

## WHAT IS "VICARIOUS LIABILITY"?

An infamous case is the McDonald's hot coffee litigation of 1992 where a woman was severely burned by a coffee that she had purchased from a McDonalds franchise. Ultimately, the McDonalds Corporation (the franchisor) was found vicariously liable for the fault, or negligence of the McDonald's franchise that sold the cup, as the franchisor had dictated the policies and procedures in the heating and sale of the coffee. McDonalds retained the rights of control over the franchise to the extent it mandated the temperature at which coffee should be sold, the type of container used and the marketing technique. This is only one example.

## FRANCHISOR THINKS INSURANCE IS TOO EXPENSIVE?

We encourage franchisors to seek value. We understand that a young franchisor has numerous economic challenges. With that said, litigation is very expensive and settlements can be huge, sometimes destroying a franchisor early in its formation. The premium needs to be evaluated on the protection the insurance is providing. **FranchisorSuite®** not only protects the balance sheet of the franchisor but also the personal assets of its directors and officers. In today's litigious society, being a victim of litigation can destroy all the franchisors hard work and its dream of success.

## WHO IS FranchisePerils?

**FranchisePerils**, a division of **ExecutivePerils**, Inc., is solely focused on the franchise industry. **ExecutivePerils** has been uncompromising in its business model of bringing value to its clients through innovation, integrity and excellent service. **FranchisePerils** is committed to the franchise industry and understands its unique challenges and positive attributes.

**FranchisorSuite®** is the only policy in the industry specifically tailored to franchisors. This policy was written by and for franchisors to avoid the gaps and additional costs of securing numerous policies to secure comprehensive protection.

The **ONLY** insurance policy in the industry written by and for Franchisors.

Franchisors' E&O Malpractice  
Directors' & Officers' Liability  
Employment Practices Liability  
Fiduciary Liability  
Vicarious Liability  
& Joint Employer

**MOST  
FREQUENTLY**



## FranchisePerils

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### WHY SHOULD A FRANCHISOR BUY BOTH D&O AND FRANCHISORS' E&O ON ONE POLICY AND ONE CARRIER?

By securing coverage for both D&O and E&O under one policy, the franchisor avoids any conflict between two insurance carriers claiming coverage is through the other carrier. It also reduces the total premium charged because the limit of liability is one aggregate.

The D&O policy is business malpractice coverage, protecting the directors and officers against litigation from third parties. Franchisors can be and often are sued by franchisees for mismanagement, misrepresentations and fraud arising out of the Franchise Disclosure Document (FDD) or franchise agreement. If it is perceived that the franchisor did something that harmed the “franchise”, meaning the reputation and/or perception of the business, then the franchisees sue alleging their franchise is worth less.

Franchisors' E&O is when a franchisee claims that the services the franchisor said were going to be provided in exchange for royalty payments were not delivered or did not meet expectations.

### IS IT COMMON FOR FRANCHISEES TO BRING “CLASS ACTION” LAWSUITS AGAINST FRANCHISORS?

There are many examples of franchisees acting together in a class action lawsuit against franchisors. It is not uncommon, when there is a problem, for all or most of the franchisees to be effected. There are numerous advantages to filing litigation as a class, chiefly, the costs are commonly shared. Plaintiff attorneys also prefer class actions as the settlements usually are significant.

### IF A FRANCHISOR CANNOT AFFORD FranchisorSuite®, IS THERE AN ALTERNATIVE?

The concept behind **FranchisorSuite®** came about because there is no one solution for franchisors in the insurance industry. Prior to **FranchisorSuite®**, franchisors would have to secure 3 to 4 policies when protecting their corporate and personal assets. We felt that gaps existed when more than one insurance carrier was writing D&O, E&O, and EPL for a franchisor. It is not uncommon for litigation to include allegations that would be covered under numerous policies. We also experience the costs to be substantially more when securing numerous policies. One policy with an aggregate limit (with 6 coverages) is always going to be less than securing 4 to 5 separate policies (each with its own limit).

We encourage the franchisor to evaluate the costs versus the value in protection. **FranchisorSuite®** is the only policy available written on a specific form for franchisors versus the insurance industry's use of “miscellaneous generic” forms.

### FRANCHISOR ALREADY PURCHASES FRANCHISOR E&O (OR D&O), DO WE NEED THE OTHER COVERAGE?

One of the most frequent misconceptions by franchisors and their insurance representatives is that if a franchisor is buying E&O (or D&O), they do not need the other coverage. This is a dangerous perception because each policy specifically addresses its own unique perils and frequently franchisor litigation triggers both Franchisors' Liability and Directors' & Officers' Liability policies. Franchisees may allege mismanagement (D&O), failure to provide services outlined in FDD (E&O), fraud (D&O/E&O), reputational harm (D&O), vicarious liability (usually excluded except under FranchisorSuite®), etc. Another misconception is the frequency of litigation that threatens the personal assets of the directors & officers arising out of the offering documents, breach of fiduciary duty, duty of care, and duty of loyalty. FranchisorSuite® offers D&O, E&O, EPL, Fiduciary, Joint Employer and Vicarious protection all in one policy.