

Directors & Officers Insurance – Do you need it?

By Art Cruz, CIC

Directors and Officers Liability insurance, often referred to as D&O insurance, should be a common insurance product to consider when rounding out your overall business insurance portfolio. In effect, D&O insurance policies respond as management errors and omissions insurance, and cover claim allegations and related judgments resulting from management decisions that may have adverse financial consequences for the business entity. This insurance protects the personal liability of the commonly insured, directors, officers, managers, employees, committee members, and spouses or domestic partners. It normally does not apply to sole proprietors. A practice with one officer could get D&O insurance though coverage is limited due to less exposure.

D&O insurance claim allegations or suits can commonly arise for actual or alleged wrongful acts when managing a company from the following sources: employees, competitors, vendors, investors, donors, government agencies, customers, banks or financial institutions, and other parties.

Litigation or allegations may arise for a variety of reasons including, but not limited to the following:

- Breach of fiduciary responsibilities
- Misrepresentation of company assets or funds
- Misappropriation of company funds
- Fraud
- Failure to meet workplace compliance
- Intellectual property theft
- Lack of corporate governance

Past corporate scandals have resulted in regulations being enacted to improve corporate governance and financial reporting. Thus, enacted regulations have increased litigation risks for the directors and officers of companies.

Protective Actions

Company directors and officers can help protect their liability through a combination of the following:

- A strong corporate governance policy
- A broad corporate indemnification provision
- A D&O liability insurance policy

While there is no single solution for protecting directors and officers from liability, D&O liability insurance can be an important coverage in mitigating your overall exposure.

D&O insurance may also be packaged as part of a bundled insurance policy commonly referred to as Management Liability insurance. Bundled forms may include D&O liability insurance combined with Employment Practices Liability insurance, Fiduciary Liability insurance, "special crime" coverages for kidnap, ransom, and extortion, and Cyber Risk insurance.

When applying for D&O insurance, insurance carriers commonly require the following information:

- Several years sustained in business
- Ownership comprised of those actively involved in the business
- Strong financials that demonstrate positive cash flow, manageable debt
- Information regarding any merger or acquisition activity
- Are you replacing a prior D&O policy with one with a retroactive date?

Since D&O insurance is such a specific type of coverage, your individual needs need to be tailored to your situation. Communication with your insurance broker could assist in determining your insurance needs. Call your VISC representative at 888.762.3143 to discuss your options. ■

