



COVERAGE INSIGHTS

Provided by Winters-Oliver Insurance Agency

The Value of D&O Insurance for Private Companies

With today's growing emphasis on corporate transparency and accountability, an organization's directors and officers may face a range of liability exposures. For instance, stakeholders and third parties may hold a company's board members responsible for damages resulting from their alleged mistakes or poor decisions, prompting legal action. Regardless of an organization's size or mission, the costs associated with such lawsuits can be crippling for both the company and its senior leadership team.

Fortunately, that's where directors and officers (D&O) liability insurance can help. This type of coverage, which can be purchased as a standalone policy or bundled with other commercial insurance offerings, may help reimburse organizations and their directors and officers for losses stemming from these individuals being held liable for their alleged wrongdoings in the boardroom. Many business owners wrongly assume that D&O insurance is only necessary for public companies. However, private organizations may also encounter lawsuits that could impact their finances, operations and senior leadership teams, making D&O insurance a must.

Although individual policies and coverage offerings may vary between insurers, a standard D&O policy contains three insuring agreements, often labeled Sides A, B and C. These insuring agreements specify the type of protection provided by a D&O policy and summarize the promise by the insurer to indemnify the insured from covered losses. Private companies should clearly understand all forms of D&O coverage and their key protections. This article highlights the value of D&O insurance for private companies by outlining the main features of Sides A, B and C.

Side A

Also known as the personal protection portion of a D&O policy, Side A can insure a company's directors and officers against losses that the organization cannot legally or financially indemnify. In other words, this type of coverage may help protect the personal assets of directors and officers when a company will not or cannot pay related defense costs or fund indemnification (e.g., in instances of bankruptcy or legal prohibitions).

Side A plays a significant role in ensuring organizations can attract qualified individuals to join their senior leadership teams. After all, prospective directors and officers may not feel comfortable serving on a board for a company that won't be able to help protect their personal assets when they make mistakes or are accused of doing so. As such, organizations that lack Side A may end up with less experienced and less knowledgeable senior leadership teams, potentially hindering their competitive edge and long-term operational success.

Side B

Side B, sometimes called corporate reimbursement coverage, can insure an organization itself. In particular, Side B can help reimburse a company when it indemnifies its directors and officers, thus covering expenses incurred from claims against these individuals. The costs of indemnifying board members can be financially devastating for any organization. Side B can provide companies with much-needed protection by agreeing to compensate them for legal fees, settlements and judgments related to these losses.



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Unlike Side A, Side B usually involves a self-insured retention or deductible. This portion of a D&O policy is known for responding to the majority of claims that organizations encounter, making it all the more valuable.

Side C

Frequently referred to as entity coverage, Side C can insure an organization for claims made directly against it by providing entity asset protections and compensation for associated defense costs. In D&O policies issued to public companies, Side C is typically limited to securities claims; on the other hand, Side C for private organizations often applies to a broader range of claims related to alleged wrongful acts committed by companies or their directors and officers (e.g., poor employment practices).

Similar to Side B, Side C also generally involves a self-insured retention or deductible. When paired together, Sides B and C are commonly deemed the balance sheet protection portion of a D&O policy.

Combination ABC Policies vs. Standalone Side A Policies

A D&O policy that contains all three of the previously mentioned insuring agreements is usually called a combination ABC policy. In addition to combination ABC policies, companies may purchase standalone Side A policies. Also known as difference-in-condition policies, such policies solely offer Side A, albeit with additional coverage offerings and fewer exclusions than those found in combination ABC policies.

To ensure maximum protection against various D&O exposures, some organizations set up their insurance programs to include both combination ABC and standalone Side A policies. This is a particularly valuable risk management practice for two reasons. First, companies that only purchase combination ABC policies may have their coverage seized in the event of bankruptcy, leaving them unprotected during an already vulnerable period. Second, organizations that solely secure standalone Side A policies lack the balance sheet protection of Side B and Side C. With this in mind, having both policies can help minimize major out-of-pocket losses and limit the likelihood of financial ruin when costly or complicated D&O claims arise.

Conclusion

Private companies don't have to navigate the evolving liability landscape alone; D&O insurance can make all the difference in helping them avoid large-scale financial losses amid lawsuits involving their senior leadership teams, thus fostering strong corporate governance and promoting effective risk management strategies. Private companies should consult trusted insurance professionals to discuss their particular coverage needs.

Contact us today for more insurance solutions.