



132 REASONS DIRECTORS AND OFFICERS NEED LIABILITY INSURANCE

Rapidly evolving legal, economic and regulatory events are transforming American business and are having a great impact on the need for Directors & Officers liability coverage for large and small businesses alike.

The near collapse of the banking system, securities frauds of mammoth proportion, escalating bankruptcies and intensified merger and acquisition activity are all leading to a greater number of filed suits in both state and federal courts, according to Advisen, a respected resource of information on the insurance industry. In the third quarter of 2009, suits increased 11% over the second quarter, which followed hundreds of suits filed in the first quarter of the year. Periods of economic turbulence—whether positive or negative—are traditionally characterized by increased D&O litigation, which is increasingly costly to both defendants and their insurers, according to Advisen. Historically nearly one-third of all U.S. companies are potential targets for D&O claims. Industry experts estimate that insured losses for the two-year period ending in 2009 will approach \$6 billion.

In today's litigious society, corporations and their board members must be made aware of the many personal and corporate exposures they face. These risks make it even more important for companies and their directors and officers not only to make sure this coverage is in place, but to make sure it's the best available.

The D&O specialists at Swett & Crawford are your best resource to help your client navigate through these potential exposures and liabilities. With our decades-long expertise in this area and our understanding of the risks your clients face, Swett & Crawford is poised to find you the best solutions.

MANAGEMENT, BUSINESS AND OPERATIONS

1. Acquiescence to conduct of fellow directors engaged in improper activities.
2. Aiding or abetting misconduct of others.
3. Insufficient attendance at director's meetings/committee meetings.
4. Ignoring or permitting unlawful political contributions.
5. Improper oversight of internal management controls.
6. Excessive compensation arrangements and insufficient reports of compensation committees.
7. Continuing a wrongful practice after learning of its impropriety.
8. Interaction with regulatory authorities.
9. Corporate acquisition that would result in a loss of corporate assets.
10. Corporate financial delinquencies.
11. Allegations regarding possible libel or slander.
12. Not dealing responsibly with corporate debts.
13. Dishonored corporate checks.
14. Dissent from improper acts of board or committees.
15. Not documenting Executive Committee proceedings.
16. Extending credit beyond what is warranted.
17. Errors in filing annual and periodic reports.
18. Corporate payment of bribes or making illegal payments.
19. Inefficient management resulting in losses.
20. Informal dissolution or liquidation of corporation.

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21. Infringement of patents, copyrights or trademarks.
22. Damaging Board or Committee minutes.
23. Misuse or nonuse of electronic data processing.
24. Incorrect monthly operational reports and financial statements.
25. Neglecting to qualify corporation in other states where it does business.
26. Receiving personal benefit or gain as a consequence of service performed as a director or officer.
27. Qualified reports of auditors/audit committee.
28. Failing to record dissent from wrongful acts in minutes.
29. Selling or transferring corporate assets for inadequate consideration.
30. Shirking responsibility.
31. Statements of corporate policy in areas that frequently generate litigation.

INFORMED BUSINESS JUDGMENT

32. Neglecting to be inquisitive.
33. Failing to consult legal counsel, auditors, other experts and corporation's officers and managers to obtain information.
34. Decisions based on inadequate information and/or without intelligent and advised judgment.
35. Ignorance of corporate books and records.
36. Neglecting to inspect corporation's books and records when necessary to keep abreast of its activities.
37. Failing to make reasonable investigations as necessary.
38. Failing to make use of all available information.
39. Delinquent registration statements and other reports and filings.
40. Failing to use your own expertise and that of others.
41. Failing to verify facts in official documents before signing and filing them.

UNAUTHORIZED OR ULTRA VIRES ACTIONS

42. Activities in which the corporation engages beyond those permitted by its corporate powers.

43. Compensation and benefits paid to directors and officers not verified for reasonableness.
44. Failing to consult counsel for advice as to corporate powers under statutes, charter and bylaws.
45. Declaring and paying dividends beyond what is provided in corporate powers.
46. Distributing assets without adequate provision to pay or secure corporate debt.
47. Paying dividends that may be either inadequate or excessive.
48. Lack of obedience to charter and bylaw provisions.

