

# Performance News

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## ***Directors' and Officers' Liability***

*Don't be caught off guard! No company, large or small, is exempt from D&O claims.*

When people think about Directors' and Officers' Liability (D&O), big name companies come to mind like Enron, GM, Microsoft, or Google. These public corporations certainly need (or needed) D&O Liability coverage; however, small and private companies also have exposure to similar losses. Most companies have a General Liability (GL) policy, which provides some security; however, GL policies mostly deal with bodily injury and property damage claims. Directors' and Officers' Liability deals with management decision claims which a General Liability policy does not address. In the eyes of the law, all companies and their directors and officers owe the same duties to their employees, their shareholders, and third parties. Any size company could face tough financial times or even bankruptcy as a result of an uninsured claim.

According to a recent survey by Chubb Insurance, 22% of private companies have experienced a D&O lawsuit in the past five years with 57% of the lawsuits brought by customers. On average, the total loss was \$393,017. These types of losses emanate from alleged breaches of common or statutory law. Directors and officers have a duty of care, of loyalty to the company's interests above their own, of disclosure, and of obedience to perform duties in compliance with statutes and corporate charter. Breaching any of these duties could result in a lawsuit from a third party, employee, shareholder, or even a competitor.

Given the current financial turmoil and increased scrutiny of business practices, many companies may face lawsuits from their employees for breaching of fiduciary responsibilities. Major losses in company value or stock may result in shareholders suing because of alleged poor business decisions. An increasingly competitive environment may lead to unfair competition lawsuits from rival companies. Unfortunately, when many companies are looking to reduce their expenses, the exposure to loss from alleged poor management decisions has increased.

Employment Practices Liability (EPL) is a similar insurance coverage that addresses human resource activities such as hiring, firing, promotions, demotions, etc. Insurance companies often combine both EPL and D&O coverage in a package policy as both losses may be alleged in the same lawsuit. According to the same Chubb survey, 22% of private companies have experienced an EPL claim in the last five years. Even if a meritless lawsuit is filed, the average claim cost is \$63,115. These claims arise from alleged sexual harassment, discrimination, and hiring and firing practices which are frequently contained in federal statutes. In addition to covering claims from employees, insurance companies will offer coverage when third parties such as vendors or customers allege harassment or discrimination against you or your employees.

Over the years the EEOC has made filing claims easier for employees. Couple this with the trend of outsourcing and layoffs to reduce costs, and the exposure continues to grow. Even a meritless lawsuit can have catastrophic defense costs. As companies face tough financial decisions, they face even tougher scrutiny from employees, shareholders, and governmental agencies. Whether you are a public company or a small to mid-sized private company, you face Directors' and Officers' Liability and Employment Practices Liability loss exposures that, if left unaddressed, could endanger the future of your business.

*Suffering from insurance insomnia? Contact a Scott Insurance Advisor to help place the insurance coverage that will help you sleep through the choppy economic waters and beyond.*

---- Dustin DeJarnette, CIC CLCS, Commercial Compliance Specialist, Scott Insurance