Crime Pack®

Directors and Officers Liability

Employment Practices Liability

Epack℠

Epack EZ℠

Fiduciary Liability

Media Liability

Miscellaneous Professional Liability

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, private companies 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:
  - 64% of claims brought against private companies were brought by shareholders and other third parties, while 25% were brought by employees.[1]
  - Defense costs can be significant, ranging from $100,000 to nearly $2,000,000.[2]
  - Claim frequency and severity have continued to increase.[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:

- Coverage for the directors and officers of an insured company in the event they are sued in conjunction with performing their duties
- Optional Entity Liability coverage to help protect the assets of the insured company

Common D&O allegations include:

- Failure to perform appropriate Due Diligence when making an acquisition
- Misrepresentations or errors regarding the financial health of the organization to a customer or vendor
- Misstatements or omissions regarding potential future performance of the company to minority investors
- Careless management strategy that causes bankruptcy
- Breach of duties under applicable securities or other statutory laws
- Conflicts of interest when considering personal motives vs. interests of the shareholders

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

CNA
Management and Professional Liability

800-852-0393

www.cnapro.com

Coverage Scenarios

Minority shareholder oppression

The Facts: ABC Corp. 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 ABC Corp. Mr. Jones is a 20% shareholder in ABC Corp. 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 Corp. 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 Corp. In addition, the former employer sued XYZ Corp. 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: ABC Corp. 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. ABC Corp. also met with the investor on several occasions to discuss ABC'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, ABC experienced a significant profit loss for three consecutive quarters. The investor filed a lawsuit against ABC Corp. 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.

Bankruptcy

The Facts: X Company manufactures auto parts. The President and Vice-President of X Company facilitated the purchase of some smaller businesses specializing in the manufacture of similar products. The evaluation and purchase of these smaller businesses was apparently mishandled by the President and Vice-President and they ended up not being profitable. The purchases and subsequent mismanagement of the companies ultimately led to X Company filing for bankruptcy. Suit was filed against X Company and its President and Vice-President by various creditors alleging negligent misrepresentation and breach of fiduciary duties.
The Bottom Line: It cost $100,000 to defend the President and Vice-President and separate counsel was retained for each in light of conflicts between them. Ultimately, the matter settled for payment of $250,000.

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