



# FINANCIAL AND PROFESSIONAL SERVICES MANAGEMENT LIABILITY

## Wrap+ PRIVATE COMPANY DIRECTORS AND OFFICERS LIABILITY

# DIRECTORS AND OFFICERS OF PRIVATELY HELD COMPANIES CAN BE SUED ON MOST ANY DECISION BY ALMOST ANYONE AFFECTED BY IT

## Wrap<sup>+</sup> Private Company Directors and Officers Liability

The personal assets of Directors and Officers are at risk with every decision they make, every day. Regardless of the number of shareholders of a privately held company, the personal assets of Directors and Officers are exposed to litigation from creditors, vendors, customers, competitors, regulators and employees as well as shareholders. While a private company may not have the same exposure as a publicly traded company, it is exposed to securities litigation, allegations of misrepresentation by creditors or customers, conflicts of interest and/or other breaches of fiduciary duty. Wrap<sup>+</sup> covers defence costs, settlements and judgments associated with these, and many other types of claims. Also, Wrap<sup>+</sup> protects the personal assets of a Director's or Officer's spouse or domestic partner, as well as a deceased Director's or Officer's estate.

If Directors or Officers are sued for wrongdoing, chances are the company will be named in the action as well. According to recent Tillinghast Director & Officers Liability surveys, the corporate entity historically is named as a defendant in 80 to 90 percent of lawsuits brought against Directors and Officers. Wrap<sup>+</sup> offers corporate liability ("entity") coverage. With Wrap<sup>+</sup>, one never has to wonder whether coverage applies to the business and/or individual Directors and Officers – our policy offers the full protection that is needed.

Not all private company Directors and Officers liability policies are the same, and policy comparisons can be misleading. Do your own analysis.

**Check and see how their policy stacks up... there is a difference!**

	Wrap <sup>+</sup>	Their Policy	
<b>Broad Definition of Insured</b> – includes the Insured Organization as well as past, present or future directors, officers, members of the board of managers, employees or members of a management committee or advisory committee of the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>All Risks Entity Coverage</b> – the privately held organization and its more than 50 percent owned Subsidiaries, joint ventures, limited liability companies and partnerships are Insureds.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Duty to Defend</b> – 100 percent pre-determined allocation of Defence Expenses for Claims against any Insured consisting of Loss that is and is not covered by the policy	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Defence:</b>			
• For allegations of dishonest, fraudulent, criminal or wilful conduct until determined by final adjudication	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• For allegations against the insured for gaining a profit that the insured is not legally entitled to, until determined by final adjudication	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Option to select additional defence Limit of Liability</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non- Entity Employment Practices</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Supplemental Personal Indemnification</b> – additional Side A limits to protect Insured Persons in the event of exhaustion of base Limit of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Foreign Parent Corporation Coverage Extension</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Investigative Expense Coverage</b> – for investigating Security Holder Derivative Claims	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Broad Definition of Claim Includes:</b>			
• Written demand for monetary damages or non-monetary relief	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Civil proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Criminal proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Formal administrative or regulatory proceeding	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Arbitration, mediation or similar alternative dispute resolution	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Written request to toll or waive statute of limitations	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>No absolute Bodily Injury or Property Damage Exclusions</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Broad Definition of Loss Includes:</b>			
• Punitive, exemplary and multiplied damages with most favourable venue	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Prejudgment and post judgment interest and expenses awarded	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Canadian statutory liabilities payable by Directors and Officers	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Broad Definition of Subsidiary</b> – definition of Subsidiary includes majority owned corporations, partnerships, limited liability companies and 50 percent owned joint ventures under management control of Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No



