

# Directors & Officers Liability Management Liability



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# What is **D&O/Management Liability** and why do you need protection?

**Directors and Officers Liability Insurance** (often called **D&O** or **Management Liability**) is liability insurance payable to the directors and officers of a company, or to the organization(s) itself, to cover damages or defense costs in the event they suffer such losses as a result of a lawsuit for alleged wrongful acts while acting in their capacity as directors and officers for the organization.

# Wrongful Acts

A common misperception of D&O insurance is that it makes directors or officers able to engage in acts they know to be wrong; this is not the case.

Intentionally illegal acts or any illegal gains/profits obtained by directors/officers are not covered in D&O insurance.

# Wrongful Acts

Coverage would only extend to "wrongful acts" as defined under the policy.

Wrongful Acts means, but is not limited to any:

- Any Actual or Alleged Error
- Act
- Omission
- Neglect
- Misfeasance or Nonfeasance
- Breach of duty
- Misstatement
- Other acts committed or wrongfully attempted by the insured or officers of the entity while acting as a director/officer of the organization.

# Immunity

Directors and Officers still answer to your shareholders or stakeholders including members, employees and the public if you are a district. Immunity statutes will only go so far in protecting the personal assets from liability claims. Even if the claims are ultimately proven false, the cost of defending a lawsuit can be financially debilitating.

# Insuring Agreements

- A – Limit for individual Directors & Officers.
- B – Limit for Organization if they have indemnified the Directors and Officers in accordance with the bylaws
- C – Limit for Organization

# Coverage Forms

## Claims Made and Occurrence

- What are the differences in these forms?
- A **claims made** policy only covers claims that are **reported** during the policy period.
- An **occurrence** policy only covers claims that **occur** during the policy period.

# Coverage Forms

What is Tail Coverage on a Claims Made Policy?

- This will extend the reporting period for claims past the end of a policy period for a predetermined period of time
- Triggering Claims Made Coverage – It is important to report all potential or incidences immediately. This will trigger the “Claims Made” date for your policy. The actual claim could be filed in the future and coverage would still be available.

# Optional Benefits and/or Coverages

- Employment Practices Liability – Discrimination, Wrongful Termination or harassment, etc.
- Flexible limits starting at \$500,000
- Defense coverage outside the limit or inside limit
- Ability to choose your own defense team
- Reimbursement or Pay on behalf coverage
- Fiduciary Liability
- Non-Monetary/Injunctive Relief Coverage - Limited

# Premium Basis & Costs

- Number of Board members
- Annual gross receipts or budgeted Income
- Prior Claims History
- Types of business entities/Subsidiaries
- Stand alone policies start at \$1,000

# D&O - Claims Examples

Typical sources of claims include:

- Shareholders
- Shareholder-derivative actions
- Customers
- Regulators
- Competitors (for anti-trust or unfair trade practice allegations).
- Directors and officers of a corporation can be liable if they damage the corporation by breaching their duties and contracts to the corporation, mix personal and business assets, or fail to disclose conflicts of interest.

# D&O - \$7,250,000

A trade association with 3000 members self insured the members' workers compensation exposure. Workers compensation underwriting losses lead to the insolvency of the association. The members filed numerous suits including class action suits for allegations including breach of good faith, breach of contract, failure to report the financial condition, and failure to secure adequate premiums.

# **D&O - \$85,000 defense costs only**

Residents living on an access road into a country club sued the club during a construction project to restrict the use of the road by construction vehicles. The complaint included allegations of trespass, nuisance, and violation of easement.

# **D&O - \$75,000 defense costs only**

A group of association members filed a lawsuit alleging the recent election of a new board President did not follow the association bylaws. Members argued that the 51% majority vote required was not obtained for the election to be valid.

# EPLI - \$375,000

The vice president of programs was terminated for performance reasons. She alleged she was terminated only after she questioned **the** allocation of monies from funding sources. She filed a whistle-blower lawsuit against the organization and the executive director. Even though the allegations had little merit, the plaintiff began requesting documents from all funding sources and from the Insured which seriously disrupted operations and damaged its reputation in the non profit community.

## **EPLI - \$115,000**

The plaintiff terminated her position with the Insured because they reduced her hours when she returned from maternity leave. She alleged pregnancy discrimination and sought damages for lost wages for the 8 months it took her to find another job.

# **EPLI- \$50,000 defense costs only**

An Insured received an Americans with Disabilities Act claim involving a patron who alleged the Insured's facility could not accommodate his wheel chair.



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