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Side A DIC Claim Scenarios: Publicly Traded Companies

Below are **Side A DIC–focused D&O claim scenarios,** tailored for publicly traded companies. These highlight when **traditional ABC towers fail or are unavailable,** and the **Side A DIC layer becomes critical**—exactly the type of scenarios clients and boards find most compelling.

1. Bankruptcy – Entity Cannot Indemnify

- **Scenario:** A public company files for Chapter 11 after liquidity collapse.
- **Issue:** The company is legally or financially unable to indemnify directors/officers.
- **Claim:** Securities class action + derivative suits against directors.
- **Why Side A DIC Responds**:
  - **Side B unavailable** (no indemnification)
  - **Side A DIC drops down** to protect individuals
- **Key Value:** Protects personal assets of directors in insolvency scenarios.

2. Rescission of Underlying Policy

- **Scenario:** Insurer rescinds the primary D&O policy due to alleged misrepresentations in the application (e.g., undisclosed accounting issues).
- **Claim:** SEC investigation + shareholder litigation.
- **Why Side A DIC Responds:**
  - Traditional tower voided
  - **Side A DIC (non-rescindable)** provides protection to innocent insureds
- **Key Value:** "Last line of defense" when the core tower disappears.

3. Conduct Exclusion Trigger (Final Adjudication)

- **Scenario:** Court finds one executive committed fraud; insurer denies coverage under conduct exclusion.
- **Claim:** Securities fraud litigation.
- **Why Side A DIC Responds:**
  - Base policy excludes certain individuals after adjudication
  - **Side A DIC can preserve coverage for innocent directors/officers**
- **Key Value:** Protects independent directors not involved in wrongdoing.

4. Exhaustion Dispute / Carrier Insolvency

- **Scenario:** Underlying insurer becomes insolvent or refuses to acknowledge exhaustion of its layer.
- **Claim:** Ongoing securities class action with mounting defense costs.
- **Why Side A DIC Responds:**
  - **Difference-in-Conditions (DIC)** feature allows drop-down
  - Fills gap where underlying insurer fails
- **Key Value:** Ensures continuity of defense funding.

5. Derivative Settlement Not Indemnifiable

- **Scenario:** Derivative suit settles with directors required to personally contribute to governance reforms or payments.
- **Issue:** Certain elements deemed non-indemnifiable under law.
- **Why Side A DIC Responds:**
  - **Side A specifically covers non-indemnifiable loss**
- **Key Value:** Critical for settlements structured to bypass indemnification.

6. Regulatory Action Against Individuals Only

- **Scenario:** SEC or DOJ brings enforcement action solely against individual executives.
- **Issue:** Company declines or is prohibited from indemnifying.
- **Why Side A DIC Responds:**
  - Covers **individual capacity exposure** when entity is not involved
- **Key Value:** Direct protection for executives in enforcement actions.

7. "Order of Payments" Dispute – Entity Erodes Tower

- **Scenario:** Securities class action erodes shared ABC limits (Side C heavy loss), leaving little for individuals.
- **Issue:** Directors face derivative claims with limited remaining limits.
- **Why Side A DIC Responds:**
  - Separate, dedicated limit not shared with entity
- **Key Value:** Protects individuals from **limit erosion by Side C claims.**

8. Foreign Jurisdiction Indemnification Restrictions

- **Scenario:** U.S.-listed company with foreign subsidiaries; local law prohibits indemnification of directors.
- **Claim:** Local regulatory action against non-U.S. directors.
- **Why Side A DIC Responds:**
  - Covers **non-indemnifiable loss due to legal restrictions**
- **Key Value:** Important for multinational boards.

9. Pre-Claim Investigation Costs (Broader DIC Coverage)

- **Scenario:** Directors incur significant legal costs responding to informal SEC inquiries before a formal claim.
- **Issue:** Underlying policy may not cover informal investigations.
- **Why Side A DIC Responds:**
  - Broader definitions can include **pre-claim inquiry costs**
- **Key Value:** Earlier access to defense funding.

10. Excess Layer Refusal to Follow Form

- **Scenario:** Excess carrier disputes coverage interpretation (e.g., definition of "claim" or "loss").
- **Claim:** Ongoing securities litigation.
- **Why Side A DIC Responds:**
  - Can "drop down" if underlying excess refuses to pay
- **Key Value:** Eliminates coverage gaps due to wording disputes.

Quick Comparison: Standard D&O vs. Side A DIC Triggers

Scenario Type	ABC Tower Response	Side A DIC Value
Bankruptcy	Side B unavailable	Pays individuals directly
Securities Class Action	Heavy Side C erosion	Preserves separate limits
Fraud finding	Coverage excluded	Protects innocent insureds
Carrier insolvency	Gap in tower	Drops down
Non-indemnifiable derivative claims	Limited	Primary protection
Regulatory actions (individuals)	May be restricted	Direct coverage

Key Takeaways for Client Discussions

- **Side A DIC is "catastrophic protection" for individuals,** not just excess insurance.
- Most valuable in:
  - **Insolvency**
  - **Coverage denial scenarios**
  - **Shared limit erosion (Side C exposure)**
- Increasingly viewed as **standard for public company boards,** especially with:
  - Event-driven litigation
  - Regulatory scrutiny
  - ESG and cyber exposures