

DIRECTORS & OFFICERS LIABILITY

Private corporations and non-profit entities often find it difficult to understand the need for Directors' and Officers' Liability insurance. However, due to the number of articles appearing in newspapers, the need for this insurance is becoming clearer.

Public attitudes are changing. Legislators and the courts are making directors and officers personally liable for good corporate governance. This presents new and significant risk to the personal assets of individuals who serve in these roles.

The increase in number and magnitude of legal actions against Boards of Directors and corporate officers has precipitated demand for Directors & Officers Insurance from all sectors of public and private business, industry and not

Directors and officers of privately held corporations and non-standards as publicly traded companies. Directors and officers are responsible for directing the affairs of the corporation or non-profit entity and must follow three basic duties:

- duty of diligence
- duty of loyalty
- duty of obedience

If it is alleged that the directors and officers have failed in these duties, they may be held responsible for such negligent action.

It is also important to note that:

- Directors can be held personally liable.
- Ignorance is not a defence.
- Resignation is not necessarily a defence.
- Board indemnity agreement may not be enough.

Coverage Defined

The Directors' and Officers' Liability Insurance Policy (D&O) pays on behalf of individual directors and officers damages and expenses in the event they are sued in conjunction with the performance of their duties as directors or officers of the company defence costs and damages that the corporation cannot pay either because indemnification is not permitted or the corporation is not financially able to do so. Further, the policy will pay on behalf of the corporation for those amounts the corporation is required or permitted to pay on behalf of its directors and officers.

Types of events that could lead to a claim

- •Misleading representations
- •Neglect or breach of duty
- •Breach of contract or copyright infringement
- •Unpaid wages
- •"Oppressed" shareholders creditors or employees
- •Unpaid taxes
- •Conflict of interest
- •Improper dividend payments
- •Improper issuance or repurchase of shares
- •Take-over defences (poison pill)
- •Breached debt covenants
- •Failure to ensure the corporation meets its financial obligations
- •Wrongful Dismissal

Sources of Legal Action Against Directors & Officers

- •Shareholders
- •Employees
- •Governments (Failure to act as stated under a statute. For example, if a statute require
- directors to file a report or maintain certain records, and these reports and records are
- not maintained, then the director may be liable for an offence under that statute.

AND/OR Non-compliance of the organization with a statute.

For example, directors be liable for mismanagement, financial losses, wrongful dismissal, employee discrimination or failure to remediate environmental damage.)

- •Creditors
- •Competitors
- •Regulatory Authorities
- •Derivative action suites
- •Class action suites
- •Other third parties
- subsidiaries specified in the application.

For more information or a quote on Directors & Officers Liability Insurance,
please do not hesitate to "Collis".