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Side A DIC Claims Scenarios for Asset Managers

For asset managers, Side A Difference in Conditions (DIC) coverage is a valuable component of a management liability program because it protects individual directors, officers, partners, managers, trustees, investment committee members, and other insured persons when indemnification is unavailable and the underlying D&O/Fund Liability insurer fails to respond. Many asset managers do not purchase Side A DIC coverage. Below are sample Side A DIC Claims examples for various types of asset managers.

Unlike public company Side A claims, asset manager Side A DIC policies frequently respond to claims involving:

- SEC and regulatory investigations
- LP investor litigation
- Bankruptcy or insolvency of the management company
- Clawback and recoupment actions
- Portfolio company board service exposures
- Derivative demands
- International regulatory proceedings
- Conflicts of interest allegations
- Management company wind-downs

Below are practical claim scenarios by asset manager segment.

Investment Advisor (RIA) Side A DIC Claim Scenarios

Scenario 1: SEC Enforcement Action Against Individual CCO

FACTS

- SEC investigates alleged compliance failures.
- Chief Compliance Officer is personally named.
- Advisory firm lacks sufficient financial resources to advance defense costs.
- Primary D&O carrier rescinds coverage for the entity due to alleged application misrepresentations.

SIDE A DIC RESPONSE

- Drops down when underlying coverage becomes unavailable.
- Pays defense costs directly for the CCO.
- Advances expenses throughout investigation.

INSURED PERSON

- Chief Compliance Officer

Scenario 2: Bankruptcy of Registered Investment Advisor

FACTS

- RIA suffers significant losses and enters bankruptcy.
- Clients sue directors and officers alleging breach of fiduciary duties.
- Bankruptcy estate prohibits indemnification.

SIDE A DIC RESPONSE

- Provides protection when company cannot legally indemnify.
- Pays defense and settlement costs.

INSURED PERSONS

- CEO
- President
- Directors
- Officers

Scenario 3: Personal Liability from Cyber Governance Failure

FACTS

- Large cyber breach exposes client records.
- SEC alleges executives failed to implement appropriate cybersecurity oversight.
- Entity coverage exhausted by corporate claims.

SIDE A DIC RESPONSE

- Responds after exhaustion of underlying limits.
- Protects individuals from uncovered personal liability.

Hedge Fund Side A DIC Claim Scenarios

Scenario 4: LP Investor Suit Following Fund Collapse

FACTS
- Hedge fund experiences significant trading losses.
- Investors allege failure to disclose risks.
- Management company insolvent.

SIDE A DIC RESPONSE
- Individuals cannot obtain indemnification.
- Side A DIC funds defense and settlement.

INSURED PERSONS
- Portfolio Managers
- CIO
- Managing Members

Scenario 5: SEC Market Manipulation Investigation

FACTS
- SEC investigates alleged market timing and trading practices.
- Fund manager receives Wells Notice.
- Underlying insurer disputes coverage due to certain conduct allegations before adjudication.

SIDE A DIC RESPONSE
- DIC wording may override restrictive exclusions until final adjudication standard is met.
- Pays defense costs.

Scenario 6: Clawback from Bankruptcy Trustee

FACTS
- Fund invested in company that enters bankruptcy.
- Bankruptcy trustee sues individual fund managers who served on portfolio company board.
- Trustee seeks recovery of allegedly improper dividends.

SIDE A DIC RESPONSE
- Protects outside director board representatives.
- Funds defense and settlements where insurable.

Private Equity Fund Side A DIC Claim Scenarios

Scenario 7: Portfolio Company Bankruptcy

FACTS
- PE-backed company enters Chapter 11.
- Trustee sues PE-appointed directors.
- Claims include:
  - Breach of fiduciary duty
  - Deepening insolvency
  - Preferential transfers

SIDE A DIC RESPONSE
- Classic Side A DIC claim.
- Management company cannot indemnify.
- Portfolio company insolvent.

INSURED PERSONS
- PE Partners
- Operating Partners
- Board Representatives

Scenario 8: Conflict of Interest Transaction

FACTS
- Minority shareholders allege PE sponsor improperly structured sale process.
- PE-appointed board members personally sued.

SIDE A DIC RESPONSE
- Protects individual directors.
- Can drop down if portfolio company D&O carrier denies coverage.

Scenario 9: Fund Wind-Down and Investor Litigation

FACTS
- Fund enters liquidation.
- LPs sue General Partner executives alleging mismanagement.
- Fund lacks remaining assets for indemnification.

SIDE A DIC RESPONSE
- Covers defense and settlements for GP executives.

