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Public Company D&O Claims Examples

Below are **10 representative D&O claim scenarios for publicly traded companies,** structured to reflect how claims typically arise, the allegations involved, and the relevant D&O coverage sections (Sides A, B, and C).

1. Securities Class Action – Earnings Misstatement

- **Scenario:** Company announces a significant restatement due to revenue recognition errors.
- **Allegations:** Misleading financial disclosures, violation of securities laws (Rule 10b5).
- **Claimants:** Shareholders (class action).
- **Coverage Triggered:**
  - Side C (Entity Securities Coverage) – primary
  - Side B (to reimburse indemnifying entity)
- **Exposure Drivers:** Stock drop following restatement, SEC scrutiny.

2. Securities Class Action – Missed Earnings Guidance

- **Scenario:** Management repeatedly issues optimistic guidance but materially misses targets due to known operational issues.
- **Allegations:** Failure to disclose known risks; misleading forward-looking statements.
- **Coverage Triggered:**
  - Side C
  - Side B
- **Typical Outcome:** Defense costs + settlement tied to market cap decline.

3. Derivative Action – Breach of Fiduciary Duty

- **Scenario:** Shareholders sue directors on behalf of the company after a significant loss tied to poor oversight.
- **Allegations:** Breach of duty of care, failure of oversight (Caremark claims).
- **Coverage Triggered:**
  - Side A (non-indemnifiable losses)
  - Side B (if indemnified portions apply)
- **Key Exposure:** Settlements, governance reforms, plaintiff attorney fees.

4. Regulatory Investigation – SEC Enforcement

- **Scenario:** SEC investigates alleged accounting fraud or disclosure failures.
- **Allegations:** Violations of securities laws, improper disclosures.
- **Coverage Triggered:**
  - Side A/B for individuals
  - Side C for securities-related investigations (depending on policy wording)
- **Costs:** Defense, investigations, potential settlements (fines often uninsurable).

5. M&A Litigation – Inadequate Sale Process

- **Scenario:** Company sells at a premium, but shareholders allege board failed to maximize value.
- **Allegations:** Breach of fiduciary duty, flawed sale process, inadequate disclosures.
- **Coverage Triggered:**
  - Side C (public company securities claim)
  - Side A/B
- **Common Resolution:** Disclosure-only settlements or monetary settlements.

6. Misleading ESG/Climate Disclosures

- **Scenario:** Company promotes sustainability commitments that are later challenged as misleading ("greenwashing").
- **Allegations:** False/misleading ESG disclosures impacting stock price.
- **Coverage Triggered:**
  - Side C
  - Side B
- **Trend:** Increasing frequency given regulatory and investor focus on ESG.

7. Cyber Incident Disclosure Claim

- **Scenario:** Major cyber breach occurs; plaintiffs allege delayed or inadequate disclosure.
- **Allegations:** Failure to disclose material cyber risks or incident impacts.
- **Coverage Triggered:**
  - Side C
  - Side B
- **Overlap Considerations:** Coordination with cyber policy.

8. Insider Trading Allegations

- **Scenario:** Executives sell stock before negative news becomes public.
- **Allegations:** Insider trading, securities fraud.
- **Coverage Triggered:**
  - Side A/B (defense costs; final adjudication may impact indemnity)
- **Key Risk:** Conduct exclusions triggered upon adjudication of fraud.

9. IPO-Related Litigation

- **Scenario:** Newly public company experiences a sharp stock decline post-IPO.
- **Allegations:** Misstatements or omissions in registration statement (Section 11/12 claims).
- **Coverage Triggered:**
  - Side C
  - Side B
- **Common Timing:** Within 6–18 months post-IPO.

10. Antitrust or Competition-Related Securities Claim

- **Scenario:** Company is investigated for anti-competitive practices; stock drops after disclosure.
- **Allegations:** Failure to disclose legal/regulatory risks tied to antitrust conduct.
- **Coverage Triggered:**
  - Side C (shareholder claims)
  - Side A/B (defense for individuals)
- **Exposure:** Parallel regulatory + securities litigation.

Key Observations (Market Context)

- **Side C exposure dominates** for public companies due to securities class actions.
- **Derivative suits frequently follow securities claims** ("tag-along" litigation).
- **Event-driven litigation is rising** (cyber, ESG, regulatory actions).
- **Defense costs are a major driver,** even where settlements are modest.