



Examples of claims involving directors' and officers' liability

Claims for damages against directors and officers can take many different forms.

Legal protection in criminal proceedings

G AG, a bank, grants a loan to H AG after inspecting its books of account. H AG is soon in arrears with the interest payments. Following press reports about irregularities in H AG's accounting, the G AG bank launches a criminal complaint against the board of directors. The district attorney opens criminal proceedings on account of suspected document forgery and fraud.

The board of directors informs AXA about the criminal investigation. The defense lawyer financed by AXA brings about an acquittal.

Defense against unjustified claims

D GmbH, a mechanical engineering company, sells machines to C AG. A few months after delivery of the machines, C AG experiences production outages due to defects in the machines. C AG claims compensation from D GmbH. D GmbH, in turn, asserts claims in respect of directors' and officers' liability against its former CEO because he was involved in the sale process.

AXA's lawyers make contact with D GmbH, pointing out that the warranty claims are directed solely against the company and that there is no question of directors' and officers' liability. D GmbH then drops its claims.

Overstepping of authority

The CEO of E AG, a private clinic, oversteps his authority by purchasing medical equipment. The board of directors considers this equipment to be useless and overpriced. It asserts claims for damages against the CEO based on his responsibility under stock corporation law.

AXA's lawyers enter into negotiations with E AG, which sells the equipment that is not required. AXA covers the difference between the purchase price and the selling price.

Delay in bankruptcy proceedings

F AG experiences financial difficulties due to the insolvency of one of its customers. Despite the board of directors' restructuring efforts, F AG is unable to meet claims from various creditors, leading ultimately to the opening of bankruptcy proceedings against it. In the bankruptcy, one creditor claims that the members of the board of directors are liable to pay compensation because they failed to deposit the balance sheet on time.

AXA's auditors and lawyers examine the claims and conclude that the loss due to failure to notify the court is significantly less than the alleged figure. A settlement can be reached with the creditor.

Doctoring of the balance sheet

Based on trust in the correctness of the figures published in the 2015 annual report, an investor acquires a block of equities in A AG. In 2018, he asserts that he has paid far too much for the A AG equities due to inaccurate figures in the annual financial statements. He advances claims for damages against the board of directors, based on their responsibility under stock corporation law, for the amount of the difference between the price paid and the allegedly appropriate price.

AXA's auditor concludes that the 2015 annual financial statements showed considerably smaller deviations than were alleged. On the basis of this assessment, AXA's lawyers negotiate a settlement with the investor which provides for payment of a minimal amount by AXA.

Media reports of cases involving directors' and officers' liability

Bodensee Arena

The cities of Kreuzlingen in Switzerland and Konstanz in Germany jointly operate the indoor ice rink in Kreuzlingen. Each of the two cities holds 50% of the equities, and they each appoint half of the board of directors. An extension to the indoor ice rink in the Bodensee Arena vastly exceeded the planned costs. Instead of the budgeted figure of CHF 9 million, the final cost of the extension was CHF 12 million. The entire board of directors was replaced due to this cost overrun and the partial failure to adhere to the business plan. The new board of directors asserted liability claims against the old board of directors as well as the architect who was responsible. A settlement was reached at the start of 2003. The architect paid CHF 400,000 and the members of the board of directors each paid CHF 100,000. Of the six former Swiss members of the Bodensee Arena board of directors, all but one paid this amount from their own pockets in the absence of directors' and officers' liability insurance. The settlement negotiations involving the former German members of the Bodensee Arena board of directors were conducted with an insurance company.



Central Thurgau Railway

The Thurgau district attorney brought charges against the former director and former CFO of the Central Thurgau Railway (Mittelthurgaubahn) for offenses against property and in connection with documents. The charges basically comprised three accusations: maintaining a "black" account containing CHF 1.8 million, temporary transfer of funds belonging to the Frauenfeld-Wil Railway to the Central Thurgau Railway, and temporary misappropriation of subsidies amounting to CHF 24 million. In June 2005, the former director was given a suspended prison sentence and ordered to pay a fine in connection with the "black" account, on account of management fraud, embezzlement and document forgery. The former CFO was given a suspended prison sentence and ordered to pay a fine on account of embezzlement and document forgery.



AFG Arbonia-Forster-Holding AG

At the general meeting of AFG Arbonia-Forster-Holding AG, the main shareholder, CEO and chairman of the board of directors stated the findings of a critical review of AFG's organization: in connection with speculative foreign exchange transactions, the AFG Group had sustained a loss of CHF 8.54 million. Two former members of the board of directors were held responsible for this. The main shareholder went on to mention that the directors' and officers' liability insurance had to cover this loss. Negotiations with the existing directors' and officers' liability insurer, which had been offered a substantial settlement, were nevertheless failing, so AFG (it was stated) would institute court proceedings to claim the sum of CHF 6.75 million.



Suter+Suter AG

Six years after the collapse of Suter+Suter AG, the exchange-listed planning and architecture company based in Basel, the administrator reached a settlement for CHF 11 million with 11 of the 12 former members of the board of directors and members of the executive board. The settlement came about after the liquidator had prepared extensive complaints – with claims of well over CHF 11 million – in response to a decision by the creditors' committees. The accusations: the responsible directors and officers should already have foreseen the risks involved in the company's development (due mainly to expansion financed with borrowed funds and failed acquisitions) years before the debt-restructuring moratorium in 1995. The directors and officers, it was said, did not adequately foresee the high risks, nor did they have sufficient expertise or management capabilities. It is not known whether the sums were paid by the parties concerned themselves, or by directors' and officers' liability insurances.



These examples of claims and losses are merely of a descriptive nature and are based solely on publicly accessible information; they are **not** related to any customers of AXA.

Source: various Swiss media.

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