

Examples of Allegations Against Directors and Executives¹

A. Compensation and Benefits

1. Disney : Michael Ovitz (President) (resigned)
 - i. In *Re Walt Disney Company Derivative Litigation*, 906 A. 2d 27 (Del. 2006). Shareholders brought suit over the directors' approval of terms of Ovitz employment agreement, specifically charging that the directors allowed Eisner and Ovitz to negotiate a sweetheart deal, the terms of which the directors were barely aware. The lower court found that the directors "were taken on a wild ride and most of it in the dark." However, although the Compensation Committee failed to follow best practices, the court found it did not breach its fiduciary duty.
2. Brocade Comm. : Gregory Reyes (CEO) (convicted of fraud)
 - i. Convicted of 10 counts of securities fraud in related to stock option backdating. Reyes was hurt by inconsistencies between his statements to internal investigators and his strategy at trial.
3. United Health : William McGuire (CEO) (class action settled)
 - i. The Board was alleged to have approved an arrangement by which, according to the Wall Street Journal, McGuire essentially was awarded the same options twice, resulting in an extra \$250 million in compensation that was not properly recorded. In 2008, McGuire agreed to personally pay \$30 million and relinquish stock option rights in order to settle a class-action lawsuit led by the California Public Employee's Retirement System. Health South will be making a \$895 million payment to Plaintiffs in that action and have promised to make corporate governance changes, including the election of a shareholder-nominated director and increased director independence.
4. Smithsonian : Lawrence Small (Secretary) (resigned)
 - i. Small's salary shot from about \$300,000 to nearly \$1 million in seven years. According to an inspector general's report, the Board of Regents, which consisted of Vice President Cheney and Chief Justice John Roberts, "were not fully aware" of Small's compensation, which Small essentially set himself. One inspector general resigned claiming that Small tried to derail her investigation.
5. AIG : Maurice "Hank" Greenberg (CEO) (investigation launched)
 - i. In October 2008, New York Attorney General Andrew Cuomo announced an investigation into tens of millions of dollars in bonuses paid to executives linked to the company's losses, even though senior management had already been alerted to the firm's imminent problems.

B. Travel and Entertainment

1. Adelphia Comm. Corp: John Rigas (Chairman) (convicted of fraud)
 - i. Prosecutors pointed to Rigas' use of the company jet for a safari to Kenya, for annual deliveries of Christmas trees to his daughter, and for free rides for actress Peta Wilson, the object of CFO Tim Rigas' affection.

2. Beacon Mutual Insurance Company (fine and restitution)
 - i. Executives and Board accused of approving \$1.1 million in “golf-related events, attire, and travel” over only two years. The company also spent \$20,000 to support the PGA career of a top agent’s son. In a settlement with Rhode Island regulators, the Company agreed to pay a \$2.5 million fine, refund \$7 million to policyholders, and implement management changes.

3. CitiGroup : Todd Thompson (CFO) (resigned)
 - i. Thompson bumped CitiGroup executives from the corporate jet in order to offer a ride to CNBC reporter Maria Bartiromo, a personal friend.

4. Astra USA: Lars Bildman (liable for breach of fiduciary duty; tax evasion)
 - i. Allegedly spent company funds on yacht cruises with prostitutes.

5. American University: Benjamin Ladner (President) (suspended then terminated)
 - i. According to a long-time assistant, Ladner made no effort to separate business and personal expenses, insisting the university pay for first class air travel and the “best room with the best view” at luxury hotels. Ladner purportedly asked the assistant to add business appointments to his past calendars after the investigation into his expenses had begun.

6. InfoGroup Inc.: Vinod Gupta (founder and CEO) (resigned)
 - i. Shareholder suit alleged misuse of shareholder funds, most notably entertainment expenses including aircraft, yachts, condos in Hawaii, stadium box seats and an expense of nearly \$900,000 related to providing free air transportation to former President and Senator Clinton. A special committee conducted an internal investigation, which led to a proposed settlement including Gupta’s resignation as CEO, separation of the role of CEO and Chairman, and new rules requiring board approval for related-party transactions over \$125,000.

7. AIG: Maurice “Hank” Greenberg (CEO) (investigation threatened)
 - i. In October 2008, New York Attorney General Andrew Cuomo demanded a halt to and accounting of travel and entertainment expenses, including hunting trips to England, which were approved and expensed even as the company was “teetering toward bankruptcy.”

C. Insider deals/Conflicts of Interest

1. Adelphia Communications Corp. : John Rigas (Chairman) (convicted of fraud)
 - i. Prosecutors alleged that the company was Rigas’ “Personal Piggybank” from which he borrowed money to make personal purchases and investments, including the Buffalo Sabres NHL franchise and the Aidan Quinn movie Song Catcher.
 - ii. Rigas’ wife Doris was awarded a \$371,000 contract to install furniture at Adelphia’s offices.

