Directors and Officers Liability

by Matt Hughes, Moody Insurance

Depending on the legal structure of your business, you may be required to have a board of directors. The responsibilities of the board can vary depending on your articles of incorporation, but the most important attribute of the board is that they have a responsibility to protect the money and assets of the organization.

The likelihood that one of the members causes physical harm to someone is very slight. If that happens, general liability policies are in place to cover those occurrences. But what if a board member makes a decision that financially damages a vendor? Or an employee? What if your brewery declares bankruptcy and vendors are blaming the failure on the Board's leadership? No physical harm or property damage occurred, which are the factors needed in order to trigger a general liability claim.

This is where Directors and Officers Liability (D&O) insurance comes into play. It protects the Ds and Os, making it so they can confidently make decisions about the direction of the company without having to worry about personal financial loss. The policy will pay out to cover settlements or defense costs. Depending on how the claim is filed, these claim payments will be made directly to the Officer or to the organization itself.

I have a client that was the victim of embezzlement over the course of multiple years by a trusted employee. By the time the theft was discovered, well over $250,000 was missing.

One investor claimed poor financial oversight from the company's officers was the reason the loss happened and sued to get their investments back. The D&O policy provided money to cover the defense and ultimate settlement of the lawsuit. Without the D&O coverage, the board would have been on the hook personally for those dollars.

These policies can be purchased stand-alone or as part of a package typically referred to as a management liability policy. Management liability policies typically contain coverages for D&O, Employment Practices Liability, enhanced Crime and Cyber Liability policies, and Fiduciary Liability policies. These are not policies that most breweries purchase when they open, mainly because no one ever brings it up or start-up companies are looking to pinch as many pennies as possible.

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But as your business grows, the likelihood that your exposure to different kinds of claims grows as well. Whether you choose to buy an insurance policy (particularly one that isn't mandated by law or contract) is a philosophical decision that every company has to make. But being aware of these exposures and taking steps to mitigate losses outside of traditional, mandated insurance coverage is a huge part of risk management. It's an exercise that could one day save your business.

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