



Financial Guaranty Insurance Brokers, Inc.

CORPORATE DIRECTORS LIABILITY AND THE D&O MARKETPLACE

The Sarbanes-Oxley Act has placed significant requirements on corporate disclosure.

This has caused directors of corporations to be concerned about personal liability and the Directors and Officers Liability insurance's ability to protect themselves. Much information has been published regarding the availability (or lack thereof) and the price of Directors and Officers Liability Insurance, some of which is inaccurate and alarmist.

The Fortune 500 companies requiring high limits of liability are facing significantly higher premiums and sometimes coverage exclusions, depending upon each company's operating results.

The capacity of primary insurers has been somewhat restricted by the reinsurance market which is no longer offering three-year commitments and reinsurance treaties with reduced limits. This is due not only to losses in the Directors and Officers Liability Insurance arena but also due to other catastrophe losses including September 11.

For the average corporation requiring more moderate limits of liability, the Directors and Officers Liability market is more flexible in the pricing and terms of coverage. With good results, a corporation should expect an increase in premium of 10% to 20% over the expiring contract. If the expiring contract is a three-year term, the increase in premium will be slightly higher. Higher deductibles may offset these increases.

The Directors and Officers Liability policies offer an "annual aggregate limit." The limit does not apply per claim. The limit of insurance applies to any and all claims which are reported during the policy year. This means the limit of insurance is depleted by any and all settlements or cost of defense exceeding the deductible.

Because Directors and Officers Liability Insurance is usually written to protect the interest of the directors and officers and the corporation, it is extremely important to have adequate limits of insurance. There is a line of personal interest for the directors seeking to protect their personal net worth. To assure directors of protection, a separate limit of insurance may be negotiated applicable to directors only in the event that the corporation is unable to indemnify them due to State laws or insolvency. Limits of insurance are readily available, ranging from 1 Million to 50 Million for corporations which are in not serious trouble.

When writing a D&O policy, these points should be considered:

Non-erosion of the agreement covering directors and officers only, assuring them of uninterrupted coverage.
· Defined order of payments (which defines priority of payment) · Adequate limits (limits for directors and officers only, separate from corporate limits)

Corporate Employment Practices Liability insurance often is included on the Directors and Officers Liability policy. It may be more beneficial to place this on a stand-alone policy as oftentimes coverage is broader and may extend to third party claims (non-employees). In some cases, lower deductibles may also be available. Employment related claims tend to be more frequent. If it is included to the D&O policy, it could reduce your overall aggregate limit of coverage. If the only option is to include it on your Directors and Officers Liability policy, request a separate aggregate limit.

In spite of the publicity which corporations and their officers and directors are facing, there is a robust Directors and Officers Liability insurance marketplace. Underwriters are more careful in their selection of risks and their offer of terms. A director should feel confident there is adequate coverage available. This could be done by reviewing the actual policy and having your insurance broker review the coverages with you.

It is recommended that you start your renewal process early. This can be done by meeting with your insurance broker approximately 90 days in advance of your renewal. Have them review your expiring policy, and have the broker provide you with a list of companies they are going to approach for quotations. You must also complete all the necessary applications soon thereafter, and if possible, communicate directly with the underwriters. Have quotations presented approximately 30 days prior to expiration. Your broker should explain all terms and conditions and review policy coverages (no two D&O policies are alike). You may even want the broker to make a presentation at the board meeting. With this, you should have adequate time to make the necessary adjustments prior to the expiration date.

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