

Directors and Officers Liability

Management Liability

Directors and Officers

Employment Practices

Fiduciary

Professional Liability

Media

Miscellaneous

Network Security and Privacy Injury

Technology and Telecommunications

Crime

Directors and Officers can be targets for legal action, due to the decisions they make and also simply because of their status.

- Not only do public companies have this exposure, but private companies also face similar risks, and the size of the organization does not matter.
- Any private company can be sued by employees, shareholders, investors, customers, competitors, creditors, vendors, and/or suppliers.
- According to Tillinghast-Towers Perrin D&O surveys:
 - Claimant distribution against private companies included 33% employees, 28% other third parties, 25% shareholders, and 10% competitors.¹
 - Defense costs can be significant, with a median amount of over \$44,000 (and an average of more than \$800,000).²
 - Private company D&O claim frequency and susceptibility have been relatively stable over time, but remain higher than they were in 2004.³
- The costs mentioned above would be difficult for many private companies to sustain. And, in some cases, without the proper D&O insurance, individual Directors and Officers could have to pay for those defense costs out of their own personal assets.

CNA provides:

- Side A Coverage for Directors and Officers for non-indemnifiable loss resulting from a claim for a wrongful act.
- Side B Coverage reimburses the entity for indemnifiable loss resulting from a claim against Directors and Officers for a wrongful act.
- Side C Coverage helps protect the entity.

Common D&O allegations include:

- Failure to perform appropriate due diligence when making an acquisition
- Breach of duties under applicable securities or other statutory laws
- Careless management strategy that causes bankruptcy
- Misstatements or omissions regarding potential future performance of the company to minority investors
- Misrepresentations or errors regarding the financial health of the organization to a customer, vendor, or creditor
- Conflicts of interest when considering personal motives vs. interests of the shareholders
- Competitor lawsuits for tortious interference with business relationships

Exposure to D&O Liability is not unique to any one particular industry.

Lawsuits have been filed against private companies operating in many different industries including but not limited to:

- | | | |
|---------------------|---------------|------------------|
| • Manufacturing | • Wholesale | • Construction |
| • Business Services | • Technology | • Transportation |
| • Personal Services | • Agriculture | • Communications |

Broad coverage for Directors and Officers Liability is provided as one part of the Epack ExtraSM policy. Epack ExtraSM allows insureds to package multiple coverages on one policy form.

Management and Professional Liability



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800-852-0393

Coverage Scenarios

Minority Shareholder Oppression

The Facts: ABC Corporation is a privately-held family business engaged in the distribution of lamps and lighting equipment. When ABC experienced an upswing in profits due to high production and sales, the majority shareholders voted to approve a large compensation package for the CEO, who is the family patriarch and founder of the company. Mr. Jones is a 20% shareholder in ABC Corporation and is a distant cousin of the CEO. Mr. Jones was upset as he felt that the majority shareholders, the three children of the CEO, were siphoning off the recent corporate earnings through the high compensation package and left Mr. Jones with little reward. Mr. Jones filed a lawsuit against them alleging breach of fiduciary duty and minority shareholder oppression.

The Bottom Line: After incurring \$75,000 in defending the lawsuit, ABC agreed to pay Mr. Jones \$200,000 representing a percentage of the increased profits.

Officer Accused of Misappropriation of Trade Secrets

The Facts: XYZ Corporation is a computer software company. They recently recruited a new chief technology officer from a competitor, given his great reputation in the industry. Shortly after he started with XYZ, his former employer filed a lawsuit against him alleging that he was using trade secrets and confidential information to assist XYZ Corporation. In addition, the former employer sued XYZ alleging tortious interference with contract alleging that XYZ interfered with the employment contract it had with its former chief technology officer.

The Bottom Line: Defense costs totaled \$200,000 given the need for computer experts to analyze software and hard drives. In the end, the parties settled after XYZ agreed not to use certain systems/programs.

Misrepresentation

The Facts: 123 Corporation is a company which distributes medical supplies. It needed to raise capital and told an interested investor that it was close to securing contracts with several large hospitals. 123 Corporation also met with the investor on several occasions to discuss the company's financial condition and plans for future expansion. As a result, the investor agreed to provide funding. When the contracts were not finalized and expansion plans were not fulfilled, 123 Corporation experienced a significant financial loss for three consecutive quarters. The investor filed a lawsuit against 123 Corporation and its Board of Directors alleging that they made several misrepresentations to induce the investor to provide funding.

The Bottom Line: The matter went to trial and the investor was awarded \$4 million.

Chapter 11 Bankruptcy

The Facts: A car parts manufacturer filed for Chapter 11 bankruptcy. Suit was filed by the Official Committee of Unsecured Creditors, against several Directors and Officers of the bankrupt company alleging numerous causes of action including breach of fiduciary duties, breach of contract, fraudulent conveyances, and excessive improper withdrawals from the company. The complaint included allegations that the defendant Directors systematically acted to defraud creditors by committing certain acts, errors or omissions in their capacity as Directors of the company. These acts included excessive and unnecessary withdrawals of company funds, improper use of funds to pay for personal entertainment, and travel and improvements on the Directors' homes. Plaintiff's sought over \$18,000,000 in potential damages from four of the corporate Directors.

The Bottom Line: The creditors agreed to release the Directors for a total of \$750,000, as there were virtually no remaining assets of the company. The bankruptcy court had ruled that the company's insurance policy was the lone remaining asset and could be used in satisfaction of the settlement. Approximately \$250,000 was spent in defense costs prior to reaching a settlement.

To learn more about CNA's Management and Professional Liability offerings, contact your agent or broker.

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¹ Tillinghast-Towers Perrin 2006 D&O Liability Survey Executive Summary. ² Data excerpted from Tillinghast-Towers Perrin 2006 D&O Liability Survey.

³ Tillinghast-Towers Perrin 2006 D&O Liability Survey Executive Summary.