2. Hollinger : Conrad Black (CEO) (convicted of fraud)
 - i. Black conditioned the sale of company assets on the buyers compensating him personally for signing non-compete agreements.

3. Priscilla Slade : Texas Southern University (President) (no contest plea)
 - i. Slade was accused of the crime of misapplication of fiduciary property, to wit, spending over \$500,000 of University funds for personal use, including crystal stemware and a \$1,000 silk canopy for her \$9,000 sleigh bed. The CFO who approved the expenses had already been convicted and sentenced to 10 years in prison for ‘misapplication of fiduciary property.’ After a mistrial was declared in October

2007, Slade pleaded no contest. She was sentenced to 10 years of deferred adjudication, 400 hours of community service, and agreed to restitution of approximately \$125,000.

4. Smithsonian: Lawrence Small (Secretary) (resigned)

- i. Received a \$1.15 million housing allowance over 6 years in return for letting the Smithsonian use his house for functions. In fact, Small's home was used only infrequently for functions.
- ii. Small and his deputy both sat the board of Chubb, to whom the Smithsonian directed the lion's share of its insurance business.

D. Personal Relationships

1. Boeing: Harry Stonecipher (CEO) (terminated)

- i. Anonymous tip led to internal investigation revealing affair with VP Debra Peabody. Stonecipher was terminated within 2 weeks of tip.

2. British Petroleum : Lord John Browne (CEO) (resigned)

- i. Former boyfriend gave interview to newspaper about Browne's misuse of company assets to benefit the boyfriend.

3. Time Warner : Chris Albrecht (CEO) (terminated)

- i. Removed by Board in 2007 after being arrested on suspicion of assaulting his girlfriend in a Las Vegas parking lot.

4. Wal-Mart : Julie Roehm (EVP) (terminated)

- i. Terminated for relationship with subordinate in violation of ethics policies.

5. Wellpoint Inc. : David Colby (CFO) (terminated)

- i. Terminated following filing of civil suit alleging that Colby had been carrying on approximately 15 concurrent romantic relationships with women (including several employees) since mid-2004.

6. Int. Monetary Fund: Dominique Strauss-Kahn (Managing Director) (cleared)

- i. Internal investigation by the board determined that Strauss-Kahn had a romantic relationship with Pirooska Nagy, former IMF employee and wife of the former President of the Argentine National Bank. The investigation found that Strauss-Kahn committed a serious error in judgment, but also found that Strauss-Kahn played no role in Nagy's subsequent employment, and that he did not engage in "harassment, favoritism, or any other abuse of authority." Strauss-Kahn will retain his position and the board has accepted an apology.

E. Other

1. Raytheon : William Swanson (CEO) (board docked \$1 million in compensation)

- i. Swanson plagiarized material for his book about management.

2. Astra USA: Lars Bildman (liable for breach of fiduciary duty; tax evasion)

- i. Fostered culture of sexual harassment, perpetrated by Bildman and dozens of male executives and customers. Employees report a "fraternity-like atmosphere" in which Bildman "demanded that eight hours of work be followed by eight hours of drinking and partying."

3. Smithsonian: Lawrence Small (Secretary) (resigned)

- i. Small and his Deputy were permitted unlimited time off. Small took about 10 weeks of vacation a year, and also missed a total of 400 workdays in seven years. His deputy missed 550 work days in six years.

4. Minerals Management Service: Gregory W. Smith (Program Director) (retired)

- i. Interior Department Investigative Report found that Smith steered government contracts to certain consultants, improperly accepted gifts from oil and gas companies including cash and drugs, and had improper sexual relations with at least two subordinates.

Director's Duty to Investigate

A. Fiduciary Duty of Care

1. Duty to (1) act in good faith; (2) act with the care an ordinary person would under like circumstances; (3) act in a manner you reasonably believe is in the best interests of the corporation.

2. Duty to Investigate
 - a. "The duty of due care requires that a director's decision be made on the basis of 'reasonable diligence' in gathering and considering material information. In short, a director's decision must be an informed one." *Hanson Trust PLC v. ML SCM Acquisition, Inc.*, 781 F. 2d 264 (2d Cir. 1986).

 - b. "Where suspicions are aroused, or should be aroused, it is the director's duty to make necessary inquiries." *Hoye v. Meek*, 795 F. 2d 893, 896 (10th Cir. 1986).

 - c. The duty of care is breached when director "ignored either willfully or through inattention obvious danger signs of employee wrongdoing." *Graham v. Allis-Chalmers Mfg. Co.*, 188 A. 2d 125 (DE 1963)

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