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Trusted Choice®

Employment Practices Litigation Rising

The Equal Employment Opportunity Commission (EEOC) reports that equal employment opportunity claims are at their highest volume since 2002. Claims of discrimination, harassment and retaliation have risen by double digits since 2006. Chubb Specialty Insurance says that monetary relief paid for such claims in 2007 was up 26% from 2006.

The average cost for an employer to defend an employment practices claim is $125,000. The average jury award is $200,000, and employees win two of three cases that make it to trial. Companies with 500 or more employees get hit hard, with 80% having had an employment practices claim within the past five years. Worse, only one in three had insurance to assist with defense.

Experts say that in order to bring a claim to the EEOC (which is required to investigate all claims) individuals must simply allege misconduct. Preparing defense against a claim, even if it never goes to trial, can be costly.

The growing threat is reason for concern for all employers. Fortunately, many insurance companies offer employment practices liability coverage. For more information on a policy for your firm, call our service team today. ■

Fiduciary Liability Insurance

Real estate agents, bankers, personal financial assistants, accountants, stockbrokers, and insurance agents are all people who serve as fiduciaries. In this age of a bear market in stocks, real estate and other investments, fiduciaries can take it on the chin. Errors, omissions or any other mistakes are ample cause for those who suffer financial loss to sue.

In today's market and litigious climate, fiduciaries' professional conduct is under increased scrutiny. Documenting advice and maintaining a clear and accessible paper trail play an important role in protecting your firm from claims of malfeasance. Cautiously following the law and internal best practices is also key. And don't forget internal and independent audits that keep all players in line with the playbook.

Still, fiduciaries make mistakes, and investments can go bad. Our insurance specialists are here to assist your firm in finding fiduciary liability insurance that is right for you. Give us a call to discover your options. ■

Insuring Directors and Officers Abroad

Claims are increasing against directors and officers of U.S. firms operating abroad, and new laws in many countries now permit derivative and shareholder lawsuits. The changing international business landscape means more risk for your company's foreign operations.

Although 43% of respondents in a Towers Perrin survey indicated their firms have global operations, only 3% said they have directors and officers (D&O) insurance that covers executive liability for business activity in other countries. Many governments do not permit non-admitted D&O insurance policies to cover local directors and officers, so a U.S. D&O policy might not pay claims, regardless of the policy language.

Insuring directors and officers abroad can be complicated by different laws in each country, premium payment variations, and restricted access to agents locally. Our representatives can help your company find D&O insurance that covers your directors and officers outside the United States.

For more information, give our service team a call. ■

Is Your Online Calculator a Claims Risk?

It's time to take a look at those online calculators and cost estimators on your Web site.

A recent case heard by the U.S. Court of Appeals involved a plaintiff who claimed that his reliance on an online cost estimator of a monthly pension payout caused him financial suffering. The online estimate proved incorrect, and the plaintiff sued the company that provided the estimate for a breach of fiduciary responsibility—all because of a miscalculation on the part of an outdated estimation tool.

If your firm makes tools such as these available to customers, create a plan to frequently test their accuracy. Failure to do so can provide misleading information that at best is embarrassing to your business and at worst could lead to costly litigation.

Your firm's general liability coverage is limited in how it will respond to claims involving financial loss that is not the result of (1) bodily injury or (2) property damage. A professional liability policy will help pay the costs of claims, including defense, in the event a third party suffers financially due to a breach of professional standards.

For more information, call our service team today. ■

D&O Coverage Denials Hurt

Recently, Bear Stearns was denied as much as $40 million in coverage under its directors and officers (D&O) liability policy due to the disregard of a contractual requirement in the policy.

The issue involved language in the policy clearly stating that the D&O insurance company must be involved in any settlement reached by its client that exceeds a specified amount, in this case, $5 million. Bear Stearns ignored this provision and settled claims with the SEC, NASD and NYSE for $80 million. Only after the settlement was reached did it inform the D&O insurer of the settlement. Citing the policy wording, that company subsequently denied payment—a decision that was upheld by the New York Court of Appeals.

While not every company with a D&O policy is a multi-billion dollar operation, this story is an example of the importance of involving the D&O insurer immediately when knowledge of a possible claim is obtained. This way, business owners can rest assured that the insurance company has maximum time to prepare adequate defense and that all contractual obligations for payment will be met.

Give your policy a read-through this week, and call us if you have any questions. ■

Continuing Education Prevents Errors

The professional services environment is one of frequent, if not constant, change. Laws, guidelines, metrics, best practices, you name it—they change often and affect many professional businesses and organizations. Whether your group is private or public, for-profit or non-profit, these changes can become sources of errors and omissions.

One way to guard your firm against errors and omissions is to provide and mandate continuing education. Providing written updates is helpful, but nothing beats a hands-on, head-in-the-game, classroom exercise for heightening awareness and making those update memos jump off the page for your employees. Your firm can make continuing ed a group event for the whole office, or it can send individual employees to conferences and classes offered by experts in the field.

It might be advisable to periodically test employees on their recall of regulations and guidelines as well. Consider publicly awarding the highest performers to motivate all employees to keep abreast of the changing legal and best practices landscape.

Try placing informative materials in the break room and posting important updates via e-mail so employees can store the notices in a computer file for future reference. In all cases, make employees aware of the dangers of errors and omissions and regularly remind your professionals that conscientious rendering of services is key to promotions and continued employment at your firm.

And call our professionals for information on insuring against errors and omissions. We can help. ■

Know Your D&O Risks

Directors and officers can be held liable for breaches of duty and violations of law as well as injury or damages to individuals inside or outside the company. The following is a general list of potential plaintiffs or claimants that should help your firm assess its D&O vulnerabilities and risks:

Employees

Believe it or not, the most common source of claims against company directors and officers is from employees. In fact, more than 50% of D&O claims relate to employment practices. Frequent legal action comes from allegations of wrongful termination, breach of contract, and harassment.

Shareholders

Shareholders often blame mismanagement for decline in share value. Frequent legal action comes from frustration over declining stock prices, inadequate disclosure, and poor decision-making. Claims also arise from allegations of dishonesty and missed business opportunities.

Government Authorities

Organizations, such as the SEC, IRS and EPA, are common sources of D&O claims due to the fact that violations of federal regulations are often the result of failed corporate management and internal oversight.

Others

Other sources of D&O claims include competitor accusations of malicious business practices and social and environmental activist organizations for alleged violations against the community.

Know your potential claimants and their interests and concerns and include those in your D&O risk management program. ■

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Thank you for your referrals.

If you're pleased with us, spread the word! We'll be happy to give the same great service to all of your friends and business associates.

Exactly Whom Are You Hiring?

Inflating appearances on resumes has become common practice, and many applicants lie outright. Kroll reports that 11.7% of financial service industry applicants and 16.8% of healthcare industry applicants last year had criminal records, and as many as 50% of applicants in these industries lied on applications. Even professional licensing was misrepresented, with more than 40% of financial services applicants having some kind of discrepancy regarding their professional license.

In fact, employers across all industries should be cautious about vetting prospective employees because employers can be held responsible for the professional actions of their organizations. Resume verification and background checks lead to fewer criminal occurrences after hire and can minimize claims against businesses for professional malfeasance.

Minimize your professional risk when hiring. Always call former employers. In addition, request and contact personal references, run a criminal background check, and verify professional licenses. ■