



## **COLBURN GROUP**

### **D&O Coverage Belongs in Your Company's Insurance Portfolio**

Does your current insurance portfolio adequately protect your company and its most key people against significant financial losses? All companies understand the importance of a general liability policy, for example, to cover customer injuries that occur on the business premises. And every business knows it's important to protect the business premises and its contents against the risks of fire, flooding, vandalism, etc., through a comprehensive property and casualty policy. But many overlook an entire area of potential liability and loss that can result when claims are made that are based on the actions of its directors and officers.

Directors & officers (D&O) liability insurance protects against financial losses resulting from claims based on allegations of wrongdoing by these individuals when acting in their corporate capacities. Both publicly traded and privately held companies should consider the coverage.

What kinds of claims fall under the scope of such policies? Consider these—

- Claims by shareholders/investors alleging misrepresentations, inadequate disclosures, conflicts of interest, misdealing and mismanagement.
- Claims by competitors alleging bad faith in business dealings, appropriation of trade secrets, and unfair or deceptive trade practices.
- Claims by customers based on dishonesty, sales disputes, and the like.
- Employment practices liability claims, including failure to hire, termination, discrimination and sexual harassment.
- Suits by government agencies, including those involving tax laws, securities laws, labor laws, violation of applicable business regulations, etc.

When claims such as these include allegations of a company's directors' or officers' wrongdoing, that can bring them within the coverage of a D&O policy. For publicly traded companies, in 2006, 49% of claims covered under D&O policies were brought by shareholders, according to a survey by professional services firm Towers Perrin. Think of the well-publicized cases involving corporate giants like Enron and Worldcom, which alleged financial misdealing and cover-ups by corporate officers.

Private companies can also be hit by shareholder lawsuits. These companies do have investors, who can become disgruntled with management decision-making when their investment in the company does not turn out to be as good as expected. Also, the definition of a "security" can be a very broad term. But a key reason these firms need

D&O coverage is the increasing number of employment practices lawsuits, brought by employees, alleging claims such as sexual harassment, discrimination, or wrongful discharge. A policy that couples D&O and employment practices liability insurance (EPLI) works well for these firms.

A claim against a company's CEO, chief financial officer, vice president, etc.—whether based on allegations of misrepresentation, negligence, employment discrimination, or the like—has the potential to cripple an organization financially. Even if a claim does not result in a legal judgment or settlement, it will need to be defended, resulting in substantial legal costs to the organization.

A properly written policy will provide protection both to the company and to the individual insured directors and officers. The personal assets of individual directors and officers—and thus those of their spouses and estates—can be at risk if the company is not in a position to indemnify them for any losses. Such a situation could occur if corporate bylaws or public policy would not permit indemnification based on the particular allegations, or if the company is in a bad financial condition, or even bankrupt.

Today's insurance market offers D&O coverage at surprisingly affordable rates. Given the financial loss potential, it's a coverage that any company should consider adding to its insurance portfolio.