

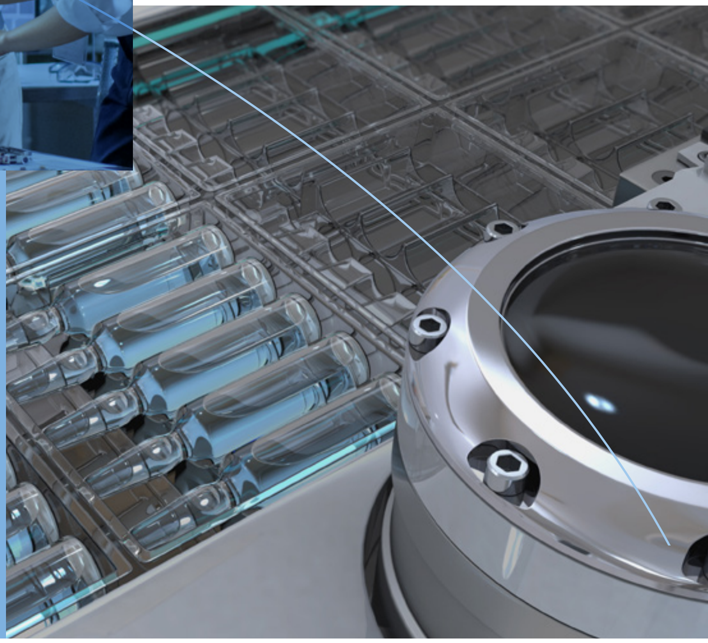

10 REASONS FOR LIFE SCIENCES COMPANIES TO CONSIDER D&O INSURANCE

INTRODUCTION

One of the most important elements of risk management for life science companies at any stage is adequate directors' and officers' (D&O) liability insurance, but it can also be one of the most misunderstood.

Directors of life sciences businesses carry a huge weight of responsibility, and yet many companies, especially in the start-up phase, may not recognise the true value of a directors' and officers' policy. Lawsuits targeting directors and officers are becoming more common, and with gaps or errors in a policy, or—worse still—no D&O insurance at all, the company's assets and the personal assets of the directors and officers can be at risk.

We have outlined 10 important reasons to have directors' and officers' insurance in place to protect your organisation and its key decision-makers.

1. Regulatory obligations

The life sciences industry operates in an increasingly complex regulatory landscape. Regulatory authorities, their processes and their requirements for approval for marketing and sales will vary from product to product within industry sub-sectors. Companies are faced with the challenge of product development and decision-making in this challenging environment and, as such, directors and senior managers have a significant burden of responsibility for good governance. Even after regulatory approval, unforeseen adverse events or manufacturing defects may arise which could expose a company or its directors to litigation—from illness or injury claims to product recall or reputational damage.

2. Medical research studies and clinical trials

Clinical trials create significant risk exposure by their very nature, whether they are focused on vaccines, new drugs and therapies, or new ways of using known treatments. Testing new drugs and treatments brings the risk of adverse events which, in turn, may lead to liability claims. While the business itself may be protected by adequate public liability and employers' liability insurance, there is still the potential for a member of the public, an employee or other third party to take legal action against a company director for a wrongful act. This could be, for example, for a breach of duty related to health and safety, or a misleading statement about a drug or treatment. Due to such risks, sponsors of clinical trials are likely to insist that the company has directors' and officers' liability insurance in place.

3. Cyber risk and the protection of intellectual property

Life science companies must be able to collect, share and analyse data while navigating the security challenges around personal information and intellectual property such as patents, trade secrets and proprietary processes. In this sector, the protection of sensitive data is paramount, and the consequences of a breach can be extremely damaging, both financially and in terms of reputation.

While your organisation may have cyber insurance in place, a senior executive may be deemed liable for a data breach through failing to ensure adequate cybersecurity measures, and so they may be the subject of a claim.

4. Investor expectation

Most investors in life science companies will typically tolerate higher levels of risk, with the expectation that returns will likely be higher than average. The most attractive investors are those that bring knowledge along with capital, and are willing to support a company for the long term. While they may have an appetite for risk, it is common for investors to want to see evidence of a comprehensive risk management strategy within the company. This will likely include adequate liability insurance for directors and senior management—as their decision-making may bear a direct relationship to the return on their investment.

5. Shareholder expectation

Life sciences companies and their directors are expected to create value for shareholders. If the company performs badly and the shareholders view this to the fault of the directors, they may decide, by majority vote, to bring a claim against the directors for negligence, breach of duty, or breach of trust.

6. Attracting board members and non-executive directors to the board

Like any organisation, life sciences companies will want to attract the best expertise possible to its board—bringing the desired mix of individuals who can help steer and grow the business. Potential board members and non-executive directors will often require directors' and officers' cover to be in place, viewing it as a vital part of the organisations risk management programme. D&O cover can help demonstrate your commitment to protecting the individuals involved in the management of your company, not just the business itself.

7. Customer and supplier relationships

Your customers and suppliers rely on you to fulfil your contractual obligations towards them. They place trust in you to meet deadlines, protect their sensitive data, and adhere to the relevant industry legislation. Many customers, suppliers and contractors who deal with your company will have their own stringent risk management, and this may include the requirement for your company to have D&O insurance.

8. Mergers and acquisitions

While mergers and acquisitions can lead to significant growth opportunities, they can also come with substantial risks and complications for the parties involved. Directors may end up being held liable for lack of due diligence, miscalculation of synergies and/or overpayment, or integration issues resulting from poor planning. Even after a business is sold, directors can be pursued or investigated, making D&O cover extremely important for long-term protection—not only for them, but for the reputation of the involved parties.

9. Overseas expansion

Growing a business internationally brings numerous risk exposures and places greater responsibility on directors. As well as additional legislation to contend with, including EU directives and U.S. securities laws, the need for supply chain visibility intensifies. Travel also needs to be taken into consideration—adequate D&O cover should be in place to cover directors who make frequent business trips abroad, including the provision of cover for legal representation and extradition protection should they be detained.

10. Environmental impact

In recent years, there has been an increasing focus on the life sciences sector in terms of environmental sustainability. The pharmaceutical industry contributes a significant proportion of healthcare-associated greenhouse gas emissions, and incorrectly disposed medicines have been shown to pose a risk to fish and other wildlife. Therefore, there is increased pressure on decision-makers to limit the environmental impact of products, from the research and development stage, through their commercial lifetime to end-of-use. Directors should ensure the company's actions reflect the commitment of their sustainability policies, and shareholders are increasingly expecting to see evidence of this alignment.

These are brief product descriptions only. Please refer to the policy documentation paying particular attention to the terms and conditions, exclusions, warranties, subjectivities, excesses and any endorsements.

Speak to our specialist team

Our team at Gallagher specialises in providing directors' and officers' insurance for the life sciences sector. We can work with you to understand your business and its needs, and provide a tailored policy that will help protect your company and your key people. If you already have a D&O policy in place, we can review your existing cover to help identify any potential insurance gaps and provide an appropriate, more robust solution.

For more information, please contact:

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