

Why you should consider Directors & Officers 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 can arise from the execution of their day-to-day duties or management functions. Every decision made by a director or officer of your company can fall under scrutiny. Directors and officers of a company have three main duties:

- Duty of loyalty
- Duty of obedience
- Duty of diligence

Any actual or perceived breach of these duties can lead individual directors and officers as well as your company into a lawsuit. Some of the potential claimants are vendors, customers, creditors, competitors and employees. Examples of alleged wrongful acts resulting in litigation can be caused by breach of good faith, conflict of interest, breach of contract, negligence, fraud — the list is long.

It has been commonly and incorrectly assumed that publicly traded companies are the only ones with a need for D&O Liability insurance. However, in recent years, it has become more apparent that private companies have a real need for this insurance coverage. They have risk that, although perhaps on a smaller scale, can mirror that of the publicly traded sector. Therefore, privately held companies are doing their homework, and along with their insurance agents, are determining whether or not D&O insurance is a prudent expense and addition to their insurance portfolio.

Following are three reasons privately held companies are choosing to transfer their risk to a D&O insurance policy.

1. Directors and officers of a company can be held personally liable. Their personal assets can be attached, causing many 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 to this risk by including coverage for the individual directors and officers on the corporate policy in cases where the employer does not indemnify them.
2. Lawsuits by competitors are becoming more common. Competitors can sue under federal antitrust statutes or allege interference with business opportunity. They can hold a corporate officer liable for patent or trade infringement. An example of a competitor lawsuit would be an ex-employee, now working at a competing shop, used confidential and proprietary information to create an unfair competitive advantage for their new employer. The plaintiff in this case could allege irreparable and immediate injury as well as alleging the ex-employee has possession of its intellectual property.
3. Dispelling the myth that “I don’t need this coverage because I don’t have any stockholders.” As D&O coverage is becoming

a more mainstream insurance product, the need for coverage for the privately held company is becoming more prevalent. It’s important to remember that even with publicly traded companies, only about 25% of their D&O lawsuits are brought against them by stockholders themselves. Other types of claimants discussed previously and the visibility of the coverage is making a D&O policy more desirable in the private sector.

Many business owners believe these types of losses would be covered by their existing General Liability insurance policies, and this is a risky assumption. Your general liability policy protects you against lawsuits arising from bodily injury or property damage resulting from your operations and or product. But 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 insurance products available, 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 may leave you exposed to potential risk.

JD Fulwiler & Co. Insurance developed the Work Truck Total Protect 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 at ntea.com/partnerships.

