

What is Directors and Officers (D&O) Liability Insurance?

Directors & Officers liability insurance protects the executive management team of public or private, and non-profit companies and organizations from claims against them relating to their daily management decisions.

There are typically three parts to a D&O policy:

- **Part A** – provides protection for the Directors and Officers from personal liability
- **Part B** – provides protection for the company's indemnification of its Directors and Officers
- **Part C** – provides protection for the corporate entity itself

Why do I need Directors and Officers Liability Insurance?

A director or officer can be held personally responsible for their management and oversight of the company. When dealing with stockholders, employees, and clients, claims are likely to be brought against the directors and officers. A properly structured D&O policy can help attract qualified people to the Board of Directors.

What does a Directors and Officers insurance policy cover?

A standard D&O policy typically covers claims relating to unfair business practices, conflict of interests, violations of non-compete agreements, bankruptcy filing, creditor actions, and merger and acquisition related issues. Policies also help provide defense costs associated with responding to lawsuits and investigations. There has been an increase in the frequency of litigation brought against D&Os due to Merger & Acquisition (M&A) transactions. To anticipate these types of lawsuits, insurance carriers are looking to include separate corporate retentions for D&O Liability insurance renewals which deal specifically with M&A activity.

Who needs Directors and Officers Insurance?

Any company, public or private, or non-profit organization needs Directors and Officers liability insurance. There are no organizations immune to liability associated with daily business activities. Many private companies overlook this important coverage. Since directors and officers are personally liable for their actions, this could be a big mistake. The cost of defending corporate lawsuits can possibly exceed the net worth of most private companies.



Why choose Axis Insurance Services?

Unlike most brokers, our professionals specialize in professional liability and are nationally recognized. Our years of expertise in the industry allow us direct access to high-quality insurance carriers, extremely competitive rates and the ability to customize insurance solutions to meet the needs of our clients. Call us for a quick review of your current policy to ensure you and your business are properly protected.

Claim Scenarios:

Misrepresentation

Directors and officers failed to disclose material facts and provided inaccurate and misleading information to their investors. It was alleged that the materials did not disclose the high turnover of management and that the company's website had not yet been developed. The company later went bankrupt. The complaint included causes of action for: (1) common law fraud; (2) negligent misrepresentation; and (3) breach of fiduciary duties. Settled for over \$1 million and defense costs exceeding another \$1.4 million.

Credit Fraud

A creditor filed a complaint against individual directors and officers of a company alleging that its CEO, CFO, and COO conspired to use the plaintiff's services to furnish, install and repair the company's equipment knowing that it was insolvent and was planning to file for bankruptcy protection. Causes of action included: (1) fraud, misrepresentation and non-disclosure; (2) deceptive trade practices; and (3) civil conspiracy. Total settlement and defense of the individually named defendants exceeded \$100,000.

Stolen Corporate Secrets

The Vice President of a manufacturer determined that diversification into a different product line presented tremendous sales potential for his company. Instead of presenting that opportunity to his employer, the VP shared it with his brother who formed a new company to produce that product. On behalf of the company, a shareholder sued the VP alleging that he wrongfully took advantage of an opportunity belonging to the corporation. The suit eventually settled for \$2.5M.

Recruiting Sales Executives

A company recruited a top sales executive who had an employment contract with a competitor company. The competitor sued the company for damages suffered as a result of losing its top sales producer on the grounds that the company interfered with the competitor's contractual relationship with its employee. Defense expenses were in excess of \$250,000 and the competitor was awarded damages of \$600,000.

Investment Agreement

A company signed onto an investment agreement with a third party which agreed not to negotiate with other entities regarding a potential acquisition for a two-week period. During that time, the company engaged with another investment group. The third party alleged that the company performed a breach of investment agreement and intentional and negligent misrepresentation. The total amount of settlement and defense costs exceeded \$350,000.

These are only claims examples: minor changes from actual suits have been made to protect the confidentiality of all clients.