed suit against the company. The plaintiff agreed to accept the company's offer to convert the promissory note to stock in the company, but the defense costs exceeded \$100,000.