Insurance / Risk Advisory / Employee Benefits

HORTON

MANAGEMENT LIABILITY PRACTICE

Coverages For All Types Of Management And Executive Risk

Managing an organization and people is inherently filled with risk and liability.

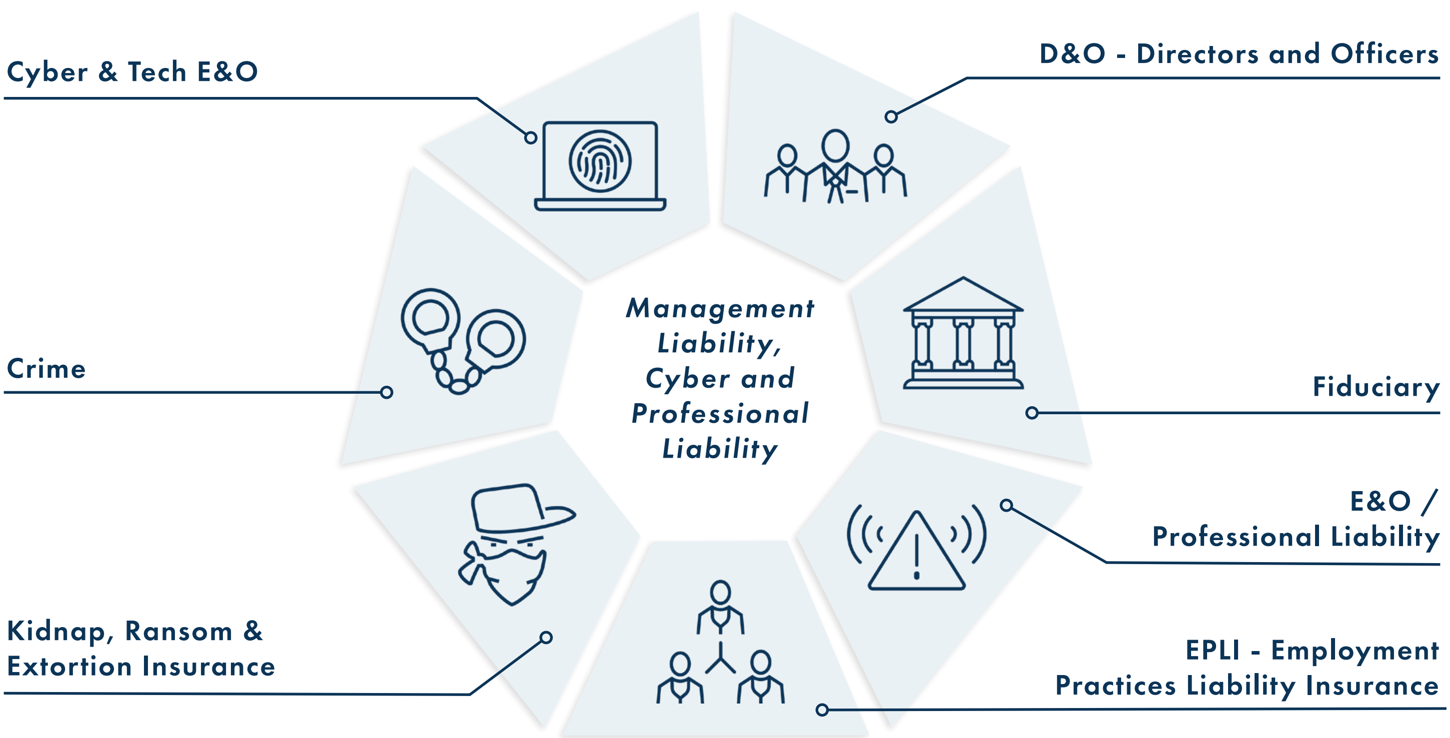
As the director or officer of a private company, you may assume your position is relatively low risk compared to the executive management at a public company, which is subject to heavy securities regulation.