Venture Capital Fund Side A DIC Claim Scenarios

Scenario 10: Startup Failure Following Financing Round

FACTS

- Venture-backed company fails.
- Creditors sue VC-appointed directors.
- Allegations include:
  - Breach of fiduciary duty
  - Insolvent trading
  - Improper fundraising disclosures

SIDE A DIC RESPONSE

- Protects VC partner serving as board representative.

Scenario 11: Down-Round Financing Litigation

FACTS

- Common shareholders allege VC directors engineered financing that diluted their interests.
- Individual board representatives named.

SIDE A DIC RESPONSE

- Pays defense costs.
- Provides excess protection above portfolio company D&O limits.

Scenario 12: Founder Litigation

FACTS

- Founder removed from management.
- Founder sues board members including VC representatives.
- Claims involve self-dealing and conflicts.

SIDE A DIC RESPONSE

- Protects VC partner's personal assets.

Real Estate Fund Side A DIC Claim Scenarios

Scenario 13: Real Estate Project Insolvency

FACTS

- Real estate project fails.
- Lenders sue fund-appointed directors and managers.
- Allegations include misrepresentation of project financial condition.

SIDE A DIC RESPONSE

- Fund entity cannot indemnify.
- Side A DIC protects individuals.

Scenario 14: BREIT-Type Redemption Crisis

FACTS

- Investors challenge redemption limitations and valuation practices during liquidity stress.
- Managers and board members personally sued.

SIDE A DIC RESPONSE

- Provides excess dedicated limits solely for individuals.

Scenario 15: Environmental Liability Oversight Claim

FACTS

- Contaminated property results in regulatory action.
- Regulators allege fund managers ignored environmental reports before acquisition.

SIDE A DIC RESPONSE

- Covers defense costs for individuals where allegations constitute wrongful acts.

Outside Director Liability (ODL) Side A DIC Scenarios

These are among the most common and severe asset manager Side A losses.

Scenario 16: Portfolio Company Securities Class Action

FACTS

- Public portfolio company misses earnings.
- Securities litigation follows.
- PE or VC partner serves on board.

OUTCOME

- Company's D&O tower exhausted by class action.

SIDE A DIC RESPONSE

- Drops down above exhausted tower.
- Protects PE/VC representative.

Scenario 17: Foreign Portfolio Company Investigation

FACTS

- European regulator investigates accounting issues.
- U.S.-based fund representative personally named.

SIDE A DIC RESPONSE

- Covers international defense costs.
- May broaden jurisdictional coverage beyond local policies.

Regulatory Side A DIC Scenarios

Scenario 18: SEC Individual Wells Notice

FACTS

- SEC pursues individual CIO or portfolio manager.
- No parallel action against entity.

SIDE A DIC RESPONSE

- Pays legal representation expenses.

Scenario 19: CFTC Investigation

FACTS

- Hedge fund trading practices reviewed.
- Individuals separately represented.

SIDE A DIC RESPONSE

- Pays defense costs not indemnified by management company.

Scenario 20: FCA, ESMA or Foreign Regulator Action

FACTS

- Cross-border fund management activities investigated.
- Local regulations prevent indemnification.

SIDE A DIC RESPONSE

- Provides multinational protection.

Catastrophic Side A DIC Loss Scenario (Most Severe)

Scenario 21: Simultaneous Fund Failure + Bankruptcy + Regulatory Investigation

FACTS

- Hedge fund collapses.
- SEC investigation launched.
- LP investors sue management.
- Fund manager files bankruptcy.
- Entity D&O limits exhausted.

TOTAL EXPOSURE

Claims against:

- CEO
- CIO
- COO
- CCO
- Managing Partners
- Independent Directors

Potential defense costs:

- $10M–$30M+

SIDE A DIC RESPONSE

The policy:

- Drops down over failed primary insurer.
- Protects individuals when indemnification unavailable.
- Rings fences dedicated limits away from entity claims.
- Pays defense costs on a current basis.
- Covers non-indemnifiable loss after underlying exhaustion.

Why Asset Managers Buy Side A DIC Limits

The largest Side A DIC claims for asset managers typically arise from:

1. **Portfolio company bankruptcies** (PE/VC funds)
2. **LP investor litigation**
3. **Fund insolvencies**
4. **SEC enforcement actions**
5. **Outside director liability exposures**
6. **Clawback and trustee actions**
7. **Conflicts of interest/M&A litigation**
8. **Exhaustion of ABC/Fund Liability towers by entity claims**

For private equity, venture capital, hedge fund, and real estate fund sponsors, Side A DIC often serves as the **last line of protection for partners' and directors' personal assets,** particularly when indemnification is unavailable and underlying carriers deny coverage or exhaust their limits.