



ForeFront PortfolioSM Risk Analyzer for Privately Held Companies

DIRECTORS AND OFFICERS LIABILITY



Risk review performed for: _____

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The Purpose of the Risk Analyzer

When it comes to insuring your company, you can't afford to leave things to chance. A lack of proper coverage at a critical time can potentially result in a huge financial loss. The key to a sound base of insurance protection is securing coverage that truly meets all of your company's unique exposure needs.

How? Chubb's **ForeFront PortfolioSM Risk Analyzer** can help. The **Risk Analyzer** can help you uncover some of the biggest potential threats to your company's bottom line. It will help you answer several important questions about your company's possible financial exposures:

- What are your company's exposures and vulnerabilities?
- What is your company's tolerance for risk?
- Is your company's insurance protection adequate?

Your trusted agent or broker can assist you in using the **Risk Analyzer** to identify possible financial exposures your company might have in each of eight critical areas:

Risk*	Description
Employment practices liability	Employees and former employees can sue a company, its board members, and its officers for discrimination, harassment, and other employment practices exposures.
Fiduciary liability	Retirees, former employees, and employees can sue the company and its plan fiduciaries for alleged mismanagement in administering benefits.
Crime	A trusted employee can embezzle funds, steal inventory, or commit fraud over a long period of time.
Directors and officers liability	Investors, shareholders, customers, clients, government regulators, creditors, and competitors can sue a company's board members and officers over their actions or decisions.
Miscellaneous professional liability	Customers and related third parties can sue professional service providers for negligence in providing or failure to provide a service.
Workplace violence expense	An employee, relative of an employee, or outsider can threaten or perpetrate harm against employees in the workplace.
Internet liability	An outside person or company can sue the company for copyright infringement or defamation over content it posts on its Web site.
Kidnap/ransom and extortion	An employee can be kidnapped while traveling, or a criminal can attempt extortion against the company by threatening its employees or products.

By using Chubb's **ForeFront Portfolio Risk Analyzer**, you are taking an important step toward effectively managing some of your company's most dangerous financial exposures. Your answers to the **Risk Analyzer** questions will serve as the foundation for a program of insurance coverage, specifically designed to meet your company's needs.

* Shaded area denotes the risk area covered by this version of the **Risk Analyzer**.

Directors and Officers Liability Coverage Gap Analysis

WHAT ARE SOME TYPICAL GAPS IN TRADITIONAL COVERAGE?

ForeFront Portfolio Directors and Officers (D&O) Liability Insurance can help fill coverage gaps that may exist in your company's current insurance program. For example:

- A **general liability (GL)**¹ policy may insure directors and officers against liability for bodily injury, property damage, personal injury, and advertising injury. However, it normally excludes coverage for the financial consequences for alleged wrongdoings typically covered by D&O liability insurance.
- An **umbrella** policy typically contains the same coverage exclusions as a GL policy.
- **GL** and **umbrella** policies do not cover management liability as a result of business failure.

In summary, GL and umbrella insurance policies may not protect directors and officers against:

- Mismanagement of the business and operations.
- Competitor suits involving unfair trade, anti-trust, or intellectual property infringement.
- Misrepresentation in connection with private placements of stock or debt or in the sale of part or all of the business.
- Regulatory actions brought by the government such as FTC, FDA, or the IRS.
- Wrongful interference with a contract.
- Failure to deliver services.
- Self-dealing and conflicts of interest.

¹ GL policy references are based on the commercial ISO policy.

Directors and Officers Liability Risk Analysis

MINORITY SHAREHOLDER LAWSUIT

Question:

Might at least one former or current shareholder, or investor who is not on your board of directors, be dissatisfied with the company's performance or management decisions?

Yes No

Exposure:

A lawsuit alleging mismanagement of operations or company assets, disclosure of materially false or misleading information, or some other alleged wrongdoing can last several years and be a significant financial burden for your company.

Even if all current shareholders are unlikely to bring a suit, new shareholders with different expectations can suddenly appear as a result of a death, divorce, insolvency of a shareholder, or a transfer of shares by an existing shareholder.

Could this happen to you?

Minority shareholder alleges improper sale of stock

- A minority shareholder sued the company, three directors and officers and their spouses, and the company's accountants. The suit alleged that the defendants violated state securities laws by supposedly making untrue statements of material fact in connection with the sale of stock.
- The shareholder further alleged that improper accounting practices were authorized by the company's board, including a misleading valuation circular prepared by its accountants in connection with the stock purchase transaction.
- The shareholder sought to tender his shares back to the company as seller, and demanded that the defendants repay \$1 million for the stock he purchased, plus interest, costs, and attorney's fees.

Result: The suit settled at mediation for \$1.1 million. Defense costs totaled more than \$70,000.

Directors and Officers Liability Risk Analysis

THIRD-PARTY LAWSUITS

Question:

Have your company's senior officers or employees had or could they have disagreements with customers, suppliers, vendors, competitors, government regulators, or creditors?