Wrap+

Their Policy

	Wrap+	Their Policy	
<b>Settlement Provision</b> – provides the Named Insured with coverage for 70 percent of Loss in excess of a Settlement Offer rejected by the Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non-Rescindable</b> – with respect to all Insured Persons	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Non-Cancelable by Insurer</b> – except for non-payment of premium	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Worldwide Coverage</b> – applies to Claims made and Wrongful Acts occurring anywhere in the world	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Acquisitions</b> – automatic coverage for majority owned Subsidiaries formed or acquired during the Policy Period with assets that do not exceed 25 percent of the total assets of the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Flexible Limit Options:</b>			
• Choice of individual or shared Limits of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Options to select Annual Reinstatement of Limit of Liability (Multi-year)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Notice of Non- Renewal</b> – 30 days	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Extended Reporting Period:</b>			
• Bi-lateral Extended Reporting Period option – available if Insurer or Named Insured cancels or fails to renew	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Run-Off Extended Reporting Period option – available for a pre-determined premium upon Change of Control of Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Ability to report Potential Claims during Extended Reporting Period or Run-Off Extended Reporting Period	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Representations:</b>			
• Severability of Insured Persons with respect to the representations made in the Application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Only knowledge and representations of signer of Application are imputed to the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Severability of Exclusions:</b>			
• All exclusions are severable with respect to Insured Persons	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Full severability of fraudulent, criminal or willful conduct and personal profiteering exclusions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Exclusions Include Carvebacks for:</b>			
• Security Holder Derivative Claims regarding the Pollution exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Bankruptcy trustees regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Whistleblowers regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Claims brought by directors or officers who have not served in the past four years regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Employee driven shareholder and employment practices claims regarding the Insured vs. Insured exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Outside Directorship Liability Coverage (ODL):</b>			
• Automatic coverage for Insured Persons who serve as a director, officer, trustee, etc. or functional equivalent for any Non-Profit entity	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Ability to schedule service on boards of for profit organizations	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Order of Payments</b> – protecting personal assets first	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Defence Option</b> – option to select Duty to Defend or Reimbursement coverage at policy inception	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Spousal and Domestic Partner Liability Coverage</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Retentions:</b>			
• Only one retention must be satisfied when one Claim triggers coverage under two or more Liability Coverages	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• No retention applies with determination of No Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## PRIVATE COMPANY DIRECTORS AND OFFICERS LIABILITY CLAIMS EXAMPLES

- \$2,500,000** The Vice President of a manufacturer determined that diversification into a different product line presented tremendous sales potential. Instead of presenting the opportunity to his company, the VP informed his brother who formed a new company to manufacture that product. On behalf of the company, a shareholder sued the VP alleging that he wrongfully took advantage of an opportunity belonging to the corporation. The suit eventually settled for \$2.5 million.
- \$850,000** A company recruited a top sales executive who had an employment contract with a competitor company. The competitor sued the company for damages suffered as a result of losing its top sales producer on the grounds that the company interfered with the competitor's contractual relationship with its employee. Defence expenses were in excess of \$250,000 and the competitor was awarded damages of \$600,000.
- \$1,800,000** An employee of a small, private business convinced the board of directors that he was qualified to step into the role of president of the company and he was appointed. Under his leadership the company's financial position substantially weakened. On behalf of the company, a shareholder sued the board of directors alleging that they used poor judgment and did not act in the best interest of the company when they appointed the new president. The case eventually settled for \$1.5 million and legal fees totaled \$300,000
- \$500,000** A retailer advised one of its suppliers that it ought to increase inventory because business was expected to increase significantly. Business did increase for the retailer, but it decided to use a different supplier. The original supplier sued the retailer alleging that he relied on the retailer's promise of more business and suffered damages as a result of relying on that promise. The matter was settled for \$500,000.
- \$1,650,000** Investors filed a \$5 million dollar derivative lawsuit against a private company alleging breach of fiduciary duty. The investors claimed that the company's officers failed to investigate the qualifications of a contractor who was hired to re-tool the company's assembly line and hired that contractor to further their personal interests. Other Officers and Directors were alleged to have breached their duty of care in undertaking the project without properly investigating the qualifications of the contractor. The suit settled for \$1.5 million with an additional \$150,000.00 in legal fees.



**Travelers Guarantee Company of Canada**

20 Queen Street West  
Suite 200, P.O. Box 5  
Toronto, Ontario  
M5H 3R3

[travelerscanada.ca](http://travelerscanada.ca)

This material does not amend, or otherwise affect, the provisions or coverages of any insurance policy or bond issued by Travelers Guarantee Company of Canada. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy or bond. Coverage depends on the facts and circumstances involved in the claim or loss, all applicable policy or bond provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications, and application of legislative provisions.