D&O

Directors & Officers

Q&A

Why does my private company need to buy D&O?

D&O insurance can protect private companies from loss arising from such claims as anti-trust and unfair competition claims, governmental or regulatory claims, lawsuits brought solely against an individual director or officer of the company for mismanagement, creditor lawsuits, and even the frivolous claims that still have defense costs. The coverage helps protect the company's balance sheet and cash flow, as the carrier pays for defense costs of a claim after satisfaction of the retention. The policy is intended to protect directors and officers against allegations of wrongful conduct when they are acting as company executives

Who is covered under a D&O policy?

Directors & Officers of the company (insuring agreements 1 and 2), and the policy covers the company. Company includes subsidiaries (company owns 50% or more of the entity), and can include affiliates (common ownership entities) if specifically named. Employees are also covered, as well as the individual D&Os for their service on not-for-profit boards.

Who can bring the types of claims typically covered by a D&O policy?

Claims can be brought by the company's stakeholders (owners, investors, lenders, employees and securities holders, including bondholders). Claims can also be brought by customers, consumer groups, competitors, business partners (venders and suppliers) and government enforcement/regulatory groups

Why don't companies simply indemnify their directors and officers?

Companies generally do indemnify their directors and officers. However, sometimes companies are financially unable to provide this monetary protection or are unwilling to do so for economic or political reasons. Without corporate indemnity or insurance, directors and officers would be reduced to relying on their own personal assets to pay for the costs of defense and any resulting settlement or judgment against them. Outside directors (those that are not also employed by the company) are usually very vocal about requiring D&O coverage before agreeing to sit on a corporate board

What's an "insured versus insured" exclusion?

D&O policy is intended to function as third-party coverage or to insure claims made against the directors and officers by outsiders or third parties. It is not intended to respond to claims by the insureds themselves. (These are viewed as either insider fighting or collusive suits – things that the insurance carriers want to avoid).

There are some exceptions to the application of this exclusion. The first makes an exception for shareholder derivative suits as long as no insured (including the company) assisted in bringing the suit in any way. The second typical exception is for wrongful termination suits by officers. More recent exceptions may apply to cross-claims or claims for indemnity. Each of these exceptions means that the exclusion does not apply in those circumstances – so there is coverage.

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When does a claim have to be reported to the D&O carrier?

It varies, but typically, the claim has to be first asserted or "made" against the insured during the policy period. This is why D&O insurance is generally referred to as "claims made" coverage. Some D&O policies also require that the claim be reported to the carrier during the same policy period. This is referred to as "claims made and reported" coverage. Many carriers provide some degree of a reporting "tail" to allow a short period of time after the policy expiration in which to provide notice of claims that came in during the policy period.

How is the premium determined?

While many indicators go into the pricing, Total Assets and Gross Revenues are primary components of pricing. The general health of the financials and the company's industry are also keys to the pricing.