

Why Does Your Company Need Directors & Officers Liability Insurance?

While a privately-held company may not have the same exposures as a publicly traded company, it does face lawsuits arising from common business activities such as:

- ▶ interactions with customers and vendors
- ▶ development and marketing of their product or service
- ▶ mergers, acquisitions or divestitures
- ▶ financial management decisions, such as taking on debt or accounting for expenses

Even if the owner is the only shareholder, the company is still exposed to costly potential litigation from outside shareholders (including family members), employees, customers, suppliers, competitors, government agencies, creditors and potential merger or acquisition partners. In fact, only about 25% of Directors and Officers Liability (D&O) claims against privately-held companies are made by shareholders.

In a recent survey the top five concerns from executives of privately-held companies are:

- ▶ Lawsuits filed by customers or competitors
- ▶ Regulatory litigation and related exposures
- ▶ Employment claims
- ▶ Financial and accounting issues
- ▶ Product Liability

What if:

- ▶ A customer, competitor or investor sues your company and its executives for a misrepresentation or breach of duty?
- ▶ An employee sues your company for discrimination, harassment or retaliation?
- ▶ A retiree or employee sues your company and its plan fiduciaries for a breach in fiduciary duty?

Do you want to use funds intended to grow your business on paying for attorneys and settling the lawsuit? Average defense costs alone on D&O claims is \$267,000, not to mention the ultimate settlement or judgment. Can you afford to pay the cost out-of-pocket?

OUR PRIVATE COMPANY D&O POLICY CONSISTS OF THREE PARTS:

- ▶ D&O coverage, including entity coverage
- ▶ Employment Practices Liability (EPL)
- ▶ Fiduciary Liability

Key Coverage Features:

- ▶ Matching Directors & Officers Liability Defense Limit up to \$1,000,000 for firms with up to 200 employees
- ▶ Defense outside the limit for the EPL coverage up to 200 employees
- ▶ Defense and Settlement Provision ("Hammer Clause") – 25% coinsurance on the part of the insured after their final refusal to settle
- ▶ Individual Director or Officer Payment Protection ("Order of Payments")
- ▶ Punitive Damages, where insurable by law, included automatically (available in most jurisdictions)
- ▶ Fiduciary Liability coverage can be added to the Directors & Officers Liability section up to \$1,000,000
- ▶ Fair Labor Standards Act (FLSA)- \$100,000 sub-limit for defense costs and loss (available in most jurisdictions if EPL is purchased)
- ▶ Optional Third Party Discrimination coverage under the EPL coverage for most classes (Third Party Harassment included automatically)
- ▶ Unlimited Extended Reporting Period for former Directors & Officers
- ▶ Separate limits for Directors & Officers Liability and EPL
- ▶ Automatic Outside Directorship Liability coverage for service on 501(c)3 boards
- ▶ Stand-alone Directors & Officers Liability policy is available
- ▶ Free Human Resources (HR) consultation helpline service with unlimited calls and no time limits plus an online HR Resource Center

CLAIM EXAMPLES

▶ **Terminated Acquisition (D&O):**

Company X was looking to purchase Company Y, a competitor. After several meetings and reviewing confidential information on the company products and customers, Company X decided not to move forward with the acquisition. Several months later, Company Y alleged that Company X was never interested in purchasing their company but was looking to gain access to their sensitive trade secrets so they could gain an advantage in the marketplace.

▶ **Financial Mismanagement (D&O):**

Members of a Limited Liability Company (LLC) brought suit against the Managing Members over alleged violations of a partnership agreement and mismanagement of the LLC's finances.

▶ **Violation of a Non-Compete Agreement (D&O):**

A company recruited a top sales executive from a competitor. The competitor sued the company and its President, alleging they had violated the sales executive's non-compete clause. The competitor stated that by hiring this top sales executive they had improperly taken and used trade secrets.

▶ **Wrongful Termination (EPL):**

The Board of Directors terminated the President of the company and he sued for wrongful termination and breach of express employment contract.

▶ **Age Discrimination (EPL):**

Due to the slow-down in new home construction, a lumber yard laid off half of its employees. Several employees brought a class action suit for age discrimination along with wrongful termination.

▶ **ERISA Plan Mismanagement (Fiduciary Liability):**

For the past two years, the company was not able to make the required contribution into the retirement plan based on the plan's present and future liabilities, resulting in the plan being underfunded. Several employees upon finding this out brought a suit against the officers of the company as the plan fiduciaries and the company itself as the plan sponsor.
