

Directors & Officers Liability Insurance

What Is Directors And Officers (D&O) Liability Insurance?

Directors & Officers liability insurance protects the executive management team of public, private, and non-profit companies and organizations from claims against them relating to their daily management decisions. **There are typically three parts to a D&O policy:**

PART A

Provides personal protection for the individual directors and officers when the company is unable to indemnify them for whatever reason (legally prohibited from, financially unable to etc.).

PART B

Provides reimbursement to the organization for their indemnification of the Directors and Officers.

PART C

Provides what's known as "entity coverage" for private and non-profit organizations and for publicly traded companies. This coverage part responds to securities related claims.

Why Does My Client Need Directors And Officers Liability Insurance Coverage?

Many agency clients serve on boards of directors or are in executive positions of their companies. Directors and Officers can be personally held liable for the actions (or inaction) and decisions made in the interest of the company or organization. The defense of these allegations can be costly and a D&O policy is a risk transfer strategy for these organizations.

What Does a Directors and Officers Insurance Policy Cover?

A Standard D&O Policy typically provides coverage for claims relating to unfair business practices, conflict of interests, violations of non-compete agreements, bankruptcy filings, creditor actions, claims related to a merger or acquisition to name a few. These policies help insureds by providing defense costs associated with these types of lawsuits and investigations as well as indemnification both individually and corporately.

Who Needs Directors And Officers Insurance?

Any company, public or private as well as non-profit organizations need Directors and Officers Liability insurance. There are no organizations that are immune to liability associated with their daily operations and business activities. Even if the organization is "closely held" and don't have many outside shareholders, they can still face lawsuits from outside third parties including competitors, creditors or regulators.

D&O Coverage Enhancements Available through our Office:

- Duty to Defend (with 100% Defense Allocation)
- Non-Rescindable "Side A" Coverage
- Additional "Side A" Coverage
- Separate Limits for Defense Coverage
- Increased Derivative Demand Sublimit
- True Worldwide Territory

Related Coverages Available through our Office:

- Excess D&O Limits
- Employment Practices Liability
- Excess "Side A DIC" (Difference in Conditions)
- Commercial Crime/Financial Institution Bonds
- Fiduciary Liability
- Cyber Liability Insurance

*** EPL, Crime, Fiduciary can often be written as a package with the D&O.*

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Claim Scenarios



Vendor Dispute

A manufacturer asked a vendor to increase its supply of certain parts and materials with an expectation and promise that this vendor would be the exclusive supplier once a contract was won. Upon winning the contract, the manufacturer instead agreed to terms with another vendor/supplier for those required materials. The original vendor who was promised that business, sued for their financial loss for the inventory they now had that was specific to that contract. The suit eventually settled for \$1.2M including defense costs.



Credit Fraud

A creditor filed a complaint against individual directors and officers of a company alleging that its CEO, CFO, and COO conspired to use the plaintiff's services to furnish, install and repair the company's equipment knowing it was insolvent and was planning to file for bankruptcy protection. Causes of action included: (1) fraud, misrepresentation and non-disclosure; (2) deceptive trade practices; and (3) civil conspiracy. Total settlement and defense of the individually named defendants exceeded \$100,000.



Regulatory Violation

A plastics manufacturer and one of their distribution partners were shipping chemicals and other raw materials to international clients. Some of the chemicals that were distributed were on a prohibited list by the CBC via the U.S. Department of Commerce. Regulators investigated and it was determined that the chemical inventory logs and descriptions were inaccurate and in violation of import and export controls for these types of materials. This investigation incurred over \$150,000 in legal and \$1.1M in damages.



Stolen Corporate Secrets

The Vice President of a manufacturer determined diversification into a different product line presented tremendous sales potential for his company. Instead of presenting that opportunity to his employer, the VP shared it with his brother who formed a new company to produce that product. On behalf of the company, a shareholder sued the VP alleging that he wrongfully took advantage of an opportunity belonging to the corporation. The suit eventually settled for \$2.5M.



Recruiting Sales Executives

A company recruited a top sales executive who had a non-compete employment contract with a competitor company. The competitor sued the company for damages suffered as a result of losing its top sales producer on the grounds that the company interfered with the competitor's contractual relationship with its employee. Defense expenses were in excess of \$250,000 and the competitor was awarded damages of \$600,000.



Investment Agreement

A company signed an investment agreement with a third party which agreed not to negotiate with other entities regarding a potential acquisition for a two-week period. During that time, the company engaged with another investment group. The third party alleged that the company performed a breach of investment agreement and intentional and negligent misrepresentation. The total amount of settlement and defense costs exceeded \$350,000.

These are only claims examples: minor changes from actual suits have been made to protect the confidentiality of all clients.