

DIRECTORS & OFFICERS LIABILITY

Strength. Knowledge. Direction.®



Private companies are unintentionally leaving their most important assets uninsured. When a privately-held business prioritizes the risks that may cause them financial harm they often consider operational risks first, such as fire or customer injuries. They may then consider potential financial loss from employee-driven events, such as theft or a work injury. However, they often don't think of their own personal liability—resulting from the decisions they make in the day to day running of the company—as an area of concern.

While Directors and Officers Liability (D&O) insurance is commonly considered a requirement for publicly traded companies, it's often considered optional for closely-held private businesses. Unfortunately, this misconception can lead to uncovered claims and significant financial loss.

SOURCES OF D&O LIABILITY FOR PRIVATE COMPANIES

Shareholders are not the only source of liability for a privately-held company. They also face lawsuits and investigations from their customers, creditors, competitors, governmental regulatory authorities, and their own employees. Claims alleging antitrust violations and employee-led claims are the most prevalent causes of loss to private companies. Defense costs and judgments or settlements alone can easily run in the hundreds of thousands of dollars, if not millions of dollars range.

THE ABCs OF A PRIVATE COMPANY D&O POLICY

The unique features of a private company D&O policy make it an important addition to any size company's insurance portfolio. One important feature is that the private company D&O policy includes all directors, officers and employees as insureds. D&O insurance consists of three core insuring agreements, referred to as **Side A**, **Side B**, and **Side C**.

A-side: First-dollar protection to the directors, officers, and employees of a company for allegations of wrongdoing in their respective capacities of the company when the company cannot, or will not, indemnify them. This is important personal asset protection, and can serve as a way to attract and retain top talent.

B-side: When a company can step in and indemnify its directors, officers and employees, the benefit of a D&O policy is that it will reimburse the company for this indemnity obligation, which provides valuable financial protection.

C-side: Extends coverage to the company itself for all claims (unless specifically excluded). A public company form only provides entity coverage for securities claims.

Additionally, D&O policies are written on a claims-made basis and apply to claims made during the policy period regardless of when the act that led to the claim occurred.

With a well-crafted Directors & Officers Liability policy, private companies can enjoy piece of mind along with personal asset and balance sheet protection.



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