Executive Risk Newsletter

2025 D&O Insurance Market Outlook

Experts predict a slowdown in rate decreases in the directors and officers liability (D&O) insurance market for 2025, and newly public and mature companies may experience gradual premium increases moving forward. There's general concern that price decreases have gone too far and may not be sustainable in the long term, necessitating market correction. What's more, several trends have the potential to contribute to further shifts in the D&O market for 2025. This concern is driven by rising litigation costs, a surge in derivative action lawsuits and the growing complexity of D&O risks. Here are some key market trends to watch:

- **Artificial intelligence (AI) exposures**—Corporate leaders have begun leveraging AI systems to create organizational files, analyze company data and, in some cases, make important business decisions. In some cases, an organization's board may not be fully aware of how and where AI is used in the business, particularly regarding its application among third-party vendors. Stakeholders may hold senior leaders accountable for AI-related failures in these instances, prompting costly lawsuits and D&O losses.
- **Litigation shifts**—From 2018-21, publicly traded companies and their senior leaders faced a surge in litigation and related D&O claims, often as a result of alleged breaches of U.S. Securities and Exchange Commission (SEC) requirements or challenges related to initial public offerings and special purpose acquisition company transactions. This wave of litigation largely subsided from 2022-23 but has since resurfaced, especially as it pertains to securities class action (SCA) lawsuits. The latest estimates project that SCA filings will soon reach their highest point since 2020, posing increased D&O exposures.
- **Environmental, social and governance (ESG) issues**—Senior leaders have been held more accountable for upholding their companies' commitments to ESG initiatives by stakeholders, regulators and the public, fueling increased litigation against such leaders and associated D&O claims. Due to the ongoing rise in natural disasters, climate change has been the focus of ESG-related litigation, with much of it alleging that corporate leaders have not fully disclosed the material risks of climate change or promoted eco-friendly operations. Notably, the SEC issued updated documentation standards in March 2024 that require registrants to provide detailed climate-related disclosures in their annual reports.
- **Macroeconomic factors**—The current economic climate is characterized by both uncertainty and resilience. Bankruptcy and insolvency risks are prevalent, with Chapter 11 filings on the rise due to higher interest rates and inflation. The commercial real estate market also continues to struggle, and $1.7 trillion of industry debt is expected to mature by 2026. Refinancing this debt at higher interest rates could further strain the sector and the D&O insurers that operate within it. Further, ongoing geopolitical tensions may put increased pressure on senior leaders of global companies, requiring them to demonstrate robust risk preparedness.

Contact us today for more insurance market updates.

Scenarios Requiring D&O Runoff Coverage

When structural changes occur in a company, its leaders may face personal liability if their D&O insurance is canceled or expires. A D&O runoff policy becomes crucial in these scenarios, as it provides coverage for claims stemming from actions taken before the business transition. This type of policy can help protect corporate leaders' personal assets and ensure continuity of coverage amid various organizational shifts. D&O runoff insurance covers claims made while the policy is active, regardless of when the alleged act that gave rise to the claim occurred. This coverage generally provides protection for claims such as mismanagement, breaches of fiduciary duty and other alleged wrongful acts committed during the insured's tenure. Several scenarios may create the need for securing a D&O runoff policy, including:

- **Mergers and acquisitions (M&A)**—During M&As, business leaders may face claims related to their pretransition actions. Even leaders who remain in place following the transition may benefit from a D&O runoff policy, as the acquiring entity's insurance may not provide retroactive coverage.
- **Bankruptcy or dissolution**—Outgoing corporate leaders may need to secure coverage to protect against claims arising during a business's wind-down period.
- **Ownership changes**—If an event changes over 50% of a company's board composition, D&O runoff insurance may be necessary to protect exiting leadership.

Contact us today to discuss tailored D&O coverage options.

Side A DIC Coverage Explained

Although D&O insurance can provide coverage for alleged wrongful acts, it may not offer complete coverage for a company's senior leaders in several circumstances. Fortunately, Side A difference-in-conditions (Side A DIC) insurance can help fill the coverage gaps of traditional D&O policies, ensuring corporate leaders are not held personally liable for certain claims.

D&O Coverage Overview

A standard D&O insurance policy typically comprises three coverage parts, collectively referred to as ABC coverage. Here's a breakdown of this coverage:

1. **Side A** provides coverage for senior leaders if the company refuses or is unable to protect or indemnify them.
2. **Side B** reimburses a company for the costs it pays on behalf of a corporate leader, including legal defense costs, judgments and settlements.
3. **Side C** covers the company itself if it is sued alongside its senior leaders.

Traditional ABC coverage can be rapidly exhausted by indemnifiable losses, such as securities claims. Side A DIC insurance can provide excess Side A coverage when a company's standard D&O policy is depleted or when a company is unwilling or financially unable to indemnify its senior leaders. In other words, this coverage is designed to protect the personal assets of an organization's senior leaders when corporate indemnification is unavailable.

Key Policy Features

Consider these key features of Side A DIC coverage:

- **Broader protection**—While traditional D&O policies often contain multiple exclusions, Side A DIC insurance usually only bars coverage for deliberate fraud or malicious acts. Moreover, the definition of "insureds" is typically broader within Side A DIC policies, and covered damages may include pre-claim inquiry costs and coverage for certain fines and penalties, depending on policy wording, among other enhancements.
- **Drop-down provision**—In the event that a traditional D&O policy is unable to respond to a claim (e.g., the company is facing bankruptcy proceedings), a Side A DIC policy can "drop down" and pay the first dollar of the defense costs for individual corporate leaders. Essentially, the policy will substitute for a company's underlying D&O insurance in a range of scenarios that would otherwise be considered an uncovered loss.
- **No retention or deductible**—If a corporate entity doesn't indemnify its senior leaders, these individuals could be left paying a large retention, incurring significant costs before insurance coverage can respond. Side A DIC policies typically provide first-dollar coverage, meaning no deductible or self-insured retention is required. Moreover, Side A DIC insurance is generally nonrescindable. This means that a Side A DIC carrier can't withdraw coverage once the policy has been issued, even if they later discover inaccuracies (e.g., oversights in the application process), thus providing additional assurance to companies and their senior leaders.

Ultimately, a Side A DIC policy helps attract and retain talented executives by ensuring corporate leaders can make decisions without fear of personal financial exposure. Contact us today for more coverage guidance and solutions.