Yes No

Exposure:

Your company or its individual employees may be sued by a third party for any action taken (or not taken), and they can incur substantial costs for damages, as well as defense costs from responding to such claims.

Could this happen to you?

Time pressures lead to lawsuit alleging breach of duty of care

- ABC Inc., which needed to sell its products quickly due to time constraints, pressured the freight hauler to release the goods prior to presentation of a bill of lading evidencing payment for the products.
- Having not been paid, the product suppliers sued the freight hauler, which in turn sued ABC Inc., alleging breach of duty of care, fraud, and misrepresentation.

Result: After incurring defense costs of more than \$800,000, ABC paid a settlement of approximately \$650,000 to the freight hauler.

Directors and Officers Liability Risk Analysis

FINANCIAL DISTRESS AND BANKRUPTCY

Question:

Is it possible your company might face significant financial stress, such as loss of a major customer, that could lead to a breach of loan covenants or ultimately to bankruptcy?

Yes No

Exposure:

In the event of an economic downturn or other unforeseen event, your company could be forced to file for bankruptcy. If the company becomes financially insolvent, it may not be able (or permitted) to indemnify its directors and officers if they are sued.

Consider this:

GL and **umbrella** policies do not cover management liability claims arising out of business failure.

Directors and Officers Liability Risk Analysis

UNFAIR COMPETITION

Question:

Does your company operate in a very competitive industry that is heavily reliant on a specific process, product, or service?

Yes No

Exposure:

In today's business environment, when you hire away key employees from your competitors, your company's board and executives may be vulnerable to "bet the company" suits alleging theft of trade secrets or copyright or trademark infringement.

Could this happen to you?

CEO sued by former company for unfair competition

- A company's officer left the company to start up his own firm, ABC Inc., as CEO.
- The CEO's former company later sued him, alleging he had taken a corporate opportunity of the company with him to ABC. The lawsuit also alleged usurpation of corporate assets, conversion, unjust enrichment, statutory trademark infringement, and unfair competition.

Result: The parties reached a non-monetary settlement, agreeing that the CEO would transfer a certain amount of ABC's stock to his former company in exchange for a full release from the lawsuit. The CEO's and ABC's defense costs totaled nearly \$250,000.

Directors and Officers Liability Risk Analysis

COMPANY INDEMNIFICATION ISSUES

Questions:

Do your directors and officers believe that your company can/will indemnify them:

- If the company becomes financially insolvent and cannot fund any director and officer indemnification?
 Yes No
- If they are found to have not acted in good faith or with the reasonable belief that his/her conduct is in the best interest of the company?
 Yes No
- For any settlement or judgment in shareholder derivative suits (civil lawsuits filed by shareholders on behalf of the corporation against its directors and officers in order to enforce the shareholders' corporate rights)?
 Yes No
- For violation of federal securities laws?
 Yes No




Exposure:

Most companies are not permitted to indemnify their directors and officers in these circumstances.

If any of these situations were to arise, the personal assets of your company's directors and officers would be at risk.

Consider this:

According to the *2005 Chubb Private Company Risk Survey*², **26%** of the companies had experienced a D&O-related event in the past five years. These events included the company and/or its directors and officers being sued by a customer, government or regulatory agency, vendor, or partner or other shareholder. They also included fines from a government or regulatory agency.

Size of company	Percent that experienced a D&O event:
25-49 employees	20% 
50-249 employees	31% 
250 or more employees	39% 

For the 112 companies in the *2005 Chubb Private Company Risk Survey* that had experienced a D&O liability lawsuit in the past five years, the average reported loss (settlement, judgment, and legal costs) was **\$308,475**.

² For the *2005 Chubb Private Company Risk Survey*, Chubb interviewed 451 executives from privately owned companies in 46 U.S. states in order to gain a better understanding of the companies' potential liability exposures.

Directors and Officers Liability Risk Analysis

SALE OF BUSINESS

Question:

Is your company contemplating the sale of part or all its business?

Yes No

Exposure:

Representations made by your company about the expected performance of assets can lead to disputes, putting your company at risk, as well as the personal assets of its directors and officers.

Could this happen to you?

Sale of company falters over alleged negligent misrepresentation

- Doe Inc. reached a contractual agreement with its parent, ABC Energy, to sell Doe Inc.
- Several months after the agreement, ABC Energy accused Doe of manipulating its accounts receivable and accounts payable. ABC Energy sued Doe and its board of directors for breach of contract, fraud, and negligent misrepresentation, alleging damages of \$5.5 million.
- Doe, in turn, countersued, alleging that ABC Energy owed Doe money from earlier dealings with the company.

Result: Both parties withdrew their claims and cancelled the sale of the company. Doe's legal fees totaled approximately \$200,000.

