

Article

Don't Set Sail In A Leaky Ship — D&O Insurance: How To Negotiate Your Policy To Plug The Holes In Coverage

This article offers insight to directors, officers and their companies when a directors and officers ("D&O") insurance policy is being purchased or renewed.

Executive Summary:

There's a crisis in the D&O insurance industry. The recent corporate scandals at Enron, WorldCom and others have triggered giant settlements, and the resulting corporate governance reforms have placed a greater oversight burden on boards of directors. Now, it is much more likely that directors will be held personally liable for corporate miscues. As just one example, WorldCom's directors recently paid \$20,000,000 out of their own pockets to settle D&O claims.

D&O insurance carriers have dramatically raised premiums to compensate for their increased risk, but there's only so much that rate increases can do. One of my law school professors was fond of saying that insurance companies don't make money by paying claims. True to form, insurance companies are now fighting coverage whenever possible, often using language in their D&O policies that is highly favorable to them.

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