Despite the fact that private firms are spared from some of the costly securities lawsuits that plague public companies, the directors and officers of private companies face a significant amount of their own unique risks and challenges. In many cases, these risks have even more fallout for private companies. A director and officer (D&O) lawsuit can take a substantial amount of time and capital to defend, which can cripple or bankrupt a company.

In addition to a D&O suit, cyber insurance and the risks it protects against have entered the board room more strongly than ever. Because of this and the importance of other Management Liability coverages, we at The Horton Group argue that a robust Management Liability and Cyber program not only protects a company's balance sheet, but also the personal assets of its key operators and decision makers.

To protect your private company from a costly lawsuit, understanding the areas where your business faces the most risk is the first step. Use this list as a starting point to identify the potential liabilities in your company so you can create or tailor a risk management program to attack these issues.

Key Coverages



Cyber and Technology Liability Insurance Coverage

As technology becomes increasingly important for successful business operations, the value of a strong cyber liability insurance policy continues to grow. The continued rise in the amount of information stored and transferred electronically has resulted in a remarkable increase in the potential exposures facing businesses.

In an age where a stolen laptop or data breach can instantly compromise the personal data of thousands of customers, protecting your business from cyber risks is just as important as some of the more traditional exposures businesses account for in their commercial general liability policies.

Cyber Liability Insurance policies can provide coverage for breaches whether employees are working from home or at an office. Also, Cyber Liability Insurance policies offer resources to policyholders, including training for employees, network/ system scans, and Incident Response Planning Guide support amongst other offerings. Cyber insurance provides a financial backstop to all the cyber security work a company invests in, focusing on the following areas:

1. ***Data breach :*** Legal representation is typically the first resource sought out in the wake of a cyber incident. And this representation can be the most efficient way to access Cyber Insurance policy resources including forensics, ransom negotiation, public relations and data restoration. All carriers handle these resources somewhat differently, but we emphasize providing notice to your carrier as soon as you learn of an incident. We are here to support our clients throughout that process.
2. ***Forensics:*** As noted in the paragraph above, forensic analysis and the costs associated are a very valuable resource associated with most Cyber insurance policies. Forensic investigations provide the basis for any subsequent Cyber insurance policy response and therefore should be engaged early in the incident response process. Forensic reports not only indicate how a breach occurred, but they provide specific advice and direction on how to avoid future system intrusions.
3. ***Business interruption loss reimbursement:*** A cyber attack can lead to an IT failure that disrupts business operations, costing your organization both time and money. Cyber liability policies may cover your loss of income during these interruptions. What's more, increased costs to your business operations in the aftermath of a cyber attack may also be covered.
4. ***Cyber extortion:*** Ransomware and similar malicious software are designed to steal and withhold key data from organizations until a steep fee is paid. As these types of attacks increase in frequency and severity, it's critical that organizations seek cyber liability insurance, which can help recoup losses related to cyber extortion.

Directors & Officers Insurance Coverage

Directors and Officers Insurance Coverage is specifically designed to cover "wrongful acts" based on management decisions, such as an actual or alleged error, omission, misleading statement, neglect or breach of duty.

A D&O policy provides defense costs and indemnity coverage to the entity listed on the policy declarations and its directors and officers resulting from managerial decisions that have adverse financial consequences.

Employment Practices Liability Insurance (EPLI)

In our increasingly litigious society, the threat of a lawsuit hangs over every business transaction, large or small. Even employers who adhere to the letter of the law at all times are likely be sued by an aggrieved employee or customer at some point. While many suits are groundless, defending against them is costly and time consuming.

If you carry employment practices liability insurance (EPLI), your business has a measure of protection against lawsuits from current, prospective or former employees who allege "wrongful acts" such as discrimination, sexual harassment or wrongful termination

Many employers do not realize that they have a gap in their insurance coverage that leaves them vulnerable to discrimination and harassment lawsuits from customers, clients, vendors and suppliers. Standard EPLI policies provide coverage for lawsuits brought about by employees or prospective employees, and most commercial general liability (CGL) policies specifically exclude coverage for harassment and discrimination. That's where third-party EPLI comes in.

