

**PRIVATE CHOICE PREMIER<sup>SM</sup> – D&O LIABILITY COVERAGE ANALYZER**

# Does your D&O liability insurance pass the test?



## UNDERSTANDING THE BREAKDOWN OF YOUR DIRECTORS, OFFICERS & ENTITY (D&O) POLICY

**Side A:** Broad protection for a company’s insured persons, including directors and officers. Coverage may pay for covered claims brought against such persons, minimizing the threat of non-indemnified, out-of-pocket expenses.

**Corporate reimbursement:** Reimburses your company for advanced payments made for covered claims against insured persons.

**Entity liability:** Pays expenses for covered claims brought against your company by shareholders, vendors, regulatory agencies and a wide range of other entities.

**Derivative demands:** Coverage can help defray investigation costs related to derivative demands.

## HOW DO OTHER D&O LIABILITY INSURANCE CARRIERS COMPARE TO THE HARTFORD?

The Hartford’s Private Choice Premier D&O liability insurance is designed to help protect privately-held companies of all sizes from potential losses stemming from management of the company. Fill in the checklist to help yourself decide which policy can best help to protect you and your company in the event of a D&O liability claim.



DIRECTORS, OFFICERS & ENTITY LIABILITY COVERAGE FEATURES	CRITICAL CONSIDERATIONS	The Hartford	Other carrier
<b>D&amp;Os are paid first</b> Specifies loss is paid to insured persons first with option for company to direct payment.	D&O liability insurance should pay individual managers before the company. Litigation may involve restrictions to indemnification.  Would your company’s D&Os receive priority access to insurance proceeds?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Additional limit of liability for D&amp;Os</b> Provides an additional \$1 million limit of liability for non-indemnified loss on a subsequent claim.	In the event of a policy limit loss, D&Os may need coverage for an additional claim made during the policy period.  Look for preset terms vs. trying to negotiate this with a carrier when there’s little or no coverage remaining.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Broad umbrella for D&amp;Os beyond the boardroom</b> <ul style="list-style-type: none"> <li>• Extension of coverage to spouse, domestic partner, estate, heirs and more</li> <li>• Extension of coverage to nonprofit service at company’s request</li> <li>• “Whistleblower” coverage</li> <li>• Legal Services Wrongful Act coverage sublimit, if elected</li> </ul>	Even with D&O coverage, D&Os can still face unexpected danger to their professional and personal reputation, as well as their personal assets.  Is your policy clear about how D&Os’ reputations and livelihoods are protected?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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<p><b>Definition of claim (insured person claim coverage triggers) include:</b></p> <ul style="list-style-type: none"> <li>• Written demand for monetary damages or other civil non-monetary relief</li> <li>• Civil proceeding, including an arbitration or other alternative dispute proceeding</li> <li>• Criminal proceeding</li> <li>• Formal administrative or regulatory proceeding</li> <li>• Formal civil, criminal, administrative or regulatory investigation</li> <li>• Receipt of a Wells Notice, target letter, subpoena or similar document</li> <li>• Written request to toll or waive a statute of limitations</li> </ul> <p>Coverage for derivative demands by security holders is included.</p>	<p>How a policy defines what constitutes a claim is important because it will be one of the primary triggers for coverage under the policy.</p> <p>Be careful to compare definitions of claims and look for keywords to understand which forms of disputes involving the D&amp;Os (and company) will be accepted by carrier.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Additional limit of liability for D&amp;Os</b></p> <ul style="list-style-type: none"> <li>• Provides an additional \$1,000,000 limit of liability for non-indemnified loss</li> </ul>	<p>In the event of a policy limit loss, D&amp;Os find additional protection under A-Side reinstatement limit.</p> <p>Look for preset terms vs. trying to negotiate this with a carrier when there's little or no coverage remaining.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Definition of loss</b></p> <p>Loss is defined as damages and defense costs and includes:</p> <ul style="list-style-type: none"> <li>• Compensatory damages</li> <li>• Settlement amounts and costs awarded pursuant to judgments, including pre- and post-judgment interest</li> <li>• Punitive and exemplary damages, including the multiple portion of any multiplied damage awards</li> </ul>	<p>Are there any affirmative statements regarding how settlements are treated? Are punitive damages or civil penalties covered where allowable?</p> <p>Be sure a settlement, in the best interest of resolving a claim, doesn't impact your coverage.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Exclusions</b></p> <p>Common D&amp;O exclusions are narrowed or removed, including:</p> <ul style="list-style-type: none"> <li>• No antitrust exclusion or sublimit</li> <li>• Insured vs. insured exclusion limited to one-year look-back</li> <li>• Shareholder and derivative claim carve back to product, pollution, professional services/products and intellectual property exclusions</li> <li>• "Conduct" exclusions can be applied only if there's a non-appealable final adjudication of the underlying action</li> <li>• Professional Services/Products exclusion applies only to the entity</li> </ul> <p><b>Data breach coverage</b></p> <p>\$50,000 sublimit included for data privacy regulatory expenses and notification and credit monitoring expenses.</p>	<p>D&amp;O policies' exclusionary language often vary greatly from one carrier to another.</p> <p>Pay close attention to how exclusions apply to different insuring agreements and where there are "carve backs" (i.e., exceptions to exclusions) to allow some measure of coverage.</p> <p>Data privacy is a fast-growing concern for businesses as technology becomes more and more a part of everyday operations.</p> <p>Your regulatory obligations in the event of a data breach could be as much as \$200 per customer.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>International exposures</b></p> <ul style="list-style-type: none"> <li>• Coverage territory is worldwide</li> <li>• Selected Foreign Corrupt Practices Act civil penalties</li> </ul>	<p>Even local businesses are increasingly exposed to liability through foreign expansion and globalization.</p> <p>Is your policy responsive to claims in the context of the complex, global economy?</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Coverage for securities offerings</b></p> <ul style="list-style-type: none"> <li>• Private placements of an insured entity's securities exempted from the registration requirements of the Securities Act of 1933, including such securities exempted pursuant to Title III of the JOBS Act, Crowdfunding</li> <li>• Wrongful act relating to the insured entity's preparation for an initial public offering (IPO) if such an IPO doesn't occur (also known as roadshow coverage)</li> </ul>	<p>A growing business may have many capital-raising options available in today's marketplace, including equity-based financing such as private placements, JOBS Act, Crowdfunding, and even an IPO.</p> <p>Ensure that your policy includes coverage relevant to today's capital markets.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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<p><b>\$500,000 sublimit for derivative demands</b></p>	<p>Shareholders can step into the shoes of the company to bring suit against management, alleging their actions are harming the company (i.e., self-dealing, excessive pay, etc.).</p> <p>Confirm your policy covers investigation costs associated with responding to such allegations.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Waiver of retention</b></p> <p>Reimbursement of defense costs paid by an insured that are within an applicable retention where a final adjudication or settlement with prejudice establishes that none of the insureds in the claim is liable for any loss.</p>	<p>Many claims can be resolved more cost-effectively through settlement outside the courtroom, but there are circumstances where it may be necessary to go to trial.</p> <p>Look for a carrier to reward a finding of no liability.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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