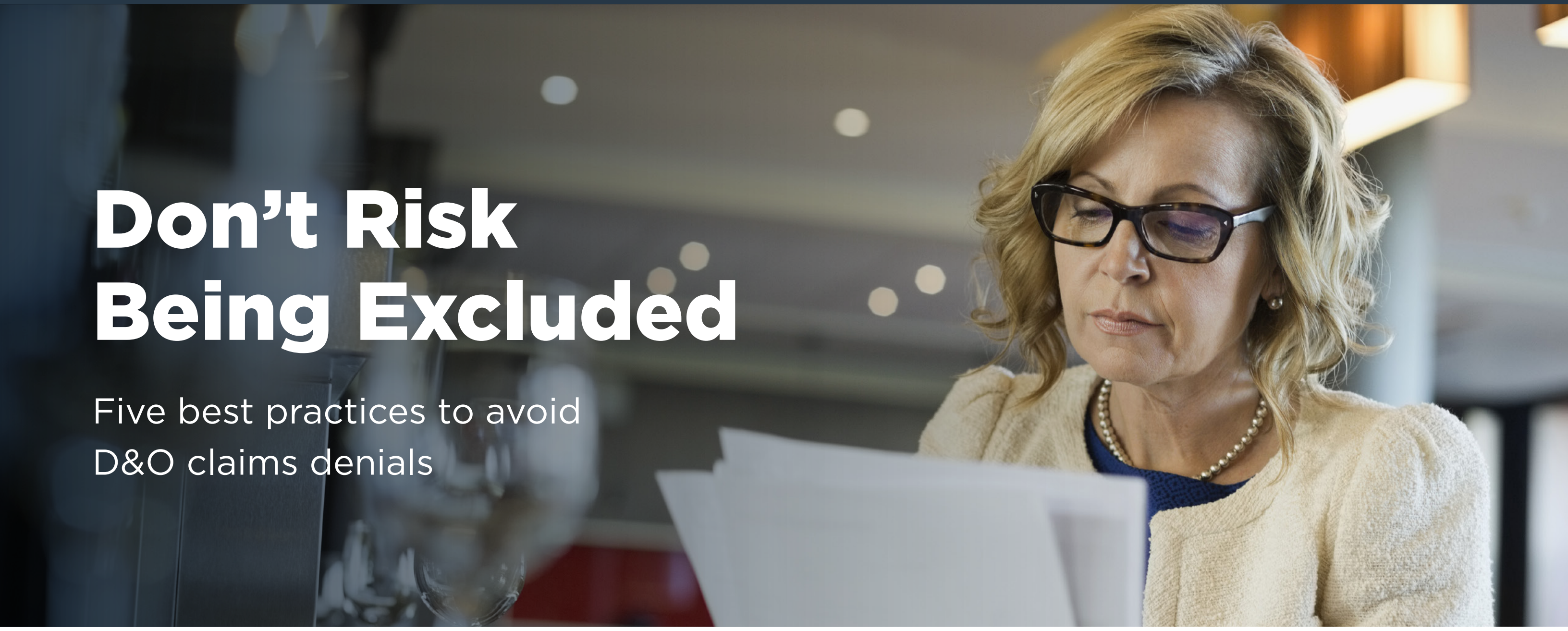

Don't Risk Being Excluded

Five best practices to avoid D&O claims denials

A robust D&O policy will provide protection for the corporate balance sheet and the personal assets of your leaders. But don't fall into the trap of thinking that D&O policies are "one size fits all." Consider the following:

CUSTOMIZE THEIR COVERAGE.

Tailor your D&O coverage to make sure it properly addresses your business needs. When we work with you, we consider many factors, including: What are your coverage priorities — business asset or personal asset protection? Should the policy insure all employees, or be limited to the board and executive team? Are you comfortable with the insurer controlling the defense and selection of counsel in a claim? Knowing that defense costs can mount quickly, are your limits high enough to cover the company and individuals in the event of a protracted claim?

AVOID OVERLY BROAD EXCLUSIONS.

All D&O policies contain some basic exclusions. However, the specific wording of those exclusions can make the difference between being paid by your insurer and having to fend for yourself on your own dollar. For example, all D&O policies contain personal conduct exclusions for illegal profit, fraud and criminal acts by directors and officers. Even if you didn't participate in any such activity, a suit could claim you did — and if your policy isn't properly worded, you might not be afforded sufficient coverage to defend yourself. Pay attention to exclusions and coverage exceptions, including contractual liability, bodily injury, pollution, and intellectual property/ copyright infringement.

CONSIDER ANTI-TRUST/UNFAIR TRADE COVERAGE.

Many D&O policies exclude antitrust or unfair trade coverage for claims made against the business entity. Examples of such claims include class actions from clients alleging deceptive trade practices, or suits from competitors alleging unfair trade practices or tortious interference. If not removed, this exclusion can significantly limit the potential coverage afforded to the balance sheet protection of your company. This coverage can sometimes be negotiated with private-company D&O insurers.

CONTROL THE THINGS YOU CAN.

Late reporting is one of the most common reasons for claims denial. Our brokers work with you to determine the triggers for claims, and the specific timeline requirements for reporting. Even if a matter seems unlikely to exceed your deductible, it should be reported as soon as possible. Waiting can put coverage for that claim, and future matters, in jeopardy. Review your policy's rules about reporting, and be unarguably specific about when, and by whom, reporting should be done.

ENSURE YOUR BUSINESS LIABILITY POLICIES FIT TOGETHER LIKE A PUZZLE.

A D&O policy will exclude coverage for bodily injury and property damage (BI/PD), because those types of exposures are typically addressed by your General Liability (GL) policy. But what if, for example, an explosion injured workers and damaged your property, and a class action lawsuit was filed against your directors and officers for the loss in business value caused by not ensuring internal safety protocols? There's a chance your GL policy wouldn't respond to shareholder matters — and that your D&O insurance wouldn't cover the claim because it arose out of BI/PD. Make sure all your policies fit together, without any gaps.

1 Chubb, 2016 Private Company Risk Survey, D&O Risks and Risk Management.
https://www2.chubb.com/US-EN/_Assets/doc/2016-07.22-Private-Co.-Survey--NA-DO-Infographic.pdf

Working with your carrier, we can help close potential gaps in your coverage before issues arise.

Let's work together to ensure that your D&O policy is right for your unique business, and its directors and officers.

Contact a HUB broker today at:

hubinternational.com/DOPolicy

