

Directors And Officers Coverage-Part 2

In Directors and Officers Coverage - Part 1, we talked about the need for a corporation's board of directors to secure D&O insurance. Like any other type of insurance transaction, a business has to complete an application and this can cause problems that could affect possible coverage.

When seeking D&O coverage, the applicant has to provide detailed information about its operations, including details on future business plans (mergers/acquisitions), capital financing activities and involvement with professional services. Further, such applications require information on litigation (past and pending) on board members as well as on the nature of the legal disputes.

D&O coverage applies to a group of persons...the executive board. However, the application is typically completed by one or two key executives. Both the applicant board and the insurance carrier rely upon the accuracy of the information provided by the persons completing the application. A problem arises because of how an insurer relies on the information. Typically, the insurer treats the information given by one or two persons as though it were received by all of the persons on the board. Insurers often either deny coverage or deny claims when there is evidence that the information is inaccurate. In other words, fraud or errors caused by an individual officer or director could eliminate coverage for all other directors and officers.

When coverage is not available or if it is denied, a director or officer may face the financial nightmare of having to handle his or her own legal expenses and costs of an award. Therefore, it is very important to take care that a D&O policy provides the anticipated protection. It is also important that a board takes steps to oversee the application process and to make sure that the provided information is accurate. Another step may be to look for D&O coverage that offers separate coverage to directors and officers so innocent parties do not have their protection stripped away due to the deliberate, false actions of others.

Persons who need D&O coverage are typically key, savvy decision-makers. A smart decision would be to find an equally savvy insurance professional to arrange for this critical insurance protection.

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