

# Directors and Officers Liability Insurance



In today's business climate of corporate transparency and accountability, an organization's officers and directors face a myriad of employment-related exposures. In the past few years, we've experienced an unprecedented number of corporate scandals and have seen directors and officers increasingly held accountable for their actions. While the trend of corporate accountability may seem to be applicable only to large corporations, privately held companies, including non-profits, are not exempt from litigation arising out of the management decisions of their boards.

Regardless of your company's size, the legal costs associated with a lawsuit can be crippling. If your company does not insure this risk, qualified directors and officers may be hesitant to join your team for fear of personal liability in the event of an error. To help recruit strong leaders as well as ensure the well-being of existing leaders and your company, a directors and officers liability insurance (D&O) policy should be part of your comprehensive risk financing strategy.

### D&O Fills the Coverage Gap

Unlike a commercial general liability policy that provides coverage for claims arising from property damage and bodily injury, a D&O policy specifically provides coverage for a "wrongful act," such as an actual or alleged error, omission, misleading statement, neglect or breach of duty.

For example, a manufacturer told one of its suppliers to increase inventory because they were expecting a large increase in production. As predicted, demand for the manufacturer's product grew, but the manufacturer increased its inventory with another vendor. The original supplier successfully sued the manufacturer, alleging

they suffered damages as a result of having relied on the manufacturer's promise.

A D&O policy provides defence costs and indemnity coverage to the entity listed on the policy declarations, which may include:

- Coverage for individual directors and officers;
- Reimbursement to the organization for a contractual obligation to indemnify directors and officers that serve on the board; and
- Protection for the organization or entity itself.

Indemnification provisions are typically included in the charter/bylaws of a corporation. While an important risk component, small to midsize privately held companies or non-profit organizations often do not have the financial resources to fund such indemnity provisions. A D&O policy provides an extra blanket of security in the event of a covered loss.

### Coverage Specifics

#### Exclusions

- A "fraud" exclusion is typically included in a D&O policy, which eliminates coverage for losses due to dishonest or fraudulent acts or omission, or wilful violations of any law or rule.
- Policies require the insured to retain a portion of the risk uninsured. This amount varies—speak to your Case Insurance Brokers Inc. representative for guidance.

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## Customization Options

In addition to the customary provisions of D&O insurance, there are additional forms of coverage that can be added to create adequate protection for the unique risks your directors and officers face. These provisions may include:

- Entity coverage;
- Payment priority for insured individuals;
- Severability of the insured as well as severability of the application;
- Coverage over time, meaning coverage responds to past, present and future directors and officers;
- Pay on behalf clause; and
- Duty to defend clause.

In addition, some D&O policies can be endorsed to provide employment practices liability (EPL) coverage and/or fiduciary liability.

## We're Here to Help

Whether you're a non-profit, privately held or a public company, it is likely that your business can benefit from a D&O policy. Since there is no such thing as a "standard" policy, a professional broker is invaluable when you go to purchase D&O coverage. At Case Insurance Brokers Inc., we make it our priority to understand your organization and assist you with customizing policy language to meet your unique needs. Contact Case Insurance Brokers Inc. today to learn more about D&O protection options for your company.