Consider this:

A **GL** policy may insure directors and officers against liability for bodily injury, property damage, personal injury, and advertising injury. However, it normally excludes coverage for the financial consequences for alleged wrongdoings typically covered by D&O liability insurance. An **umbrella** policy typically contains the same coverage exclusions as a GL policy.

Directors and Officers Liability Risk Analysis

PRIVATE PLACEMENTS OF STOCK OR DEBT

Question:

Does your company plan to seek additional financing through a private placement of debt or stock over the next two years?

Yes No

Exposure:

No matter the size of the private placement, your company could be at risk for a lawsuit by the government, existing or future investors, or another party that is hurt financially due to misrepresentations connected with the offering.

Could this happen to you?

Company sued over private placement

- A company hired an investment banker to procure financing.
- The company entered into a private placement.
- A group of aggrieved shareholders filed a suit against the company and its directors and officers, alleging that they were not invited to participate in the offering and that the offering would dilute the holdings of existing shareholders.
- The plaintiffs sought an injunctive relief to stop the private placement.

Result: The suit was settled when the plaintiffs were able to participate in the offering.

The company incurred nearly \$70,000 in defense costs.

Directors and Officers Liability Risk Analysis

INITIAL PUBLIC OFFERINGS

Question:

Is your company contemplating an initial public offering (IPO) within the next two years?

Yes No

Exposure:

There are no guarantees that an IPO will be successful. A private company that is considering going public may face unnecessary risks unless it establishes a relationship with a D&O insurer and purchases insurance coverage before the IPO takes place.

Could this happen to you?

Investor sues when board changes mind over planned IPO

- An investor put \$1 million into a private company after being assured that the company would go public within two years.
- The company took steps to put together an initial public offering, but the board, due to unfavorable market conditions, changed its mind and decided to remain private.
- The investor sued the company, alleging negligent representation and fraudulent inducement. In the suit, the plaintiff demanded the difference between what his investment was currently worth and the “lost investment” he believed he would have earned if the IPO had taken place.

Result: The parties settled for \$50,000 after the company had incurred nearly \$300,000 in defense costs.

Chubb's Solution

Chubb's *ForeFront Portfolio D&O Liability Insurance* offers insurance for the personal assets of a privately owned company's directors and officers, as well as for the company itself.

WHO IS INSURED BY FOREFRONT PORTFOLIO D&O LIABILITY INSURANCE?

Chubb's policy covers:

- Directors and officers. (Optional coverage available for the company.)
- Members of the board of managers or management committee members.
- In-house general counsel.
- Part-time, seasonal, leased, and temporary employees.
- Volunteers.
- Executives' and employees' spouses/domestic partners who are named as co-defendants.

WHAT ARE THE COVERAGE HIGHLIGHTS OF FOREFRONT PORTFOLIO D&O LIABILITY INSURANCE?

- **Chubb manages the defense with expert attorneys**—Because Chubb has the duty to defend its customers, should a claim arise, we retain expert counsel at affordable rates to manage a strong defense, sparing your company this burdensome worry. We've selected a superb panel of attorneys with unparalleled experience in private company issues who are dedicated to helping secure the most positive outcome possible for your company. If there is a covered claim, Chubb pays 100% of defense costs (within the available limits and after payment of any applicable deductible), even if only part of the claim is actually covered.
- **Private placement coverage**—Even if our customer's securities are exempt from registration with the SEC, the customer can still be sued for misrepresentation and other securities violations. Our policy insures such suits.
- **Coverage for punitive or exemplary damages** is provided, where permissible, under the law most favorable to the insurability of these damages of any jurisdiction that has a substantial relationship to our customer, to Chubb, to the policy, or to the claim.
- **Automatic coverage for acquisitions** of less than 25% of the insured organization's assets for acts that occur after the acquisition.
- **Companies with fewer than 250 employees may qualify for special coverage features**, including an option for separate \$1 million defense costs insurance, no deductible, and a short, simple application form.
- **Automatic outside not-for-profit directorship liability coverage.**
- **Guaranteed proposal for insurance for initial public offering (IPO) event** if all relevant information is received at least 30 days prior to the IPO.

IF THERE IS A COVERED CLAIM,
Chubb pays 100% of defense costs, even if only part of the claim is covered.

Risk Analysis Summary

Your answers to the *Risk Analyzer* questions on the preceding pages could point to areas where your company may have significant financial exposures or gaps in its current insurance program that threaten its financial well being. Your answers will help you and your agent or broker to develop a *ForeFront Portfolio* insurance program that is tailored to your company's specific needs.

THE NEXT STEP

Your agent or broker will develop a recommendation for managing your company's risks with *ForeFront Portfolio*—an integrated insurance solution from Chubb.



Chubb Group of Insurance Companies

Warren, NJ 07059

www.chubb.com

For promotional purposes, Chubb refers to the member insurers of the Chubb Group of Insurance Companies underwriting coverage. Not all insurers do business in all jurisdictions.

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