



Protection for organizational leadership

TRAVELERS CANADA | DIRECTORS AND OFFICERS LIABILITY INSURANCE

Today, more than ever, individuals serving on boards of directors of public corporations, private companies and non-profit organizations are being held accountable for the actions – and inactions – of the businesses they oversee.

Liabilities of directors and officers can arise in many ways, including allegations of breach of common law duties, breach of duties owed to shareholders, and statutory liabilities imposed by federal or provincial laws.

Often the greatest cost in dealing with an allegation against a corporation, or its directors or officers, is the legal cost of defending the action. In many circumstances, directors' acts are indemnified by their corporations' by-laws. However, in the case of insolvency of a corporation or allegations of wrongdoing by a director, legal costs may not be covered. To ensure directors have access to legal defence and are indemnified in the event they are found liable, the safest option is often to ensure that a directors and officers (D&O) policy is in place.

D&O policies commonly consist of three parts:

- Side A indemnifies directors and officers in the event that they are not indemnified by the corporation
- Side B indemnifies the corporation for payments made to directors and officers under the terms of its indemnification provisions
- Side C provides coverage to the entity for securities claims

Key coverage considerations when selecting a D&O insurance provider

- Definitions of “loss,” “claim,” “wrongful act,” “insured person” and other terms all impact the coverage available. Travelers Canada policies provide broad definitions for all of these terms.

- Consider whether the insurer is under a duty to defend, or has the right to choose to defend. If Travelers Canada provides a D&O policy to private or non-profit organizations on a duty-to-defend basis, then 100 percent of defence costs will be covered with respect to covered and uncovered matters.
- Entity coverage may erode the limits available to the directors and officers in the event the entity is sued for non-securities claims along with directors and officers. Check for priority of payments provisions giving priority to the individuals. This provision is built into Travelers Canada D&O policies. Additional Side A coverage is also available to protect individual directors and officers.
- Defence costs can erode limits, particularly if there is a shared limit with employment practices liability or fiduciary liability. Adequate limits should be bought to cover both costs and settlements for all potential defendants. Travelers Canada can provide dedicated limits for each of these insuring agreements. In addition, defence costs can be provided outside of policy limits for private and non-profit organizations.
- Warranty statements in an application for D&O insurance may negate coverage if false statements are made. Check for full severability of the application so that the entity and other directors who do not have knowledge of the falsehoods still benefit from the policy, and for non-rescindability by the insurer. Travelers Canada D&O policies provide for severability of application form and non-rescindability.
- Allocation is a concern when multiple causes of action are brought by plaintiffs, some of which may not be covered by the policy or where multiple parties are sued, some of whom are not insureds under the policy. Predetermined allocation of defence costs is preferable to ensure that defence costs are available to a set limit, regardless of the nature of allegations. This is available in all Travelers Canada D&O policies.

Consider the following examples:

- The vice-president of a manufacturing firm determined that diversification into a different product line presented tremendous sales potential. Instead of presenting the opportunity to his company, the VP informed his brother, who started a new company to manufacture that product. On behalf of the company, a shareholder sued the VP, alleging that he wrongly took advantage of an opportunity belonging to the corporation. The suit eventually settled for \$2.5 million, which was covered by the company's Travelers Canada D&O policy.
- A trade association was sued for anti-trust violations in connection with the rejection of a company's application for membership. Defence costs alone were \$175,000, which were covered by the association's Travelers Canada D&O policy.

Additional coverage customized for private and non-profit organizations

In addition to D&O coverage, Travelers Canada offers a Business Office Package (BOP), which is a property and liability policy available to private and non-profit organizations with small office exposures.

About Travelers Canada

Whether it is selecting the best coverage for a customer's situation, responding to a broker's request, educating a client on ways to reduce risk or managing a claim, we work hard to do things right.

Our commitment to outstanding service combined with our comprehensive insurance-based solutions gives customers the confidence they need to feel secure.

Travelers Canada combines financial strength and international reach with local knowledge and expertise. As the Canadian arm of The Travelers Companies, Inc., we are part of an industry leading organization committed to continuously evolving to meet customers' ever-changing needs. In Canada, our 450 employees in Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Montreal and Halifax serve commercial customers from coast to coast.

For more information about Travelers Canada's products and solutions, please contact your local Travelers account executive or visit travelerscanada.ca.

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