

Fighting Back with a Perfect D&O Policy

Times are tough, losses are tremendous, and this hardened economic climate is not allowing many second chances. As investor confidence and consumer spending continue to wane and bankruptcy and unemployment filings soar, some may argue that we have already crossed the threshold into uncharted territory. While the experts work on turning things around, the media is fueling public ire with sound bites blasting companies, with an emphasis on bailout recipients, for over the top expenditures under the alleged guise of rewarding performance. Unfortunately, the disregard for basic fiduciary duties of a select few has empowered the media to make sweeping generalizations as to how all corporations operate.

Aside from providing the public with a focal point for their anger, media coverage has an ancillary effect of motivating the plaintiffs' bar in their quest to recoup shareholder losses. Market conditions aside, claim filings in 2008 were already climbing back up to levels not seen in years and the forecast for 2009 promises a continued surge. What's more, plaintiffs' firms are now taking bold steps right out of the box to overcome arguably unfavorable decisions of recent years. By increasing upfront private investigative efforts in an effort to obtain statements from former employees, their objective is to defeat dismissal motions and roll right into discovery to search for information to prove their allegations. One of the best ways for a director or officer to fight back is to have the protection of the most comprehensive D&O coverage. There is no time like the present to pull out your D&O policy and confirm that you are protected.

Although many claim to offer the broadest coverage, that may not be the case. Some policy nuances are so minute that it can be as simple as adding or deleting a few words to ensure you have the benefit of the most comprehensive coverage. Your D&O policy can be customized to specifically capture your company's unique needs and address your concerns. As a start, when reviewing your policy there are key questions that you need answered:

- Is your policy fully severable or will you lose the benefit of coverage because of someone else's bad acts?
- How many years of publicly filed documents are insurers including with your applications?
- Is there a material misrepresentation in one of your public documents that could result in unilateral rescission?

Moreover, in today's highly competitive environment, insurers are challenged to offer products demonstrating greater value. On a rolling basis insurers offer policy enhancements significantly expanding coverage. One new prime example is a recent Side A policy that replenishes its limits at no additional cost for independent directors in the event of a claim. Other enhancements include expanding the definition of a claim to include government inquiries regardless of whether a wrongful act is alleged, more favorable conduct exclusions, and short time frames on advancement of defense costs.



We view the insurance placement through a sharper lens than our competitors by taking a consultative approach to the process. In counseling our clients, our primary focus is to:

- Conduct a detailed policy review highlighting possible issues and offering recommendations to strengthen coverage,
- Shore up any potential gaps so coverage is seamless,
- Manuscript language tailored to suit a client's specific needs, and
- Ensure our clients are educated on the latest product offerings available in the market and that their programs include the newest enhancements

By working with a trusted adviser you will have a partner who will be a valuable resource for you every step of the way. In these uncertain times it takes a bold innovative approach to tackling insurance hurdles to give you the security you need to keep your assets protected.



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