

Not All Directors & Officers Policies Are Created Equal

When talking with executives about Directors and Officers insurance, most tell me they are well covered with a policy in place through their general insurance Broker. What I have found however, is that even the most sophisticated insureds and those well versed in D&O are unaware of critical exclusions and conditions precedent to coverage contained in their policy. Numerous assumptions are common as well:

- all D&O policies are good policies
- all policies are similar
- all Brokers are knowledgeable on this type of insurance

Unfortunately, many seem to be lured into a false sense of security by the presence of a D&O policy without scrutiny.

D&O policies differ significantly from one another and are more sophisticated than other types of policies.

Many common insurance policies are derived from an ISO (Insurance Services Office) standard. There is however, no ISO standard D&O policy; each insurance carrier writes their own. Language, terms, conditions, clauses and exclusions all differ from policy to policy. As such, specimen copies of each quoted policy need to be obtained, read and compared in order to truly understand what is being quoted and what you are getting. It's a challenging task which begs the question – how often is it being done?

Insurance Brokers are not required to be educated and knowledgeable on D&O insurance.

You might be surprised to know that information on D&O insurance is not included in the Broker licensing education or common Continuing Education curriculum. Like doctors and attorneys, each Broker evolves expertise in certain areas. You would not ask a patent attorney to handle your divorce or a dermatologist to treat a vision problem. D&O insurance requires attention to details that are not readily apparent. Knowing what to look for and how to negotiate such policies is not a common skill set. Unfortunately, for insureds and Brokers alike,

“You don't know what you don't know!”

Insurance designations such as RPLU (Registered Professional Liability Underwriter) and MLIS (Management Liability Insurance Specialist) address D&O coverage in depth but are not common amongst Brokers.

Thorough analysis, review and education of all executives on the terms of the D&O policy is prudent.

In today's work environment, bandwidths are stretched beyond capacity. Rules, regulations and standards by which companies are held accountable however, keep increasing. Publicly we see these standards being difficult to meet even by large companies that have resources with which to comply. Small and mid-size companies with few resources are actually more at risk. Claim statistics show frequency and claim costs rising. Reliance on an existing D&O policy may be convenient but might not provide the protection that you are expecting.

You rely on the D&O policy to protect your personal assets so make sure that you know how to operate your policy by asking your Broker what the terms and conditions are. Find out what is excluded – you will be alarmed at the sheer number of exclusions! Most importantly, when obtaining or renewing a D&O policy work with an Insurance Broker that specializes in D&O coverage and has attorney resources that specialize in insurance to refer to.

For more information on choosing the right policy, contact me directly at 858.202.6187 or by email at ccorporales@wateridge.com