

expert ease

Outside Directorships

Understanding the risks: Outside directorship positions

An Outside Directors position is where an Insured Person sits on the Board of a Non-Profit Entity or Associated Company or any other entity where they don't have a majority (or possibly any) financial interest.

The positions are not automatically covered and the underwriter needs to agree to extend the company's own Directors & Officers cover for this exposure. As such, it's the insured's responsibility to ensure they obtain suitable additional cover which sits in excess of any other insurance cover held by the Outside Entity and any indemnities provided to this Outside Entity.

Outside Directors risks:

There are many risks facing an Outside Position which need to be considered. Recent notable claims include:

- An Outside Entity had signed a contract which turned out to put the business at financial risk. The Entity was sued and all the Directors were held liable, even though the Outside Director had no involvement in signing the contract.
- An employee of an Outside Entity was seriously injured at work. The company was found to be negligent under the Health & Safety in Employment Act and all Directors were held personally liable for this negligence.
- Fraud was committed against an Outside Entity which caused significant damage to the business. Shareholders sued the business and all Directors were named as being liable even though the Outside



Director had no knowledge of the fraud.

It is important your clients understand the risks they are exposed to by having their primary Directors & Officers potentially covering losses for an Insured holding an Outside Position. The Outside Position cover is often misunderstood, so there are some key considerations required relating to advising clients who hold Outside Positions.

Broker considerations:

Have you...

1. Confirmed with your client the existence of Outside Positions?

2. Discussed the need for insurance cover for the Outside Positions to cover joint and several liabilities that can arise?

3. Explained the cover only responds:
 - To the person holding the Outside Position and not the other Board members?
 - In excess of any other insurance cover held by the Outside Entity and any indemnities provided to the Outside Entity?

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4. Obtained all the necessary underwriting material, including the latest annual report and financials to submit to the underwriter?

Considerations for Directors:

Have they....

1. Confirmed and approved the Outside Positions that are being held?
2. An understanding that holding an Outside Position can lead to liability arising from the actions of the other Board members of the Outside Entity?
3. Considered and documented the rationale and merits of having a Person sit on the Outside Entity?
4. Reviewed the:
 - Calibre and quality of the other Directors of the Outside Entity?
 - Reviewed the financial position and the business plan of the Outside Entity?
5. Checked if there is primary Directors & Officers insurance in place for the Outside Entity?
6. Put in place risk management procedures to manage:
 - Conflicts of interest that may arise?
 - Protection of shared knowledge?
 - Possible abuses of position?
7. An understanding of:
 - How the Outside Position cover will operate in the event of a claim?
 - That if the cover responds to a claim it will erode your primary cover?
8. Submitted the most recent annual report and financials for the Outside Entity to you, as their broker for submission to the underwriter?

Make sure your clients are aware of the risks involved with Outside Positions to ensure they have the right level of Liability cover for any unexpected eventualities.

If disclosed to and agreed by Lumley in advance, our standard Directors & Officers Policy includes cover for Directors and Officers holding an Outside Position.

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If you have any questions, please call Lumley Liability on 09 308 1100 and ask to discuss this cover with one of our experts.
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