

Executive Risk Claims Overview

U.S. Exposures

- Insured operated a chain of fast food restaurants. They sent their lunch special/coupons by fax to individuals that did not ask for it (deemed Spam). They were found to be in violation of the Telephone Consumer Protection Act which allows for \$500 per incident in a class action. Incurred \$450,000. There is now similar legislation in Canada (Anti-Spam). Fines and penalties were not covered under the policy. Defense costs swelled to over \$400,000 due to significant number of appeals before the claim settled.
- Private, Canadian junior mining company with land in Nevada. Plaintiff challenged the Insureds ownership and right to sell the disputed land. Required mining experts and lawyers involved as expert witnesses, which increased the defense bill significantly. Ultimately settled for \$200,000 but incurred \$800,000 in defense costs.
- Technology company based in Toronto. Allegations of anti-competitive conduct, breach of contract and tortious interference. Our Insured had no operations in the U.S. (no assets, no employees) but was sued by a competitor in California. Incurred loss of \$2.5MM, \$45k in settlement and rest in defense costs.

Product/Trade Secrets

- Biotechnology firm invented new product to clean air of dangerous particles. Unknowingly misrepresented the effectiveness of their product based on results from a related product. Shareholders sued when they realized the presentation they were given before investing was not a true representation of the company. Plaintiff sued the company for return of investment and lost profits. Settlement of \$900,000, defense costs of \$500,000.
- Ontario based biotech firm involved in innovative manufacturing technology for pharmaceuticals industry. Complaint includes the CEO and the Company alleging interference and misappropriation of trade secrets and unfair competition. Suit brought forward in Delaware where plaintiff is headquartered. Complex science behind the claim means the case will have to go to full trial rather than stop at summary judgment. Pre-trial defense costs estimated at \$650,000.

Coverage determinations are necessarily based upon the specific facts and circumstances unique to each and every case. As a rule, real exposures are rarely as simple as hypothetical scenarios. The materials contained herein are for discussion purposes only and does not constitute legal advice nor shall it set any precedent for any actual claim presented to Berkley Canada.

Ashley Beales

Vice President, Executive Risk
(416) 594-4933
abeales@berkleycanada.com

Richard Kniaz

Assistant Vice President, Executive Risk
(416) 594-4805
rkniaz@berkleycanada.com

Rob MacKay

Senior Underwriter, Executive Risk
(416) 594-4816
rmackay@berkleypro.com

W.R. BERKLEY CORPORATION

Total Assets:
\$20.6 billion USD

Common Stockholders' Equity:
\$4.3 billion USD

Reserves for Losses and Loss Expenses:
\$10.1 billion USD

40+ years of casualty market experience

BERKLEY INSURANCE COMPANY

A.M. Best A+
S&P A+

Berkley Canada is committed to providing essential business coverage over the long term. We apply our experience, industry expertise and underwriting knowledge to develop fully-featured, realistically priced protection on which our business partners and insureds can rely now and into the future.

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Fraud and Bankruptcy

- Publicly traded company with operations in China. The material assets of the Insured were wholly owned companies in China. The directors failed to secure proper control over the subsidiaries. The company ultimately lost control of the subsidiaries and was unable to fund their liabilities. Directors and auditors allegedly failed to report the issues going on with the subsidiaries. Claim for \$10MM.
- Mortgage/ Real Estate company operating in a booming part of Canada. Allegations of fraudulent activity resulted in the insolvency of the company. Three related companies were each given a \$1MM policy. The Non-stacking endorsement did not address the additional \$1MM Side A that was in the wording, resulting in a much larger cumulative exposure than anticipated. Claim for \$34.5MM.

Crime

- Service company with 100 employees, one location. A former employee of the Insured forged their signature on cheques and cashed them for their own personal use. Incurred loss of \$100,000.
- Large manufacturing/industrial firm, with over 2,000 employees. Employee was responsible for collecting materials from a client, price of goods determined by weight. Employee allegedly rigged the weight of the goods in his favour. Over the course of 7 years (and multiple trips per day) it has been alleged that the employee stole over \$8MM. The third party coverage endorsement does not apply if they are acting in collusion with the Client, yet to be determined.

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