



Lowenstein Sandler's In the Know Series Video 20 – D&O Insurance Myths (Part 1)

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Eric Jesse:

Hi, I'm Eric Jesse from Lowenstein Sandler's [Insurance Recovery Group](#). Welcome to "[In the Know](#)."

Directors and Officers (D&O) insurance is an important type of coverage, but it turns out there are several misconceptions about it. For one, D&O insurance is a bit of a misnomer because, yes, it does cover directors and officers, but it can cover companies for their wrongful acts, too.

So, we just dispelled one misconception about D&O insurance, so let's dispel a few more myths to give you a better picture of what D&O insurance does.

First, and this is something we hear all the time: D&O insurance does not cover fraud or intentional misconduct. Not so fast—while D&O policies will include exclusions for actual and deliberate fraud, criminal conduct, or sometimes willful violations of laws, those exclusions do not apply unless and until there is a final non-appealable adjudication establishing that such fraud or other intentional conduct occurred. That means directors, officers, and companies can access D&O insurance for Defense Cost coverage to challenge those lawsuits and for settlements before that final non-appealable judgment is ever reached.

Second, we hear people say, "Well we're a private company, or we're a company with few shareholders—we don't need D&O insurance." You might want to rethink that. D&O insurance can cover more than shareholder claims. The scope of coverage can be pretty broad because D&O insurance policies provide coverage for wrongful acts, subject to the policy's exclusions. But that means there is the potential for coverage for claims that are brought by customers, employees, lenders and other creditors, government regulators, and business competitors. And the types of claims can include misrepresentation claims, theft of trade secrets or intellectual property claims, tortious interference, and government investigations.

Here's a **third** myth: "We're a clean risk, we behave and do everything the right way, and we've never had a claim before, so we don't need insurance." Wrong—there are plenty of companies that "do right," but that may not be how others see things, to the point of those third parties may make a claim or bring a lawsuit.

Also, if you really are that “clean risk,” and there isn’t a history of claims, that will be reflected in your premium. But if that claim comes, it will probably be worth those premium dollars over the years to protect yourself. One of the valuable coverages of a D&O policy is that it is “litigation insurance.” It will cover the attorneys’ fees and expenses that you incur to defend against that lawsuit that is groundless, false, or fraudulent.

Thank you for joining us today on “[In the Know](#).” We’ll pick it up next episode and share a few more D&O insurance myths and set the story straight on those. See you next month.