

# DIRECTORS & OFFICERS INSURANCE

for Tech/IT Companies

## What is Directors & Officers Insurance?

Directors & Officers Liability provides financial protection for the directors and officers of your company in the event they are sued in conjunction with the performance of their duties as they relate to the company. Think of Directors & Officers Liability as a management Errors and Omissions policy.

Directors & Officers Liability can usually include Employment Practices Liability and sometimes Fiduciary Liability. The former involves harassment and discrimination suits, and is where the majority of your exposure will be.

Directors & Officers Liability is often confused with Errors & Omissions Liability. The two are not synonymous; Errors & Omissions is concerned with performance failures and negligence with respect to your products and services, not the performance and duties of management. Generally it is a good idea to carry both policies.

## When is Directors & Officers needed?

When you assemble a board of directors, they will frequently make the requirement.

Investors, especially Venture Capitalists, will also usually require that you show evidence of Directors & Officers Liability insurance as part of the conditions of funding your company.

Also having employees opens management up to employment practices lawsuits.

## Why do I need Directors & Officers?

First, claims from stockholders, employees, and clients will be made against the company, AND against the directors of the company. Since a director can be held personally responsible for acts of the company, most directors and officers will demand to be protected rather than put their personal assets at stake.

Second, investors and members of your board of directors will not be willing to risk their personal assets to serve as a corporate director or officer, no matter how heartfelt their belief in your company.

Last, employment practices suits constitute the single largest area of claim activity under D&O policies. Over 50% of D&O claims are employment practices related.

## Common Allegations

Most allegations involve decisions, acts, errors or omissions that have lowered stock values, compromised competitive industry position, wasted corporate assets, or overlooked significant growth or investment opportunities. These can result in financial injury to stockholders, employees, investors, and any other third party.

In the past, Directors & Officers were somewhat protected from liability due to the business judgment rule, particularly in the question of duty of care. That is, they acted in the best interest of the company and with due care, honest and reasonable belief, good faith and without a conflict of interest. Today, the judgment rule has lost much of its effect.

## New Threats

Recent laws governing employment have opened the doors to a relatively new category of potential adversary for Directors & Officers - its own workforce. Laws such as the Americans With Disabilities Act of 1990, the Civil Rights Act of 1991, and the Family And Medical Leave Act of 1993 have contributed to a dramatic increase in claims involving not only wrongful termination, but also discrimination and sexual harassment. These laws are often poorly written and vague, resulting in considerable time and money expended in each case being interpreted by the courts. Unfortunately, statistics are indicating that plaintiffs are prevailing more times than not. In any case, it is an expensive road to travel for the defense.

## Litigious Awareness

Liability insurance for the errors, omissions, and other wrongful acts of directors and officers has been available since the early 1960's. Since that time, the increase in public awareness and expectations, and the more litigious nature of society, have resulted in a virtual explosion of litigation against corporate managers as well as judicial analysis of the conduct and standards applicable to Directors & Officers. The result is that Directors & Officers are frequently being "second guessed" by the courts.



## Providing Business Insurance Since 1895

InsureCast is a division of Gaston & Associates, Inc., a NY based insurance agency tracing its roots through 4 generations of family, and incorporated in 1895.

InsureCast's marketing territory is national in scope, and we hold property-casualty and life-health licenses in all U.S. states & DC — except Alaska, Hawaii, Iowa, North Dakota, Oklahoma, and West Virginia.

Our customers range from start-ups to public companies. We serve about four thousand clients nationally and throughout the world. We specialize in providing personal and commercial lines of property and casualty insurance, group health coverage, and individual life insurance.

InsureCast has become a world leader in technology insurance and professional liability insurance products for Information and Network Technology companies by proactively anticipating changing client needs in order to offer the most up-to-date solution.

## Mission Statement

The mission of Gaston & Associates is to provide professional insurance services to the clients we represent.

- ✓ We strive to develop a customer base that will appreciate our service orientation and value added approach.
- ✓ We provide our clients with competitive, high quality insurance oriented products.
- ✓ We endeavor to maintain long-term customer relationships that are based on coverage and service.
- ✓ We embrace automation as a means to enhance service and improve communication.

To accomplish these goals, we establish departments, standards, workflows and procedures that enable us to provide a consistently high level of service to our customers. We staff each department with competent, ethical, individuals who are dedicated to continuing education and professional development.

GASTON & ASSOCIATES INC

100 S. Bedford Road

Mount Kisco, NY 10549

Phone: 914.244.1055

212.697.2444

800.432.7435

Fax: 914.244.1056

212.697.2920

Email: [info@insurecast.com](mailto:info@insurecast.com)



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