Understanding the need for D&O Insurance

Can you risk not having coverage?

Failing to obtain D&O Insurance can cost you more than you think.

Below are the top 5 reasons to obtain Directors and Officers Insurance

1. A company doesn't have to be public in order to have D&O exposure! Private companies can be sued by any number of people such as employees, investors, vendors, competitors, etc.

2. Without D&O insurance, the Directors & Officers may have to pay for their defense out of their own pocket! Defense costs are high and nobody wants to use their own funds to pay for their defense.

3. Directors and officers can be held personally liable for their decisions. They can be sued based on their actions while managing the organization or simply because they are a director or officer.

4. It can help protect your investment. As an owner of a private company, you want to ensure the company's stability and success. Is your company able to afford a large defense cost in the case a suit is filed?

5. Losses on D&O claims are high and are more so without insurance. A survey of private and not-for-profit companies with D&O claims showed an average loss of $129,625 with D&O insurance, and $408,469 for those without D&O insurance.*

For more information contact your local Avalon representative or visit www.avalonrisk.com.

** Recent Trends in D&D and Private and Non-Profit Market, PLUS*

Policy descriptions are provided for informational purposes only. They do not alter, amend or extend coverage. Only the policy can afford coverage. If conflict should arise between descriptions and policy, policy provisions shall prevail.

Directors and Officers Liability Claim Scenarios

Minority shareholder oppression

ABC Company is a privately-held family business. 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 Company. Mrs. Walsh is a 20% shareholder in ABC Company and is a distant cousin of the CEO. Mrs. Walsh was upset as she felt that the majority shareholders, the three children of the CEO, were taking advantage of the recent corporate earnings through the high compensation package and left Mrs. Walsh with little reward. Mrs. Walsh filed a lawsuit against them alleging breach of fiduciary duty and minority shareholder oppression.

Outcome: ABC incurred $75,000 in defending the lawsuit and later agreed to pay Mrs. Walsh $200,000 representing a percentage of the increased profits.

Officer accused of misappropriation of trade secrets

Tech Corp. is a computer software company. They recently recruited a new Chief Technology Officer from a competitor due to his reputation in the industry. Shortly after he started with Tech, his former employer filed a lawsuit against him alleging that he was using trade secrets and confidential information to assist Tech Corp. In addition, the former employer sued Tech Corp. alleging tortious interference with contract alleging that Tech interfered with the employment contract it had with its former Chief Technology Officer.

Outcome: Defense costs totaled $200,000. The parties settled after Tech Corp. agreed not to use certain systems/programs.

Dispute over valuation of shares

ABC Grocery Store is a privately held company which owns several small grocery stores in Minnesota. Jim Smith is Vice President of Operations and owns 25% of the shares of XYZ. After the grocery stores saw a slump in profits, the Board of Directors decided to terminate several individuals, including Mr. Smith. ABC paid Mr. Smith for a buy-out of his shares using a current valuation based on the company's declining profits. He filed a lawsuit alleging that this was not a fair valuation of the shares and was in breach of the shareholder agreement.

Outcome: The court found that ABC had a right to value Jim Smith's shares as it did under the terms of the shareholder agreement and found in favor of ABC. However, ABC spent $175,000 in defense costs defending the litigation.

Misrepresentation

Med 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. Med Corp. also met with the investor on several occasions to discuss Med'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, Med experienced a significant profit loss for three consecutive quarters. The investor filed a lawsuit against Med Corp. and its Board of Directors alleging that they made several misrepresentations to induce the investor to provide funding.

Outcome: The matter went to trial and the investor was awarded $4 million.

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