



# AppealGap® Contingency Insurance

## Case studies

### **Pending appeal prevents auction of company from commencing**

The investors in Company X, which is a defendant in a proceeding brought by a group of inventors for alleged patent infringement, wish to sell the company in an auction process. After years of litigation, a judgment is rendered in favor of Company X. The inventors immediately file for an appeal of the judgment. While the accused products do not generate significant revenue for Company X, the potential damages associated with the reversal of the judgment on appeal are significant in relation to the enterprise value of Company X. An *AppealGap*® policy with an assignment feature may be issued to the company to respond to loss payable by Company X if the judgment is reversed.

### **Pending appeal prevents inventors from obtaining a loan**

The inventors of a chemical manufacturing process file patents on their process and license the patented process to clients. During the term of one of the licensing agreements, a licensee, Company A, terminates its licensing agreement. Upon discovering that Company A is infringing their patent by continuing to sell products which utilize the inventors' process, the inventors sue Company A for patent infringement. After extensive litigation, the court finds in favor of the inventors. The judge enters a judgement against Company A in the amount of \$10,000,000. Company A immediately applies for notice of appeal. The inventors are concerned about their ability to survive the appeal given their limited financial resources and the threat that an adverse decision on appeal will serve to deter new licensees from entering into similar license agreements. A bank is prepared to offer financing to the inventors; however, they express concern about the inventors' ability to repay the loan if the first instance judgment is reversed. The inventors may obtain an *AppealGap*® policy, with the lender as a "loss payee", to cover the outstanding loan payments in the event the judgment is reversed.

### **Pending appeal prevents the closing of a company purchase**

Company Z, a close company specializing in plastics manufacture, buys back the shares of one of its founders, Founder A, for \$500,000. While this figure was considered an attractive price at the time of the buyback, two years later and after a substantial increase in annual sales, Company Z is approached by an interested buyer willing to purchase the company for \$20,000,000. Founder A becomes aware of the impending purchase and sues Company Z and its directors and officers, claiming that the Company duped him into selling his shares for an inadequate sum and that the defendants intended to seek interested buyers at the time his shares were sold. The court hearing the case refuses to issue an injunction preventing the sale and dismissed the case against Company Z. Founder A subsequently appeals the court's decision. The prospective buyer of Company Z is unwilling to proceed with the potential acquisition unless the downside risk associated with a successful appeal by Founder A can be eliminated. As a condition to completing the acquisition, Company Z may obtain an *AppealGap®* policy, with the buyer as an additional insured, to respond to losses in the event Founder A is successful in the appeal.

### **Law firm and client exposed to risk of significant damages**

A law firm represents Company B, a specialist manufacturer. Company B believes that its largest competitor is attempting to disrupt lucrative contractual relationships with several of its key customers. The law firm commences proceedings on behalf of Company B alleging tortious interference and unfair trade practices against the competitor and seeking damages of \$50,000,000. The competitor counter-sues Company B and names the law firm as an additional defendant for filing the suit based on false claims. The court dismisses both the case against the competitor and the counter-suit against Company B and the law firm. All parties appeal the decision of the court. The law firm and Company B may obtain an *AppealGap®* policy to respond to awards against them in the event they are ultimately found liable for filing a frivolous lawsuit against the competitor.

### **Pending appeal prevents funding for alternative energy plant**

The builder and operator of alternative energy plants wins a bid to build a plant in a largely undeveloped area. All necessary federal, state, and local permits needed to build the alternative energy plant have been received by the company. A group of individuals owning upscale homes several miles away commence an action before the relevant federal administrative agency to block construction of the plant. The owners' bid to block construction of the plan at the administrative level is rebuffed, but with ample funds with which to litigate, it is clear that the group will continue to pursue an appeal to prevent the company's construction of the plant. Prior to commencement of an appeal, an investment fund offers to make a significant investment in the company. Despite the positive outcome for the company in the first round of litigation before the agency, the investment fund is concerned that it will lose its investment if the property owners group prevails on appeal, or if the company is ordered to pay significant damages to the property owners for diminution in value of their property. As a condition to making the investment, the investment fund may require that the company obtain an *AppealGap®* policy to respond if the property owners prevail on the appeal.