**Lowenstein Sandler's In the Know Series**

**Video 24 – D&O Insurance: Scope of Coverage**

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**Eric Jesse:** Hi, I'm Eric Jesse, partner in Lowenstein Sandler's [**Insurance Recovery Group**](https://www.lowenstein.com/practices/insurance-recovery). Welcome to **“**[**In the Know**](https://www.lowenstein.com/news-insights/videos-listing?page=1&pageSize=25&practice=insurance-recovery&sector=&author=&start=&end&pid=40536)**.”**

We sometimes encounter the misconception that directors and officers insurance, or D&O insurance, only provides coverage for shareholder claims, but they also cover many other risks. And so today we're going to talk about the scope of coverage under D&O policies. But first some table setting: Even though the policy is called a directors and officers policy, and will cover directors and officers, these policies can also cover the company.

Either for its indemnification obligations to directors and officers who face a claim, or when the company itself is named in a claim for its own wrongful acts.

Now that we've covered the who, let's cover the what: While coverage is traditionally triggered by a capital C claim, which would be a lawsuit or a demand for monetary or non-monetary relief, insurance can also provide what's called “pre-claim” or inquiry coverage. This is coverage for directors and officers when they receive, for example, a quote-unquote “request” from a regulator to appear for an interview or to provide documents. When this coverage is triggered, a policy will cover the directors’ and officers' attorney's fees and expenses. And if those informal requests turn into more formal governmental or regulatory investigations, there can be coverage for that too.

Here, coverage is often triggered by a formal order of investigation or a written communication from the government that identifies the director or officer as the target of an investigation. Coverage could also be triggered through a civil investigative demand or a subpoena from the government.

Here are some other types of claims that can be covered: claims asserting fraud—yes, fraud claims are covered for defense costs or settlement unless and until there's a final adjudication establishing that fraud occurred; claims by lenders can be covered, and claims by trade creditors can be covered as well—in the bankruptcy setting, creditor committees may bring claims against the Ds and Os, alleging that they caused the company's bankruptcy and left the creditors' bills unpaid; a D&O policy can cover those claims. Even claims by competitors can be covered. There can be coverage, for example, for tortious interference claims or theft of trade secret claims. But as our viewers know, the devil is in the details.

So, while D&O insurance can provide the broad coverage we've identified today, it is critical to make sure that the policy wording captures these coverages.

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