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D&O Coverage Insights:
Derivative Demand Investigations and Books & Records Coverage

Derivative demand investigation and books and records coverage are extensions of D&O insurance that cover the high costs of investigating shareholder demands to sue the company. Derivative demand investigation coverage (often called "Side D") specifically addresses the costs of investigating a shareholder demand that a derivative lawsuit be filed against directors and officers for the benefit of the corporation.

Books and records coverage extends to the often-expansive costs of responding to a shareholder's request for company documents, which is frequently a precursor to a derivative suit.

Derivative demand investigation coverage (Side D)

- **Purpose:** To cover the expenses associated with a board investigating a demand from a shareholder to sue the company's directors and officers on the company's behalf.
- **What It Covers:** Costs for the investigation, which often involves hiring outside legal counsel, forensic accountants, and other experts to help the board evaluate the demand.
- **Context:** Shareholders can file a derivative suit if they believe the directors or officers have harmed the company. The company must first investigate the demand, which can be costly.

Books and records coverage

- **Purpose:** To cover the costs of responding to a shareholder's demand for access to company documents, such as emails, meeting minutes, and other records.
- **What It Covers:** The significant legal and administrative expenses involved in collecting, reviewing, and producing the requested documents.
- **Context:** This type of request, often made under specific state laws like Section 220, is frequently a "precursor to litigation" and can be a tactic to find evidence for a later derivative lawsuit. The scope of these requests can be broad, including electronically stored information like personal emails.

How they work together

- **Precursors to a Lawsuit:** Both "Side D" and "books and records" coverage are triggered by shareholder actions that may or may not result in an actual lawsuit.
- **Costly Processes:** Both investigation and document requests are expensive, requiring significant legal and expert resources.
- **D&O Policies:** These are often specialized extensions or sublimits within a broader D&O policy. Policies may have separate sublimits for books and records demands, and payments under this sublimit may reduce the overall aggregate limit or other coverage sublimits

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