



## Private Company Directors & Officers Liability

Let's roll the dice and see what happens! That seems to be the mindset of some private businesses weighing whether or not to purchase Directors & Officers liability insurance. Are these private company owners, board members and executives really willing to risk losing their personal assets—home, cars, savings, boats, jewelry, stocks and more? According to [Chubb's 2016 survey](#) of private companies, about 43% of businesses *don't* buy Directors & Officers liability insurance.

### The top reasons for not buying coverage

- They believe coverage is unnecessary because they are a private business
- They have never had a previous D&O incident
- They believe that it is not needed because their business is family-run

Do businesses fully understand the exposures that they have? Do they mistakenly believe that they have coverage in other insurance policies? Without a D&O insurance policy, the directors and officers in the business may have their personal assets at risk. A lawsuit can be disastrous to a company in both time away from its business or in the actual defense/damages costs. It can be especially harmful to small companies.

### A strong case can be made as to why a private business should purchase D&O

- There are many potential sources for claims from customers, vendors, suppliers, competitors, government regulators, partners or shareholders.
- D&O can offer protection to the business's directors and officer's personal assets.
- The prohibitive financial cost of a D&O claim can challenge the survivability of a business.
- Having an insurance carrier partner can add immeasurable value if faced with the disruption that a claim can present.

Compared to potential consequences, a Directors & Officers liability policy is relatively inexpensive. According to multiple sources the average cost of a D&O lawsuit can be well over \$100k. Even more illuminating is the statistic from [PLUS](#) (Professional Liability Underwriting Society) which contrasts the difference in cost between a D&O lawsuit under insurance coverage versus no coverage. For companies with D&O insurance, the average loss was about \$130k. However, companies without any D&O coverage faced an average loss of about \$408k. Without D&O insurance, the cost was over three times as costly!

While D&O lawsuits may not occur frequently for a private company, the potential severity should raise internal alarms. Unfortunately, the risk of experiencing a loss may catch up with a company over time. According to the Chubb survey, 26% of the companies surveyed reported a D&O lawsuit in last 3 years.





Directors and officers are held personally liable for their role in a D&O lawsuit. Their personal assets—cars, homes, investments, life savings—can be at risk. Hopefully the corporate bylaws stipulate indemnification so that there is no personal loss. However, there can be times when a company is unable to indemnify the directors and officers. If a derivative claim is made on behalf of the corporation, damages are paid to the corporation and not the directors and officers. Or if a company becomes insolvent there may be no funds available to indemnify the directors and officers. Side A of a Directors & Officers liability insurance policy may help protect the insured’s directors and officers in these situations.

The global cost of dealing with a lawsuit can potentially put a company into a death spiral. The financial expense is one critical factor—the cash reserve to fund a legal endeavor can run into hundreds of thousands of dollars which could cripple some businesses. Then there is the operational toll that must be factored in. Management and staff may need to focus their time, energy and resources to work with the legal team and to prepare discovery items. This can take an immeasurable amount of time and effort away from normal and necessary jobs and duties. Financially, operationally and psychologically it drains a business’s resources in ways that may be difficult to predict or prepare for—even with an insurance policy. Imagine how the legal morass can consume a company when there is no insurance coverage.

### The bottom line

Businesses need to become aware of these risks and exposures. The bottom line for agents—talk to your clients about the importance of D&O coverage. Be prepared to counter rebuffs that were outlined above—“We’re just a family business”, “Only large public companies get sued” or “We’ve never had a D&O claim, so why should we be concerned”.

Try to help your clients understand where their potential liabilities lie. Typically for a private business the D&O risk exposure is one of severity and not frequency. Claims examples can help, but try not to rely on the large, public, headline-making scenarios. Find private company D&O lawsuits in a similar industry if possible—ask your broker for help. The goal is to help your clients gain a more realistic idea of their risk exposure so they can make a more educated insurance purchasing decision. And if the client refuses the coverage, get a written sign-off acknowledging rejection of the Directors & Officers liability insurance.

