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Why Buy D&O Insurance?

Directors & Officers Liability

Directors and officers insurance protects you and your company against liability in the course of managing your business. The policy will cover defense costs and settlements resulting from claims that allege a breach of fiduciary duty, errors and omissions, and misrepresentations

Who needs D&O insurance?

- Public, Private, and Non-Profit companies are susceptible to D&O Claims.
- All businesses that have a board of directors, stockholders, investors, creditors, or anyone that may suffer from allegations of financial misrepresentation made against them.

- According to Chubb "More than 1 in 4 (26% private companies reported experiencing a D&O loss in the last three years"

Why buy D&O insurance?

- Policy will provide coverage for any past, present, or future director or officer of your company
- The policy will protect the individual director's or officer's personal assets in the event of a company's bankruptcy
- The policy will provide corporate balance sheet protection for indemnifiable claims and claims made against the company
- Policy will provide defence cost coverage for covered claims
- Attract investors

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Top Risks for Private Companies in the US. Highlights from Chubb's Private Company Risk Survey., 2018, https://www.chubb.com/us-en/business-insurance/top-risks-for-private-companies-in-the-us.html, Accessed 8 Apr. 2022.

What is D&O Insurance?

The ABC Insuring Agreements

There are three parts to a D&O Policy: Side A, Side B, Side C

Side A

- This Insurance agreement protects the individual direct or officer when the company is unable to indemnify the induvial because of a bankruptcy
- No retention is applicable

Side B

- This insurance agreement reimburses your company for losses it incurs in providing indemnification for the directors or officers
- Retention is applicable

Side C

- This insurance agreement provides coverage for claims made against the entity
- Retention is applicable

Stand Alone Side A Coverage

- Additional limit can be purchased through a separate Side A policy that that provides non indemnifiable coverage. Often these policies will include a difference in condition feature.
- This policy sits excess of the traditional underlying program (ABC) or can drop down to provide primary Side A coverage.
- Typically, the only exclusion that applies in these policies is the conduct exclusion.

What is not Covered in a D&O Policy?

Common D&O Exclusions

D&O policies are open peril. This means unless otherwise excluded, the policy will extend coverage to covered claims.

Insured Versus Insured

Private company D&O policies do not want to insure board infighting. This provision excludes claims from one insured person suing another insured person.

Prior Acts / Prior and Pending Litigation

These policies are claims made. The policy will only provide coverage when a claims is made during the policy. Loss that occurs outside this time frame will not be covered.

Conduct

The policy will not provide coverage for intentionally bad acts or criminality.

Breach of Contract

The policy is not intended to pick up claims for parties voluntarily undertaking risk in normal business transactions

Other Insurance

These policies will not provide insurance that is outside the scope of coverage for the company and it's leadership. This will typically include bodily injury, property damage, and employment practices liability.

Types of Claims

D&O Claims Examples

Directors and Officers can be susceptible to a variety of different situations that can stem from a number of wrongful act accusations.

Anti Trust

This may include allegations of unfair trade, tortious interference, or any anti competitive behavior

Investors

Creditor or debt holders may allege misrepresentation or look to recover funds

Shareholders

Shareholders may allege a breach of fiduciary duty that caused them a financial loss

Government Investigation

A company may be responsible for requiring information and documentation in response to a subpoena