

Not-for-Profit Loss Scenario

Creditors Sue Directors and Officers

Coverage: Directors and Officers Liability

Cause of Action: Breach of Fiduciary Duty, Mismanagement

Type of Organization: Suburban Not-for-Profit Hospital

Number of Employees: Nearly 1,000

Annual Revenue: App. \$110 million

Description of Event

A suburban not-for-profit hospital, experiencing severe financial difficulties, entered into a strategic business alliance with a third party. Under the agreement, the third party would manage the day-to-day operations of the hospital and eventually acquire it. The contemplated sale was unsuccessful, and the hospital filed for bankruptcy protection. The creditors sued the hospital's directors and officers alleging mismanagement in the period prior to insolvency, as well as breach of fiduciary duty in not accepting a competing offer to sell, which was not subject to financing contingencies. The defendants argued that the competing offer would not have satisfied outstanding obligations and would certainly have forced a bankruptcy filing. The defendants also argued that their decision to accept the chosen offer was protected under the business judgment rule.

Resolution

The parties negotiated a settlement with the creditors in excess of \$3 million and incurred over \$2 million in defense costs.

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