

Don't Overlook Directors and Officers Insurance

Claims are more frequent than you think

By Ray Irvin

Directors and Officers Insurance is designed to cover damages or defense costs in the event a golf facility suffers a loss as a result of a lawsuit for alleged wrongful acts committed while directors and officers are acting in their capacity at a facility. The policy's definition of wrongful act is broad in scope and typically contains such wording as "any act, error, omission, misstatement, neglect or breach of duty in their capacity as directors and officers."



As an insurance agency we have been involved with a number of golf facility related Directors and Officers (D&O) claims. Here are a few examples:

In our first example, the President of a private golf facility recommended to the board of directors that a member's membership privileges be revoked due to his behavior at the "19th hole" and his unwanted advances on some of the female staff. His membership was terminated and he sued the President and the Board of Directors. The case is still pending but the insurance company has set up a reserve to pay this claim.

In a second case, a member of the PGA Professional staff failed to pay the vendors for merchandise he had ordered and subsequently sold. He has

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since left the facility and the profession. When the facility was presented with the demand for payment their D & O insurance stepped up and provided defense costs related to this claim. This case is also pending.

Generally, Directors and Officers claims fall into three categories. They are:

- Breach of duties (Care, Loyalty, and Obedience)
- Mismanagement (failure to supervise, mismanagement of funds, membership discrimination)
- Failure to disclose conditions (mergers and acquisitions)

The sources of claims are as varied as the claims themselves. Potential Claimants include:

- Insiders: Employees or volunteers

- Outsiders: Club members, third parties (vendors, suppliers, visitors), the facility itself (derivative suits brought by its members)
- Directors: Board members suing each other
- Government Officials: State Attorney General, IRS, local, state and federal regulators

It's true that many D & O claims are not going to be able to prove that the allegations have any basis. However, it is important to understand that the defense costs for any suit, groundless or otherwise, can be a substantial part of the claim.

When purchasing D&O Insurance, you should understand that there are three parts to the contract:

- Side A: Coverage for an individual (when the club doesn't indemnify i.e., fraud)
- Side B: When the policy reimburses the club to indemnify an individual director or officer
- Side C: Entity coverage for the club itself, when the club is named in the lawsuit

Who should purchase D & O Insurance? All facilities have a degree of exposure that they should fully understand; then purchase a policy to cover that exposure.

From our examples you can see purchasing a D&O policy is prudent for any facility that has asked a group of professionals to help them manage their facility. This coverage provides personal liability which directors and officers are exposed to within their role at your facility. It also allows the facility to recruit more professional help knowing they are protected in the role. The best course of action is always to try and prevent a claim before it happens. With this in mind we would suggest, in addition to an appropriate D & O policy for your facility, implementing some of the following procedures and policies:

1. Written policies and procedures manuals, including how potential claims are handled and reported.
2. Background checks on new and existing employees.
3. Employee handbooks, highlighting progressive discipline and zero tolerance policies.
4. Composition of the Board of Directors should include a diversity of professionals who are both members and non-members. Your board should have access to current bylaws of the facility. The bylaws should define the duties and expectations of the officers and directors. The board should meet on a regular basis and minutes should be taken to provide clear documentation of the items discussed, their outcomes and action plans.

Do you have a need for Directors and Officers Insurance? Not sure where to turn? Please call the PGA Preferred Golf Course Insurance Program at 1-800-888-GOLF and let us help you assess your needs today. ■

Ray Irvin is Director of National Accounts for the PGA Preferred Golf Course Insurance Program.

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