

# Private Company Loss Scenarios from Chubb



## A Cashless Settlement

<b>COVERAGE</b>	<b>Directors &amp; Officers Liability</b>
Cause of action	Unfair Competition
Type of organization	Private
Number of employees	22
Annual revenue	\$650,000

### DESCRIPTION OF EVENT

Smith, the former CEO of XYZ Inc., left the company to start up a new software firm, New Co. Soon afterward, XYZ sued Smith individually as an officer of New Co., alleging that Smith had taken with him a corporate license to market certain software. XYZ's allegations included tortious interference, trademark infringement, and unfair competition. In its suit, XYZ demanded \$10 million in damages, as well as punitive damages.

### RESOLUTION

Smith settled with New Co. for a payment of \$100,000. Additionally, Smith accumulated \$245,000 in defense expenses.



## Construction Disruption

<b>COVERAGE</b>	<b>Directors &amp; Officers Liability</b>
Cause of action	Breach of Fiduciary Duty
Type of organization	Construction Company
Number of employees	140
Annual revenue	\$2.5 million

### DESCRIPTION OF EVENT

R Construction sought \$25 million in damages from ABC & Sons, another construction services company, charging that ABC was hiring away R Construction employees and interfering with its business opportunities. In the suit, R Construction alleged tortious interference with contract and tortious interference with business relationships.

### RESOLUTION

ABC & Sons put forth a strong defense and, after intense negotiation, the claim settled for \$325,000. ABC & Sons' defense costs totaled \$197,000.



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## Sold to the Highest Bidder

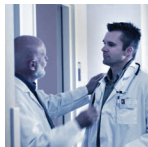
<b>COVERAGE</b>	<b>Directors &amp; Officers Liability</b>
Cause of action	Breach of Duty of Care
Type of organization	Private
Number of employees	100
Annual revenue	\$15 million

### DESCRIPTION OF EVENT

ABC Co. specialized in liquidating troubled assets, such as computer equipment, inventory, and fixed assets. It sold products to DEF Co. for \$1.6 million. A third company filed suit against ABC over the sale of equipment to DEF. The third company alleged that ABC had already accepted its bid to purchase the products for \$1.45 million, which the plaintiff said had a value of \$10 million.

### RESOLUTION

The parties reached a settlement whereby ABC paid \$600,000 to the third company. ABC also paid more than \$320,000 in defense costs.



## Anesthesiologist's Contract Proves Painful

<b>COVERAGE</b>	<b>Directors &amp; Officers Liability</b>
Cause of action	Misrepresentation
Type of organization	Medical Group
Number of employees	Fewer than 15
Annual revenue	App. \$7 million

### DESCRIPTION OF EVENT

An anesthesiologist brought suit against the medical group that he joined. In the suit, the anesthesiologist alleged misrepresentation, claiming that the medical group enticed him to join it by verbally promising him, as a partner, a share of profits as well as living and other reimbursable expenses. Based on the alleged promises made, the anesthesiologist claimed he left another medical group to join this medical group. Sometime after joining the group, the anesthesiologist claimed he asked to review detailed financial information regarding the business, but the medical group management refused, telling him he was not entitled to the information. The anesthesiologist further asserted that the medical group attempted to oust him from the group in order to prevent him from examining the financial records.

### RESOLUTION

The case settled at mediation for more than \$260,000. The medical group's defense costs exceeded \$75,000.



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## Terminated Physicians Sue Over Broken Promises

<b>COVERAGE</b>	<b>Directors &amp; Officers Liability</b>
Cause of action	Deceptive trade practices, Misrepresentation, Tortious Interference
Type of organization	For-profit physician practice organization
Number of employees	More than 30
Annual revenue	App. \$15 million

### **DESCRIPTION OF EVENT**

In order to attract physicians (who would also be shareholders), a physician practice organization made promises regarding shareholder compensation, profitability, and other inducements. However, over time, the profitability of the practice declined. Some physicians left the practice, taking their patients with them. In a cost-savings move, the practice terminated some physicians. Two cardiologists who had been terminated sued the practice for damages, alleging deceptive trade practices, tortious interference with existing business and patient relationships, negligent misrepresentation in inducing them to become shareholders, and misappropriation and conversion for lost profits.

### **RESOLUTION**

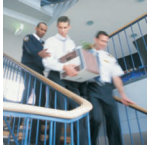
The matter settled at mediation before trial for \$375,000. The practice's defense costs totaled nearly \$450,000.



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## Bad Employees...Just Get Worse

<b>COVERAGE</b>	<b>Employment Practices Liability</b>
Cause of action	Wrongful Termination
Type of organization	Private
Number of employees	40
Annual revenue	\$3.7 million

### **DESCRIPTION OF EVENT**

A mid-level supervisor with a long history of documented performance issues was terminated for smoking in a restricted area of the company's building where flammable chemicals were stored. The terminated employee, who was 54 years old, responded by suing the company for wrongful termination. He alleged age discrimination on the basis of comments made by his supervisor (such as "You're too old") and disability discrimination because the company refused to make accommodations for his high blood pressure. He also alleged he could only be terminated for good cause. The plaintiff sought back pay, front pay, special damages, and attorneys fees totaling an estimated \$275,000, in addition to punitive damages.

### **RESOLUTION**

The company settled with the former employee, paying \$350,000, but not before it had paid \$130,000 in defense costs.



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## Discrimination...Doesn't Get Better With Age

<b>COVERAGE</b>	<b>Employment Practices Liability</b>
Cause of action	Age Discrimination
Type of organization	Private
Number of employees	120
Annual revenue	\$18 million

### DESCRIPTION OF EVENT

ABC International terminated a long-time manager for alienating employees and customers and disinterest in his job. The manager was 59 years old when the termination took place, and ABC checked off “other” instead of “poor performance” on the termination form as the reason for the termination. The manager filed a charge of discrimination with the Equal Employment Opportunity Commission, alleging he was terminated because of his age. In his charge, he stated that he had always received regular merit pay increases, was replaced by a worker in his 30s, and that some members of senior management had made comments about needing “to get rid of the old guys.” The manager subsequently filed a lawsuit against the company seeking two years of lost wages and benefits, as well as compensation for emotional distress.

### RESOLUTION

Although ABC believed it was innocent of the allegations, the company determined that defending against the lawsuit would be costly. The case eventually settled out of court for \$250,000, while expenses totaled more than \$60,000.



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## Enrollment Oversight

<b>COVERAGE</b>	<b>Fiduciary Liability</b>
Cause of action	Administrative Error
Type of organization	Office Equipment Retailer
Number of employees	Fewer than 100
Annual revenue	Less than \$10 million

### DESCRIPTION OF EVENT

An employee of an on-line office equipment retailer submitted her medical insurance plan enrollment forms to the firm's health plan administrator. The firm's health plan administrator erroneously failed to forward the enrollment forms to the insurance company where receipt of the forms was a prerequisite to coverage. A few months later, the employee required surgery, but coverage was denied because she was never enrolled in the medical plan. The employee's attorney sent a letter to the retailer complaining about the denial of benefits and demanding payment of medical fees of \$250,000, the cost of the surgery and post-operative care, plus reimbursement of attorney fees.

### RESOLUTION

The case settled for more than \$350,000, including attorney fees.



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