

## Is Your Directors And Officers Liability Coverage Illusory?

Article By:

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Many corporations pay significant amounts for directors and officers liability policies. Commonly referred to as D&O policies, these policies usually involve three sides. Directors and officers are likely to have the most interest in "Side A" coverage which insures against claims against them when the corporation is unable or is not permitted to indemnify them. Sides B & C, on the other hand, benefit the corporation. Side B reimburses the corporation for its indemnity obligations to directors and officers. Side C provides coverage to the corporation for liabilities when it is sued along with the directors and officers. It is my understanding that for publicly traded corporations, this coverage is limited to securities claims and that privately held corporations may have more risks covered.

When a director or officer is sued, all eyes may turn to the D&O policy. However, some policyholders may be in for a rude surprise. In the case of privately held corporations, insurers may exclude claims by "major shareholders". Depending upon the definition of "major shareholder", this exclusion could exclude all derivative claims. Because actions against directors and officers by shareholders are very often derivative in nature. A major shareholder exclusion can be a major lacuna in coverage. I liken it to a fire insurance policy that excludes coverage when the fire is started by a flame.

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