

D&O writeNOW! Program

The Directors and Officers Liability Insurance program features a streamlined application process. The applicant that meets program qualifications can choose options from a rate chart and request to bind.

The Directors and Officers Liability insurance program covers the entity, directors and officers, and employees for allegations and suits from customers/clients, bondholders, attorneys general, providers, vendors, regulatory agencies, competitors, investors and silent partners, creditors, and shareholders related to actual or alleged errors, omissions, misleading statements, neglect, breach of duty or act.

Typical lawsuits against health care organization directors and officers often involve allegations such as:

- Failure to deliver services
- Disclosure of materially false or misleading information
- Restraint of trade/Unfair trade practices
- Price fixing
- Breach of fiduciary duty
- Mismanagement of operations or organization assets
- Waste of corporate assets
- Violation of certain state and federal laws

PROGRAM HIGHLIGHTS

- Available coverage limits of \$300,000, \$500,000 and \$1,000,000
- Available as a Stand alone coverage with the NAS EPLI writeNOW! Program
- Full prior acts coverage is included; excluding prior knowledge and any pending and/or prior litigation
- Punitive damages coverage where insurable by law
- Claims-made policy form
- Worldwide territory for acts committed and suits brought in the U.S.
- Contains a “Duty to Defend” provision
- Is on a “Pay on Behalf” basis

OTHER IMPORTANT FACTS ABOUT THE D&O LIABILITY RISK

According to Tillinghast-Towers Perrin’s 2005 *Directors and Officers Liability Survey*:

- Health service organization directors and officers are, on average, at least 10 times more likely to be sued than most other business classes.
- More than half of all claims made against directors and officers are made by employees.
- About one-quarter of D&O claim allegations are made by shareholders and other investors.
- Defense costs per D&O claim average nearly \$800,000.

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FREQUENTLY ASKED QUESTIONS ABOUT D&O INSURANCE

1. Why do I need D&O insurance?

Answer:

- To ensure that you are protected against having to pay legal costs and/or damages in defending allegations of wrongful acts or omissions committed by you in your capacity as a director or officer.
- D&O insurance helps protect the financial assets of the company and the personal assets of directors and officers against claims/lawsuits.
- D&O insurance pays for a legal defense and supplies expert defense counsel.
- D&O insurance can help the company attract and retain qualified directors and officers.
- General liability insurance and umbrella insurance typically does not cover D&O claims.
- Peace of mind.

2. What does “Wrongful Act” mean?

Answer:

- “Wrongful Act” is defined to include any actual or alleged breach of duty or act, neglect, error, misleading statement or omission against a director or officer while acting in that capacity.

3. Examples of exposures for directors and officers?

Answer:

- Employees – actions alleging misleading statement or misrepresentation.
- Creditors – alleging that the director or officer allowed the company to trade while knowing it could not pay its debt.
- Government agencies – directors and officers may be personally be liable for breaches of federal and state statutes.
- Competitors – Trade Practices Act claims brought against the directors for misleading and deceptive type conduct.
- Shareholders – alleging that the directors mismanaged the operations of the company and its funds.

4. I don’t need D&O insurance; I always act honestly and carefully.

Answer:

- Not true. A client’s or prospective client’s best intentions will not guarantee protection from an allegation that they are forced to defend in court. The legal fees alone will be costly and deprive the company of precious cash reserves.
- As a director or officer, they are faced with a complex matrix of statutory duties and responsibilities arising legislation dealing with corporations, trade practices, tax & duties, and Occupational Health & Safety. In addition, they must comply with legislation affecting core business activities, such as dealing with dangerous goods/equipments, customs and environment.
- A director or officer is also responsible to ensure effective internal financial reporting and prudent financial risk management is in place to avoid liability for claims by creditors.

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D&O CLAIMS SENARIOS

Claims Scenario #1

Nature of Loss:

- Plaintiff filed a complaint against its competitor alleging that a former employee, now working for the competitor, engaged in unauthorized use of confidential property information and committed other acts of unfair competition.
- Allegations included misappropriation of trade secrets and confidential information, unlawful access to stored information, and unfair competition.

Total Settlement and Defense Costs exceeded \$350,000

Claims Scenario #2

Nature of Loss:

- Plaintiff filed a complaint against individual D&Os of a company alleging that its CEO, CFO and COO conspired to use the plaintiff's services to furnish, install and repair the company's equipment, knowing that the company was insolvent and planning to file for bankruptcy protection.
- Allegations included fraud, misrepresentation and non-disclosure, deceptive trade practices, and civil conspiracy.

Total Settlement and Defense Costs exceeded \$100,000

Claims Scenario #3

Nature of Loss:

- The Federal Government sued the CEO, president, and other officers of a company for price fixing.
- After an extensive trial, the allegations were dismissed, due to lack of circumstantial evidence.

Total Settlement costs: \$0
Defense Costs exceeded \$750,000

Claims Scenario #4

Nature of Loss:

- A minority shareholder of a closely-held corporation alleged that the board of directors and certain officers conspired to assist the majority shareholder in maintaining majority control of the company, when the minority shareholder attempted to purchase a greater controlling interest.
- The minority shareholder filed for restitution.

Total Defense costs: \$445,000
Total Settlement awarded to Plaintiff: \$4.2M

Claims Scenario #5

Nature of Loss:

- A private company sued a company, its Board of Directors, and the controlling private equity group alleging, among other things, breach of fiduciary duty by the Board.
- Creditor further alleged that the private equity group over-leveraged the company, in a desperate attempt to compete against more savvy, well-funded competitors.
- The defendant company ultimately filed Chapter 11, under a mountain of debt, and was forced to lay off hundreds of employees.

Total Defense costs: \$2.3M
Total Settlement awarded to Plaintiff: \$18M