

**School:** ATEC – Risk Management  
**Course:** An Overview of Directors and Officers Liability Insurance  
**Faculty:** Eric Boyum, Managing Director Technology & Communications Industry  
National Practice Leader, AON

### **Summary**

In the course "An Overview of Directors and Officers Liability Insurance," Eric Boyum, an experienced executive liability specialist with AON, provides a comprehensive examination of Directors and Officers (D&O) liability insurance. The course is designed to educate professionals about the roles and responsibilities of directors and officers, the potential liabilities they face, and the protective measures available through D&O insurance.

*Introduction to D&O Liability Insurance:* Eric Boyum begins by sharing his background, highlighting his 18 years of specialization in executive liability coverages. The course aims to cover the duties of directors and officers, the sources of their liabilities, and the various protective measures, including corporate indemnification and D&O insurance.

*Duties and Liabilities of Directors and Officers:* Boyum explains that the duties of directors and officers originate from two primary sources: state corporate laws and common law. State corporate laws define the capabilities and responsibilities of a corporation, while common law, derived from court rulings, informs how directors and officers must conduct themselves. The two main duties highlighted are the duty of care and the duty of loyalty. The duty of care requires directors to run the corporation responsibly, while the duty of loyalty mandates that directors avoid conflicts of interest. Directors and officers are accountable to various stakeholders, including creditors, regulatory bodies, customers, shareholders, and employees. Unlike employees, directors and officers can be held personally financially liable for breaches of these duties, even though they generally operate under a corporate veil of protection.

*Sources of Protection: Corporate Indemnification and D&O Insurance:* Boyum outlines two primary sources of protection for directors and officers: corporate indemnification and D&O insurance. Corporate indemnification involves the company covering defense expenses and settlement costs for its directors and officers. However, this protection is not always feasible, especially if the company is financially unstable or if the director or officer is sued by the company itself—a scenario that leads to non-indemnifiable claims. This is where D&O insurance comes into play. D&O insurance provides coverage for liabilities that cannot be indemnified by the company. It covers defense costs, settlements, and judgments related to claims against directors and officers for mismanagement, errors, or omissions.

*Structure of D&O Insurance Policies:* Boyum explains the structure of D&O insurance policies, which consist of three main parts: Side A, Side B, and Side C. Side A covers the personal liability of directors and officers when the company cannot indemnify them. Side B reimburses the company for indemnification costs paid to directors and officers. Side C covers the company itself, typically in the event of securities claims. These policies usually share a single aggregate limit, which applies across all three sides, and have varying retentions.

*Program Construction and Pricing:* The course also delves into the construction of D&O insurance programs. Companies often stack multiple layers of policies to achieve desired coverage limits. After the Enron scandal, it became common for directors and officers to request Side A only policies for additional protection. These policies provide broader coverage and can act as primary insurance in certain situations. Pricing of D&O insurance varies based on the structure and scope of coverage. Side A only policies are generally less expensive because they cover fewer types of losses. Comprehensive policies covering all three sides (A, B, and C) are more expensive due to the broader protection they offer.

*Conclusion:* Eric Boyum concludes by emphasizing the importance of understanding D&O insurance, its role in protecting directors and officers, and the factors influencing policy pricing and structure. He encourages professionals to consider the specific needs of their organizations and to ensure that their D&O insurance provides adequate coverage.

Overall, the course provides valuable insights into the complexities of D&O liability insurance, offering practical knowledge for professionals responsible for managing executive risks within their organizations.

### **Learning Objectives**

1. Understand the duties and responsibilities of directors and officers and their sources in law.
2. Identify the different types of liabilities faced by directors and officers.
3. Explore the sources of protection for directors and officers, including corporate indemnification and D&O insurance.
4. Learn the structure and components of a D&O insurance policy and program.
5. Evaluate the factors affecting the pricing and structuring of D&O insurance policies.

### **Primary Takeaways**

1. Directors and officers have duties of care and loyalty, which stem from state corporate laws and common law.
2. Directors and officers can face personal financial liabilities for breaches of their duties, even though they typically benefit from a corporate veil.
3. Protection for directors and officers includes corporate indemnification and D&O insurance, especially when indemnification is not feasible.
4. D&O insurance policies have three main components: Side A (personal coverage), Side B (corporate indemnification), and Side C (entity coverage for securities claims).
5. The overall D&O program can include multiple layers and types of coverage, with pricing influenced by the coverage scope, policy terms, and market conditions.

### **Course Outline**

- 1) Introduction to Directors and Officers (D&O) Liability Insurance
  - a) Overview of Course Objectives
  - b) Background of Eric Boyum
  - c) Importance of D&O Liability Insurance
  
- 2) Duties and Responsibilities of Directors and Officers
  - a) Sources of Duties
    - i) State Corporate Laws
    - ii) Common Law
  - b) Key Duties
    - i) Duty of Care
    - ii) Duty of Loyalty
  - c) Stakeholders
    - i) Creditors
    - ii) Regulatory Bodies
    - iii) Customers and Clients
    - iv) Public Shareholders
    - v) Employees
  
- 3) Liabilities Faced by Directors and Officers
  - a) Personal Financial Liabilities
  - b) Corporate Veil and Its Limitations
  - c) Examples of Potential Liabilities
  
- 4) Sources of Protection
  - a) Corporate Indemnification

- i) Limitations and Infeasibility
  - b) Directors and Officers (D&O) Liability Insurance
    - i) Importance and Function
    - ii) Non-Indemnifiable Claims
- 5) Structure of D&O Insurance Policy
  - a) Side A: Personal Coverage
  - b) Side B: Corporate Indemnification Coverage
  - c) Side C: Entity Coverage for Securities Claims
  - d) Shared Aggregate Limit and Retention
- 6) Program Construction
  - a) Standard Program with Multiple Layers
  - b) Side A Excess DIC Policies
  - c) Entity Investigations Coverage
  - d) International Program Considerations
- 7) Pricing of D&O Insurance Policies
  - a) Factors Influencing Pricing
    - i) Coverage Scope
    - ii) Policy Terms
    - iii) Market Conditions
  - b) Cost Structures
    - i) Side A Only
    - ii) Balanced Coverage
    - iii) Multi-Year Policies
- 8) Conclusion
  - a) Recap of Key Points
  - b) Importance of Understanding D&O Insurance
  - c) Contact Information for Further Questions

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