



# PROTECTING THE DECISION-MAKERS

## The Role of D&O Insurance in Life Sciences Companies

### INTRODUCTION

Directors and key managers in life science businesses are responsible for every decision made regarding the organisation. So, it is important to protect them from a legal standpoint, just as you would protect the business itself.

Few industries are as fast-moving as the life sciences sector. Companies seek to balance product development and innovation with the need to operate in a challenging regulatory landscape. Risks can be complex, with exposures around clinical trials, intellectual property, research and development, employers' liability, and more. And with litigation in the sector on the rise, companies and their senior executives must be aware of their potential liabilities.

The role of director comes with great privilege. Decisions made by directors and senior officers can help drive innovation and growth within the life sciences sector, as well as recognition for the company and its work. But with

this privileged position comes significant responsibility and accountability. Senior executives are judged by their decisions and could be held personally responsible for the consequences.

#### **What is directors' and officers' insurance?**

Directors' and officers' (D&O) liability insurance indemnifies management and the board of directors for claims which may arise from the decisions and actions taken within the scope of their duties.

It is designed to cover the financial cost of compensation claims made against them, as individuals, for actual or alleged wrongful acts, including:

- Breach of trust
- Breach of duty

- Misleading statements
- Error
- Wrongful trading
- Neglect

Claims can be made by employees, shareholders, investors, competitors, regulators or third parties. Directors' and officers' insurance covers the cost of defending these proceedings, and any compensation costs.

It's important to protect your key people legally—your directors and officers—because these people are personally responsible for every decision made regarding the company.

Directors' and officers' insurance isn't just there to protect individuals, it also plays an important role in protecting the company itself. Here is a summary of how it works for each party.

### Protection for the directors

D&O insurance covers individuals—current, future and past directors, as well as non-executive directors, subsidiaries, and officers of a company. It is designed to protect their personal assets in the event of a claim against them relating to their decisions and actions taken within the scope of their duties. It can also protect spouses who may be brought into a lawsuit because of shared property interests or transferred property.

Directors and officers can personally face significant fines and disqualification periods, and without cover in place, would be responsible for the financial implications this would bring. Without D&O insurance, directors can be pursued or investigated, even years after leaving the company.

### Protection and benefits for the company

As well as covering the personal liability of company's directors and officers, D&O policies can also provide company reimbursement in the event the company

has paid a claim on behalf of its directors and officers. This can prove to be vital in protecting the balance sheet of the company.

In addition, having a solid directors and officers liability insurance policy can be instrumental in attracting potential board members to a company. Because of the increasing risk to their personal assets, directors and officers are increasingly looking to evaluate their company's D&O insurance, seeking assurances that their coverage is as broad as possible with limits sufficient to protect them.

### Forms of D&O cover

D&O insurance is often viewed as a method of filling in the gaps where indemnification by the company is unavailable. A standard D&O policy generally has two primary insuring clauses, Side A and Side B, with an optional third, Side C. Together, all three coverages provide broad protection for individuals and the company.

**Side A coverage:** Provides coverage solely for the directors and officers, and operates as personal asset protection. Side A is triggered when there are costs that the company itself does not have to pay, which could include defence costs.

**Side B coverage:** Reimburses the company for the costs paid out on behalf of the directors, such as legal defence costs, settlements or judgments. It operates as a balance sheet protection for the company's obligation to indemnify its directors and officers.

**Side C coverage:** Protects the company in the event of a securities claim—typically brought in the form of class action and derivative lawsuits by shareholders for alleged wrongful acts by directors and officers resulting in a loss of market value of the company's shares. Side C operates as balance sheet protection for the organisation's own securities exposure.

Any business with a corporate board or advisory committee should consider investing in D&O insurance, with as broad coverage as possible. No matter your organisation's size, your directors and officers could be at risk of being personally sued over their management of company affairs. Start-up life science businesses with fewer assets may need D&O protection just as much as larger, more established, companies.





## D&O risk exposures in the life sciences sector

Navigating the complex risks of this sector can be challenging for companies and their directors. Key areas for concern that could lead to D&O claims, include:

- Company insolvency
- Regulatory investigations
- Contract disputes
- Shareholder/investor action
- Accusations of bribery/corruption
- Defamation
- Harassment/discrimination
- Intellectual property
- Mergers and acquisitions
- Environmental responsibilities
- Cybersecurity and IT system capabilities

## TOP TIP: Conduct a D&O insurance claim scenario

Running through hypothetical claims scenarios can help you better understand the roles and responsibilities of the company, and those of its directors and officers, in the event of a claim. Conducting these pre-loss conversations can help set expectations on both sides should a claim occur, while also having the advantage of facilitating important conversations around risk management to help avoid certain scenarios becoming a reality.

## How Gallagher can help

The services of an experienced and well-informed insurance broker are absolutely vital in negotiating and procuring directors' and officers' coverage, particularly in an industry as complex as life sciences. We have extensive experience in placing D&O policies in this sector, and can negotiate on your behalf over terms and price in light of the dynamics of the current D&O market. We understand that dealing with a claim can be a stressful experience for a director, and our team offers specialist claims support to work towards a swift resolution.

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

