Property & Casualty Insurance

Directors and Officers Liability Insurance (often called **D&O**) is liability insurance payable to the directors and officers of a company, or to the organization(s) itself, as indemnifications for certain damages (losses) or advancement of defense costs in the event any such insured suffers such a loss as a result of a legal action (whether criminal, civil, or administrative) brought for alleged wrongful acts in their capacity as directors and officers (as to the individual directors/officers) or against the organization(s) (either for securities claims or - if private - other actions against the organizations themselves). Such coverage can extend to defense costs arising out of criminal and regulatory investigations or trials as well; in fact, often civil and criminal actions are brought against directors/officers simultaneously. It has become closely associated with broader management liability insurance, which covers liabilities of the corporation Under the traditional D&O policy applied to "public companies" (those having securities trading under national securities exchanges etc.), there are three (3) insuring clauses. These insuring clauses are termed: Insuring Clause 1 (Side-A or "non-indemnified"); Insuring Clause 2 (Side-B; or "indemnified"); and Insuring Clause 3 (Side-C; "entity securities coverage"). Contemporary D&O policies also provide for Insuring Clause 4 (Side-D), which provides for a sublimit for investigative costs coverage related to a shareholder derivative demand. Side-A Insuring Clause 1, provides coverage to individual directors and officers when not indemnified by the corporation. Side-B Insuring Clause 2, provides coverage for the corporation or organization when it indemnifies the directors and officers (corporate reimbursement) Side-C Insuring Clause 3, provides coverage to the corporation (organization) itself for securities claims brought against it. NOTE: securities claims only coverage applies to publicly traded companies and large private companies; small private companies may be able to obtain broader "entity" coverage. More extensive or broader coverage can be obtained for individual directors and officers under a Broad Form Side-A DIC "Difference in Conditions" policy purchased to not only provide excess Side-A coverage but also to fill the gaps in coverage under the traditional policy, respond when the traditional policy does not, protect the individual directors and officers in the face of U.S. bankruptcy courts from wrongfully deeming the D&O policy a part of the bankruptcy estate and otherwise more fully protect the personal assets of individual directors and officers. At its roots, D&O insurance insures "behavior" in that the decisions of directors and officers are the matters which often lead to covered claims. That is, an incorrect decision often leads to shareholder discontent and, thus, a lawsuit against the directors and officers who made the decision. State law typically protects the directors and officers from liability (particularly exculpatory provisions under state law relating to directors) but this does not mean that actions are not brought by private plaintiffs aggravated by the loss of money and seeking a quick payout from insurance proceeds. Typical sources of claims include shareholders, shareholder-derivative actions, customers, regulators (including those that would bring civil and criminal charges), and competitors (for anti-trust or unfair trade practice allegations). The extent of coverage is dramatically dictated by the fact the company is publicly traded or privately held. For instance, publicly traded companies (themselves) are only covered for securities claims. In terms of basic state corporate law (at least in the U.S.A.), directors and officers of a corporation can be

liable if they damage the corporation by breaching their duties and contracts to the corporation, mix personal and business assets, or fail to disclose conflicts of interest. In the United States, under state corporate law, corporations are often mandated to indemnify directors and officers of companies incorporated in that state in order to encourage people to take the positions. That being said, there exist extensive situations in which either the corporation is only permitted to indemnify the director or officer or the company is explicitly forbidden from indemnifying such director or officer. D&O insurance is usually purchased by the company itself, even when it is for the sole benefit of directors and officers. The basic principle underlying the acceptance of D&O insurance is that companies and their shareholders are best served by knowledgeable directors and officers who take strategic risks based upon the information reasonably available to them at the time the decision is made, without the threat of personal liability. By doing so, it is believed that corporations are better able to attract qualified, intelligent, and reasonable directors and officers to manage the operations of the company. In addition to D&O insurance which fills the gaps, state law ensures that reasonable, calculated, and well-processed decisions that are made by the executives of a company, will be made without fear of personal financial loss should their well thought-out plan not come to fruition. As practical and sound as that proposition may sound, it is still within the power of states and individual companies to deny such executives indemnification for claims that arise out of their well-intended efforts. Ultimately, it is a cost/benefit analysis.