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Liability Insurance – Your Questions Answered

What is Directors and Officers Liability Insurance?

Directors & Officers Liability provides financial protection for the directors and officers of your company in the event they are sued in regards to the performance of their duties as they relate to the company. Directors and Officers Liability can usually include Employment Practices Liability and sometimes Fiduciary Liability. The former involves harassment and discrimination suits, and is where the majority of your exposure will be.

When do I need Directors and Officers Liability?

When you assemble a board of directors, they will frequently make this requirement. Also, investors, especially Venture Capitalists, will probably require you to show evidence of Directors and Officers Liability insurance as part of the conditions of funding your company. If an IPO is planned, D&O coverage will be vital because claims can arise if stock performance is not as buyers had been led to expect. And remember, hiring employees opens management up to employment practices lawsuits.

Why do I need Directors and Officers Liability?

First, any claims from stockholders, employees, and clients will be made against the company AND against the directors of the company. Because a director can be held personally responsible for the acts of the company, most directors and officers will insist on being protected rather than put their personal assets at stake. Second, no investor and member of your board of directors will be willing to risk their personal assets to serve as a corporate director or officer, no matter how much they believe in your company. And last but not least, employment practices suits constitute the single largest area of claim activity under D&O policies. Over 50% of D&O claims are employment practices related.

Typical Lawsuits Against Directors and Officers

Directors and Officers of a company can potentially face many kinds of lawsuits. Here are just a few:

- Mismanagement of operations or company assets
- Self-dealing and conflicts of interest
- Misrepresentation during the sale of company assets
- Misrepresentation in a private placement prospectus



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- Acts beyond authority granted in by-laws
- Violation of certain state and federal laws
- Breach of fiduciary duties

Each and every one of these types of litigation can last several years, becoming a financial burden and a continuous drain on a private company's profit margin. While indemnification from the company is a protection for its directors, officers and employees, sometimes it's simply not enough. If a company cannot indemnify its directors, officers or employees, either because of the allegations of a lawsuit or as a result of the company's insolvency, this cost can become the personal responsibility of the company's directors, officers or employees.