3 reasons private companies purchase D&O Liability insurance

Guest editorial
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Action brought against directors and officers of a company, whether based on actual or alleged wrongful acts, can result in a Directors & Officers (D&O) Liability claim. This may arise from execution of daily duties or management functions; every decision made by these individuals can face scrutiny.

Directors and officers have the duty of loyalty, obedience and diligence. Any actual or perceived breach of these can lead individual directors and officers as well as your business into a lawsuit from potential claimants like vendors, customers, creditors, competitors or employees. Examples of alleged wrongful acts resulting in litigation include breach of good faith, conflict of interest, breach of contract, negligence, fraud…the list is long.

It is commonly and incorrectly assumed publicly traded companies are the only ones in need of D&O Liability. Private organizations also require this insurance coverage, though, as their risk (on a smaller scale) can mirror that of the public sector.

Following are three reasons privately held corporations are transferring their risk to a D&O insurance policy.

1. Directors and officers of a company can be held *personally* liable. Their assets can be attached, causing them to reach into their own pockets for legal defense costs in civil and criminal trials as well as regulatory investigations. Fortunately, the insurance industry responded by including coverage for the individual directors and officers on the corporate policy in cases where the employer is not legally required to indemnify them.
2. Lawsuits from competitors are becoming more common, as they can sue under federal antitrust statutes or allege interference with business opportunity. They can hold a corporate officer liable for patent or trade infringement. For instance, an ex-employee, now working at a competing shop, could use confidential and proprietary information to create an unfair advantage for his or her new employer. The plaintiff in this case could allege irreparable and immediate injury as well as claim the ex-employee has possession of its intellectual property.
3. Dispelling the myth that companies without stockholders don't need coverage. As D&O insurance is becoming more mainstream, the need for privately held businesses to have coverage is more prevalent. Note, even with publicly traded companies, only about 25 percent of their D&O lawsuits are brought against them by stockholders. Other types of claimants (as mentioned previously) and coverage visibility are making D&O policies more desirable in the private sector.

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Many business owners believe these types of losses will be covered by their existing General Liability policies. It's important to remember your General Liability coverage protects you against lawsuits arising from *bodily injury or property damage* resulting from your operations and/or product. The D&O risk is different, as it covers losses resulting in *economic* damages.

While the insurance industry strives to provide customers with the most cutting-edge and up-to-date products available, it's understood that your operations change and grow. These conversations between agent and insured sometimes come too late, and a loss goes uncovered for no other reason than a lack of communication. Now is the time to visit with your insurance professional and inquire about this and other coverages that could help protect your business.

As NTEA's preferred insurance agency, JD Fulwiler developed the ***Protection Plus*** *program to provide the industry with underwriting, risk assessment and loss prevention services. JD Fulwiler will shop among many top insurance carriers with which it does business to find a coverage solution that best meets your needs. Learn more about this program at ntea.com/partnerships or call 800-441-6832.*