



Adequacy of Directors' and Officers' Liability Limits

Knowing the value of a directors and officers liability policy is one thing, but determining the adequate limit for that policy is another.

In conjunction with one of the preeminent non-profit directors' and officers' insurance underwriters in the City, the following are a number of items that must be taken into consideration when a board sits down to determine it's directors' and officer's liability limit.

1. The limit is usually "all-inclusive" of defense and any indemnity (payments for negligent acts). As our society becomes more litigious, the increase cost of legal defense must be taken into consideration.

An advancement to the policy in December 2011 has the defense cost outside of the available limit of protection thus increasing the level of protection.

2. The limit is shared among all insured individuals (D&O's, employees, volunteers, committee members) and the entity, itself....so depending on the # of "co-defendants" in any claim, the total limit is allocated accordingly. The more members to be covered, the higher the limit of coverage should be.
3. The limit is an "occurrence/aggregate," so not only does it apply to any one claim, it applies to ALL claims within a 1 year term
4. What are the corporate financial exposures? Do you have a high level of "payable's" or deferred revenues that would have to be paid back in the event of dissolution? Are there any mortgages or other loans? Any "contingency" reserves set aside for worst case scenarios? In any money held in trust?, etc.
5. Individual directors' and officer's personal assets may be at stake in the event there is no indemnity clause in the By-Laws or in the event that the entity becomes insolvent and cannot provide any or adequate indemnity/protection to the board members. So, the higher collective "worth" of the individuals, the higher potential exposure against the policy limits and thus an element that should be considered when determining the limit of coverage.
6. One must also review the number of corporate stakeholders. A publically traded entity for example will, in most cases, have a broader number of shareholders that could potentially bring suite against the board when compared to a non-publically traded company.



7. Also remember that potential claimants against Directors and Officers include:
The Company, Shareholders, Employees, Creditors, Regulatory bodies,
Liquidators / Receivers, Members, Contributors and the General Public.
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