



## Epac 3 Management Liability

# Private Company Directors & Officers Liability

Directors and officers of private companies are subject to the same legal standards of conduct as their public company counterparts. Claims against companies and organizational leaders are increasingly common and complex. Faced with costly litigation, companies without appropriate insurance could put corporate assets and the personal assets of directors and officers at risk.

CNA's Private Directors and Officers (D&O) Liability insurance is designed to protect the company and the people who lead it, addressing claims arising from their decisions and actions. The modular Epac 3 (EP3) form offers a flexible policy and streamlined language, making it easy for customers to understand the coverage and design a policy that meets their needs.

### EP3 Policy/D&O Coverage Part Highlights

#### General Terms & Conditions

- Ability to offer shared or separate coverage part limits
- Pre-claim expense coverage
- Non-rescindable policy
- No "hammer clause"
- Customer-friendly reporting and notice provisions with prejudiced standard for late-notice consideration

#### D&O Liability Coverage Part

- Embedded limit options available for Side A coverage for executives
- Shareholder Derivative Demand & Books and Records sublimit
- Broad definition of Claim, including Inquiry coverage
- Streamlined Insured vs. Insured

## Frequently Asked Questions

**Do private companies need D&O insurance? What about small businesses?** D&O litigation can come from a variety of sources, not just shareholders. A private company can also be sued by employees, investors, customers, vendors, suppliers or creditors. Smaller companies may be particularly vulnerable as litigation is increasingly expensive, and defending even a single lawsuit can be a significant financial burden.

**What are the benefits of investing in D&O insurance?** Protecting corporate assets. D&O policies cover defense costs, monetary damages, settlements and awards resulting from covered claims. The policy also protects the personal assets of directors and officers, as they can be sued directly for alleged breaches of duty. Appropriate insurance and experienced claim support prevent management from being distracted by complex and costly litigation.

**What are the three insuring agreements in a D&O policy?** Most private D&O policies include insuring agreements A, B and C, also called Side A, B and C. Side A pays non-indemnifiable loss on behalf of insured persons for covered claims against those insured persons. Side B pays on behalf of the insured company for indemnification arising from covered claims against insured persons. Side C applies to covered claims against the insured company itself.

## Directors and Officers Liability Claim Examples

<p><b>Government Action</b></p>	<p><b>Cost: \$1,500,000</b>  <b>Description:</b> After their new accountant discovered errors made by the previous accountant in the prior year's financial statements, a manufacturer of construction materials received a letter from a state government entity alleging the insured and multiple company officers had misrepresented the company's financial condition in order to procure government bonds.</p>
<p><b>Counterclaim</b></p>	<p><b>Cost: \$250,000</b>  <b>Description:</b> A real estate services company filed suit against a competitor and former employee alleging the former employee took client information and trade secrets, which he then used in his new job with the competitor. The competitor then filed a counterclaim against the insured entity and CEO, alleging the CEO contacted multiple companies that were current or prospective clients of the competitor to conduct a smear campaign and gain unfair advantage. The counterclaim alleged tortious interference with prospective business relations.</p>
<p><b>Bankruptcy Claim</b></p>	<p><b>Cost: \$980,000</b>  <b>Description:</b> The bankruptcy court appointed an examiner to investigate potential fraudulent conduct by directors and officers of a retail company. The investigation included possible involvement of the CEO and CFO in a loan scheme perpetrated by a founder of the company. The founder allegedly fraudulently obtained loans upwards of \$1B. As a result, the insured's properties were seized, and its assets were frozen, crippling its business and resulting in the bankruptcy filing.</p>
<p><b>Competitor Dispute</b></p>	<p><b>Cost: \$1,830,000</b>  <b>Description:</b> A competitor filed suit against a manufacturing company and several directors and officers alleging the insured poached employees and misappropriated sensitive, confidential, and proprietary business and technical information. The complaint also included allegations of tortious interference and civil conspiracy against both the entity and the individual defendants.</p>

### Claim Experience Matters

Most companies are not in the business of defending, settling and litigating D&O claims, but CNA is. Count on CNA's highly skilled Claims team to provide expertise and guidance to your customers through every step of the claim process, with a focus on achieving the best possible outcome for each policyholder.

### About Us

CNA is one of the largest U.S. commercial property and casualty insurance companies. We provide a broad range of standard and specialized insurance products and services for businesses and professionals in the U.S., Canada, and Europe, backed by more than 125 years of experience.

For more information, contact your field sales specialist or visit [cna.com](https://www.cna.com).