

CONSIDER BROADER COVERAGE FOR INDIVIDUAL DIRECTORS ON MULTIPLE BOARDS



Directors and Officers Liability (D&O) is often confusing for buyers and brokers alike. The marketplace is characterized by a large number of insurance carriers underwriting this coverage, and each of their forms has different terms, conditions, and most importantly, exclusions. Since an “all risk” D&O policy does not exist, there aren’t obvious perils listed and covered like you might find in a property policy. For that reason, it is normally easier to explain the intent of the coverage as opposed to reading the policy line by line. AmWINS has published [several articles](#) (see exclusive articles in right side-bar of link) about specific D&O policy provisions and what they mean.

D&O: A BRIEF OVERVIEW

Here is an oversimplification of what D&O insurance is supposed to do. When people work for or lead a corporation, they expect the organization to protect them. In business courses, we learn that an advantage of forming a corporation is that the personal assets of the owners are not comingled with the corporation, therefore protecting them from litigation and other threats. The directors and officers of a corporation also have indemnification provided to them via the corporate bylaws. Those bylaws often state which level of executive will receive protection as well as what type of acts by those executives are or are not subject to indemnification by the corporation. In yet another gross oversimplification, as long as executives are acting in the best interests of a corporation and its shareholders, they should expect indemnification to apply.

D&O insurance is a financial backstop used to provide protection to the directors and officers when indemnification by the corporation is not available because of those potential issues listed above. The current versions of D&O policies will have three coverage parts or insuring agreements:

- 1) There’s what most forms call “Side A.” This is the part of the policy that directly protects the directors and officers of a company when the organization is unable to indemnify those leaders for acts on behalf of the organization.
- 2) There’s a “Side B” of the policy that reimburses the corporation when it is able to indemnify the directors and officers for their activities. Side B is essentially helping protect the balance sheet of the corporation from wrongful acts of the individual directors and officers.
- 3) Most policies also have a “Side C” that solely protects the corporation for wrongful acts attributed to the organization and not the directors and officers.

D&O insurance is complex and its intricacies cannot be summarized in a short article. The bottom line is that D&O insurance is designed to protect the personal assets of the directors and officers of a company. There are obviously situations where the corporation can provide protection and others where additional measures such as D&O insurance are necessary.

Here are just a few of the issues that could arise:

- What if the allegations made against the executives are that they have not acted in the best interests of the organization and its shareholders?
- What if the bylaws prohibit indemnification for the alleged wrongful acts such as fraud?
- What if the organization does not have sufficient capital to provide the indemnification? Or even worse, what if the organization is in bankruptcy?
- What if multiple claims are reported under a management liability policy and the limits are fully eroded?
- What if the claim is a contentious one and the primary carrier does everything they can to avoid paying the claim?

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CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker or marketing@amwins.com.

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AN EVOLVING COVERAGE

One important thing to remember about a D&O policy is that it is shared by all the directors and officers of the corporation. It is also shared with the corporation in certain circumstances by Side C as described above. Naturally, one has to come to the conclusion that there is one policy limit available with multiple parties drawing from the same limit when there is litigation. One solution to that problem is to buy higher limits. No organization can anticipate how much limit is enough for a claim that they have yet to see. So, special products have evolved to help alleviate this particular concern. Executives and board members have been buying variations of a Side A only D&O policy so their policy limits are not shared with the organization. Some boards have also purchased policies that only cover the independent members of the board of directors. These policies are generally broader than a traditional D&O policy. They often have fewer exclusions to offer a higher level of protection to the top leaders of an organization and will, in certain circumstances, drop down to provide ground-up coverage for the individual directors and officers. For this reason, broad D&O insurance is often a prerequisite for high profile board members before they agree to join the corporation.

A SOLUTION TO PROVIDE PEACE OF MIND FOR INDIVIDUAL DIRECTORS

There are also those board members who want yet another level of personal protection. For a myriad of reasons there are board members that will want their own policy that is not shared with others. Those directors who are concerned about sharing their policy limit with other individuals or the organization can consider buying Personal Director Insurance, policies which have become very difficult to find. When purchased, they give the director the ultimate peace of mind that they won't have to worry about shared limits, rescinded policies, certain policy exclusions, underinsured situations, or lapses in underlying insurance.

AmWINS has created a policy with the benefits of a Personal Director policy that can also be used to protect a director who sits on multiple boards called Portable Individual D&O. This gives a director the broad coverage they seek; it's personal to him or her, and the flexibility to follow him or her to multiple boards so he or she doesn't need to buy multiple personal policies for every board seat. This product is uniquely tailored to the needs of high net worth board members protecting their personal financial interests when participating on multiple boards. For more information on this new level of protection for board members, please contact your AmWINS Financial Services broker.

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