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10 Reasons Why Privately Held Company Should Purchase Directors & Officers (D&O) Liability Insurance

Many privately held companies assume that Directors & Officers (D&O) insurance is primarily designed for publicly traded organizations. In reality, privately held companies often face many of the same management liability exposures—without the financial resources, indemnification capabilities, or regulatory protections available to larger public entities.

Claims can arise from employees, customers, competitors, lenders, investors, creditors, regulators, vendors, and potential acquirers. Even when allegations are unfounded, defense costs alone can be substantial and may directly impact company assets and the personal wealth of directors and officers.

D&O insurance helps protect both the organization and its leadership team from the financial consequences of management liability claims.

1. Protects Personal Assets of Directors and Officers

Owners, board members, executives, and managers can be personally named in lawsuits alleging:

- Breach of fiduciary duty
- Mismanagement
- Negligent oversight
- Misrepresentation
- Conflicts of interest
- Failure to comply with laws or regulations

Without D&O insurance, personal assets such as homes, savings, investments, and retirement accounts may be exposed to litigation costs and settlements.

EXAMPLE CLAIM: A former minority shareholder alleges that company leadership undervalued shares during a buyout and sues the CEO and board members personally for breach of fiduciary duty.

Potential Exposure: Hundreds of thousands or millions of dollars in defense expenses and settlement costs.

2. Private Companies Face Significant Shareholder and Ownership Disputes

Unlike public companies, closely held organizations frequently encounter disputes involving:

- Minority shareholders
- Family members
- Private equity investors
- Venture capital investors
- Founders
- Successor generations

These disputes often involve allegations regarding:

- Oppression of minority shareholders
- Unfair business practices
- Improper distributions
- Dilution of ownership interests
- Valuation disagreements

EXAMPLE CLAIM: A minority shareholder claims management excluded them from key decisions and improperly distributed profits to majority owners.

Potential Exposure: Defense costs, settlement payments, appraisal expenses, and expert witness costs.

3. Employment Practices Claims Continue to Increase

Employment-related lawsuits are among the most common claims affecting private companies. Allegations may include:

- Wrongful termination
- Discrimination
- Harassment
- Retaliation
- Failure to promote
- Wage and hour-related management allegations

Most private company D&O policies include Employment Practices Liability (EPL) coverage or offer it as part of a management liability package.

EXAMPLE CLAIM: A terminated executive alleges age discrimination and retaliation after raising concerns regarding company practices.

Potential Exposure: Legal fees, settlements, judgments, and reputational damage.

4. Mergers, Acquisitions, and Capital-Raising Activities Create Significant Liability

Private companies frequently engage in:

- Capital raises
- Private placements
- Investor solicitations
- Mergers and acquisitions
- Business sales
- Succession planning transactions

These events often lead to allegations involving:

- Misrepresentation
- Failure to disclose material information
- Breach of fiduciary duty
- Inaccurate financial reporting

EXAMPLE CLAIM: Following an acquisition, buyers allege management failed to disclose a significant customer concentration risk during due diligence.

Potential Exposure: Multi-million-dollar litigation and settlement costs.

5. Lenders and Creditors Can Pursue Directors and Officers

When a company experiences financial stress, creditors frequently examine executive decisions leading up to insolvency or restructuring.

Claims may involve allegations of:

- Breach of fiduciary duty
- Fraudulent conveyance
- Improper transfers
- Mismanagement of company assets

EXAMPLE CLAIM: A lender alleges management provided inaccurate financial information while seeking additional financing.

Potential Exposure: Defense costs and personal liability for executives.

6. D&O Insurance Helps Attract and Retain Quality Board Members

Qualified directors and executives increasingly expect liability protection before agreeing to serve.

Many experienced board members will ask:

- Does the company carry D&O insurance?
- What are the policy limits?
- Does coverage protect independent directors?

Without insurance, recruiting qualified directors may become difficult.

BUSINESS BENEFIT: A strong D&O program demonstrates sound corporate governance and commitment to protecting leadership.

7. Regulatory Investigations Are Increasing

Even private companies are subject to scrutiny from:

- Department of Labor
- Equal Employment Opportunity Commission
- State attorneys general
- Industry regulators
- Environmental agencies
- Data privacy regulators

Investigations can generate substantial legal costs even if no wrongdoing is ultimately found.

Example Claim: A regulatory agency investigates allegations of improper employment practices and names senior executives in the inquiry.

Potential Exposure: Significant legal and response costs before any finding is made.

8. Customer, Vendor, and Competitor Lawsuits Can Target Management

Business disputes increasingly include allegations against individual executives.

Claims may involve:

- Unfair competition
- Misrepresentation
- Breach of contract-related management allegations
- Interference with business relationships
- Misleading business practices

EXAMPLE CLAIM: A competitor sues company executives, alleging misleading statements were made during a competitive bidding process.

Potential Exposure: Extensive defense costs and settlement expenses.

9. Cyber Events and Operational Crises Frequently Lead to Management Claims

A cyber breach or other major corporate event can trigger allegations that leadership failed to:

- Implement adequate controls

- Oversee cybersecurity
- Manage risk appropriately
- Protect confidential information

Even when Cyber Liability Insurance responds to the breach itself, D&O claims may subsequently arise against directors and officers.

EXAMPLE CLAIM: Following a ransomware incident, customers and investors allege executives failed to maintain reasonable cybersecurity governance.

Potential Exposure: Separate management liability litigation against company leadership.

10. D&O Claims Are Expensive—Even When the Company Wins

The largest cost associated with many D&O claims is defense expenses.

Legal fees may include:

- Defense counsel
- Expert witnesses
- Accountants
- Forensic specialists
- Electronic discovery costs
- Mediation expenses

A claim does not have to result in a judgment for significant costs to be incurred.

EXAMPLE CLAIM: A former executive files a meritless lawsuit against the company and its leadership team. The case is dismissed after two years.

Potential Exposure: Hundreds of thousands of dollars in defense expenses despite a complete legal victory.

Typical Private Company D&O Claimants

A D&O claim can be brought by:

- Current shareholders
- Former shareholders
- Minority owners
- Employees
- Former employees
- Customers
- Vendors
- Competitors
- Creditors
- Lenders
- Bankruptcy trustees
- Regulators
- Acquisition targets
- Potential buyers or investors

The Cost of Going Without D&O Insurance

Without D&O insurance, a privately held company may face:

CORPORATE CONSEQUENCES

- Reduced enterprise value
- Significant balance sheet impact
- Increased legal expenses
- Difficulty attracting investors
- Reduced attractiveness to board candidates

PERSONAL CONSEQUENCES

- Personal payment of defense costs
- Personal settlements or judgments
- Seizure of personal assets
- Reputational damage
- Financial hardship for directors and officers

Conclusion

Privately held companies face many of the same management liability exposures as public companies, including shareholder disputes, employment claims, regulatory investigations, creditor actions, M&A-related litigation, and cyber governance allegations. D&O insurance serves as a critical risk management tool by protecting both corporate assets and the personal assets of directors, officers, and board members.

In today's litigation environment, D&O insurance should be viewed not as an optional purchase, but as a fundamental component of a private company's corporate governance and risk management framework.

BOTTOM LINE: A D&O policy helps ensure that one lawsuit does not jeopardize the financial security of the company, its leadership team, or its future growth objectives.