SELF-DEALING AND CONFLICTS OF INTEREST

49. Lack of awareness of conflicts of interest.
50. Conduct of fellow directors engaged in self-dealing.
51. Contracts with corporations involving self-dealing.
52. Unauthorized corporate contracts or use of corporate assets.
53. Corporate opportunities seized by directors or officers.
54. Failing to disclose personal interest in management transactions.
55. Engaging in a competitive enterprise.
56. Using inside information to obtain secret profits.
57. Various risks relating to key employees.
58. Loans by or to corporate officers, directors or shareholders as involves self-dealing.
59. Preference at expense of creditors or other shareholders.
60. Transactions between corporations having common directors.
61. Transactions with other entities in which an officer or director is interested.

CHANGE OF CONTROL SITUATION

62. Incorrect determination whether an anti-takeover measure is reasonable in relation to the threat imposed.

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63. Anti-takeover measures implemented by a board lacking a good faith and reasonable investigation to determine the existence of a danger to the corporation's policy and effectiveness.
 64. Expenditure of corporate funds in proxy contests as subject to directors' duties in loyalty, care and diligence.
 65. Breach of duties of care or loyalty to the corporation in connection with a merger.
 66. Failing to treat equally those making competing acquisition offers.
 67. Purchase of shares by corporation primarily to retain management in control.
 68. Rejecting of acquisition offer and refusal to submit it to shareholders.
 69. Breach of duty of loyalty and looting allegations in connection with sale of a controlling interest.
 70. Handling of takeover bids and related matters that involve directors' duties of care, loyalty and diligence to corporation and shareholders.
 71. Handling of takeover threats causing a break-up of the corporation, resulting in duty of directors to obtain highest stock price for benefit of shareholders.
- OTHER MATTERS INVOLVING SHARES AND SHAREHOLDERS**
72. Liability relating to Annual Reports.
 73. Section 16 filing errors.
 74. Control person's vicarious liability.
 75. Deceptive representations.
 76. Failure to deliver securities promptly after sale.
 77. Disclosures insufficiently or improperly made.
 78. Discrimination against minority shareholders.
 79. Fraudulent conduct in connection with purchase or sale of security.
 80. Fraudulent methods, misstatements or omissions relating to material facts.
 81. Fraudulent reports, financial statements or certificates.
 82. Freeze-out mergers without business purpose.
 83. Insider making short sales.
 84. Insider trading without disclosure of non-public information.
 85. Interstate use of mails in sale of unregistered securities.
 86. Material misstatements in filings, registration statements or reports to agencies.
 87. Misuse of insider information.
 88. Errors in prospectus and communications with investors.
 89. Insufficient proxy contest filings.
 90. Proxy statement liability.
 91. Failure to file reports with SEC and state agencies.
 92. Other SEC filings deficiencies.
 93. Short swing profits in stock trading
 94. Tipping by insiders.
 95. Conflicts of interest.
 96. Incorrect earnings forecasts.
 97. Extent of board participation in improper actions.
 98. Illegal payments.
 99. Undisclosed material facts.
 100. Illegal political contributions.
 101. Misreporting pre-tax income.
 102. Publicizing information as to favorable or unfavorable transactions or occurrences.
 103. Inflating sales information.
 104. Insufficiency of disclosures.
 105. Misreporting earnings.
 106. Untimely disclosures.
- MATTERS INVOLVING TAXES**
107. Causing corporation to incur unnecessary tax liability or penalty.
 108. Failing to monitor filing of tax returns and payment of taxes.
 109. Failure to obey requirements of tax laws and regulations.
 110. Failure to require withholding in connection with Social Security or income taxes.

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111. Failure to secure funds withheld for Social Security of income taxes.

112. Unreasonable accumulation of surplus.

MISCELLANEOUS MATTERS

113. Aiding and abetting improper actions of others.

114. Carelessness in concluding business or legal matters.

115. Commercial bribery not disclosed.

116. Consenting to improper or illegal actions resulting in losses.

117. Failing to detect and prevent embezzlement of corporate funds.

118. Failing to see what could be seen merely by looking.

119. Violation of the Federal Election Campaign Act.

120. Violation of the Federal Corrupt Practices Act of 1977.

121. Fraudulent interstate transactions.

122. Inducing corporation to commit breach of contract.

123. Inducing intentional or careless wrongdoing by corporation.

124. Ignoring statutory or regulatory requirements.

125. Insufficient monitoring or supervision of officers or other employees.

126. Non-disclosure of questionable or unlawful actions.

127. Racketeering activity.

128. Treble damages or civil fines for statutory violations.

129. Use of mails to defraud.

130. Use of wire services, telephones, radio, television or Internet to defraud.

131. Wasting corporate assets.

132. Willful wrongdoing.

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