Third-party EPLI fills this gap between EPLI and CGL, and offers protection against allegations of wrongful acts made by customers, clients, vendors and suppliers. In general, covered claims include the following:

1. Discrimination based on the following:
    - Race
    - Religion
    - Sex
    - Age
    - National origin
    - Disability
    - Pregnancy
    - Sexual orientation
2. The following forms of harassment:
    - Unwanted sexual advances
    - Unwanted requests for sexual favors
    - Other verbal or physical actions that create a hostile or offensive work environment

Third-party EPLI is vital for businesses that deal with customers on a daily basis. However, even if your firm doesn't have a lot of interaction with the general public, you may still benefit from third-party EPLI coverage if your operations involve clients, suppliers or vendors.

Crime Insurance

While you may think your business would never be the victim of theft, the harsh reality is that nearly every business can become a victim.

While standard commercial insurance policies may provide some protection from criminal acts, they often do not cover losses resulting from fraudulent activities and typically not employee theft. Crime insurance was developed to deal with the limitations of other policies and extend protection to include coverage for a wide variety of wrongdoing.

Crime insurance coverage:

1. ***Coverage for the misuse of funds:*** It is likely that a number of your employees have access to company funds or financial information. In some cases, employees may abuse this access for personal gain. Crime insurance can protect organizations from the misuse or illegal transfer of funds, ensuring your finances are safe from internal criminal acts.

2. ***Employee theft of client property:*** This coverage can be added onto a Crime or Fidelity Bond policy to provide coverage if one of your employees is onsite at a customer location and unlawfully takes money, securities or property.

3. ***Funds Transfer Fraud or Computer Fraud:*** We rely on our financial institutions and data to conduct business. A Crime or Fidelity Bond policy can provide recourse if a fraudulent actor makes a fraudulent instruction to a financial institution and that institution subsequently releases funds to a fraudulent actor. Or, if a fraudulent actor is able to manipulate computer data leading to a loss of funds, the policy will be triggered.

4. ***Social Engineering Fraud:*** Crime and Fidelity Bond policies may provide a sublimit of insurance for Social Engineering Fraud (other names include Fraudulent Transfer, Funds Transfer Fraud, Misdirected Payment and False Pretenses to name a few). This coverage comes into play when, for example, an employee is duped into willingly sending funds to a purported client, vendor or employee, who is, in fact, a fraudulent actor that had intercepted communications and tricked an individual into thinking they were someone that they were not. This coverage can be added to some Cyber Insurance policies as well.

Fiduciary Liability Insurance Coverage

Fiduciary Liability coverage, although not mandated by the Employee Retirement Income Security Act of 1974 (ERISA) protects entities, the plan itself and individuals. The damages, if covered, depend in part on negligent acts, errors or omissions in the administration of various benefit plans.

The rules and regulations of ERISA include very strict guidelines for fiduciaries of plans that fall under ERISA control. Some of the plans that are subject to ERISA regulations include the following:

1. 401k plans, Pension plans, Profit-sharing plans and Employee Stock Ownership plans (ESOPs)
2. Welfare benefits, including Medical, Life and Disability

Today, most employers have one or more plans for their employees that fall under ERISA guidelines.

Kidnap, Ransom and Extortion Insurance

Kidnap, ransom and extortion (K&R) insurance is typically a standalone policy designed for those who travel internationally. It covers the costs relating to events such as:

1. ***Kidnapping and ransom:*** Seizing an individual with the intent to demand money in return for the individual's safe return.
2. ***Wrongful detention:*** Holding an individual who mistakenly believes their captors have the legal authority to do so.
3. ***Extortion:*** Demanding money with the threat to injure or kill an individual, damage property or divulge trade secrets (applicable to business travel).
4. ***Hijacking:*** Holding an individual for an extended period of time against his/her will on an airplane, motor vehicle or ship.

This coverage is particularly beneficial for those who travel to high risk regions of the world.