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The D&O Insurance Market and Liability Trends

March 16, 2011

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Today's Presenters



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The D&O Insurance Market and Liability Trends

Summary of Presentation

- D&O Litigation and Enforcement Update
- D&O Market Overview: Pricing, Capacity and Claims
- Developments in Coverage Terms

D&O Litigation and Enforcement Update

John R. Landis
Foley & Lardner LLP

Litigation and Enforcement: 2010 Highlights

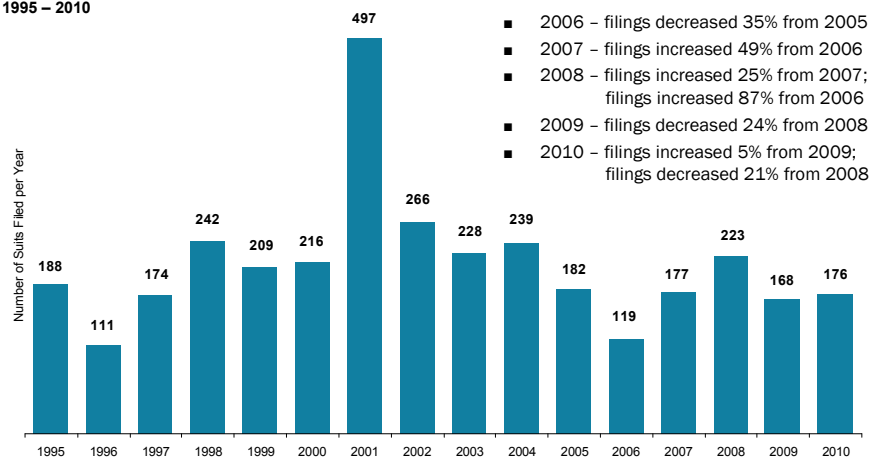
- Small increase in securities class actions, notable increase in fiduciary duty/derivative shareholder litigation.
- SEC Specialized Units signal likely direction of enforcement.
- Undetermined impact of Dodd-Frank on private litigation and enforcement.
- Economic conditions driving suits against private company officers and directors: customers, employees....now M&A.

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Frequency: Federal Securities Class Action Litigation

What is happening with claims frequency and how is this impacting my terms?

1995 – 2010



Source: Stanford Law School Securities Class Action Clearinghouse as of 01/24/2011

- 2006 – filings decreased 35% from 2005
- 2007 – filings increased 49% from 2006
- 2008 – filings increased 25% from 2007; filings increased 87% from 2006
- 2009 – filings decreased 24% from 2008
- 2010 – filings increased 5% from 2009; filings decreased 21% from 2008

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Severity: Federal Securities Class Action Litigation Settlements

1995 – 2010 (dollars in millions)



* Includes settlements of \$1B or greater
 ** Excludes settlements of \$1B or greater

Source: Aon FSG; RiskMetrics Group Securities Class Action Services as of 12/31/2010

Note: **Past settlement values are subject to change.** While settlement information generally reflects settlements as of the date a settlement is announced, as additional parties reach settlements and they become final, the past settlement values and dates occasionally change. Aon FSG adjusts settlement figures in this chart to reflect the changes.

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Developments: Federal Securities Class Action Litigation

- Reduced pace of suits relating to credit crisis.
- Increase in number of suits at year end: M&A disclosure cases.
- Target industries: Financial institutions, IT, healthcare/life sciences and for-profit education.
- Supreme Court cases of interest:
 - Merck v. Reynolds
 - Morrison v. National Australia Bank
 - Erica P. John Fund v. Halliburton
 - Matrixx Initiatives v. Siracusano

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Trends: Federal Securities Class Action Litigation

- Increase in M&A activity portends continued increase in suits based on merger disclosures.
- Impact of Dodd-Frank
 - Whistleblower provisions

Breach of Fiduciary Duty/Derivative Litigation

- Notable increase in number of suits filed in federal and state courts.
- M&A objection suits based on acquisitions, going private, management buyouts and proxy violations.

Developments: Enforcement Proceedings

- Significant matters:
 - High profile proceedings, e.g. Goldman Sachs, Citigroup, Bank of America, Rorech
 - Carters, Inc.: Non-prosecution agreement
- SEC Speaks:
 - Cooperation initiatives
 - Areas of focus: insider trading and FCPA
 - National Specialized Units: FCPA, Market Abuse, Municipal Securities and Public Pensions, Asset Management and Structured and New Products
 - Budgetary constraints: Added Dodd-Frank responsibilities

Trends: Enforcement Proceedings

- Impact of Dodd-Frank
 - Whistleblower provisions
 - International reach of SEC and DOJ powers
 - Expanded aider and abettor powers
 - Executive compensation clawbacks
- Activities of Specialized Units: Insider trading and FCPA
- Cooperation with Department of Justice:
 - FCPA
 - Dodd-Frank privilege protection

Developments: Private Company Litigation

- Modest decrease in actions against officers and directors.
- Economic conditions explain trends: cases brought by customers and employees (reductions in force).
- Potential for claims based on M&A activity.
- Companies entering into government contracts under scrutiny.
- According to Chubb Private Company Survey: 12% of private companies experienced a D&O suit in last five years.

D&O Market Overview: Pricing, Capacity and Claims

Jacqueline A. Urban
Aon Risk Services

D&O Insurance Marketplace Overview: Topics

- This is still a soft market.
 - Function of market capacity and Securities Claims activity
- What do clients purchase?
- Carrier relationships – do they matter?
 - Becoming just as important from a claims perspective
- Coverage enhancements in the market.
 - Pre-Claim Inquiry Costs
 - Personal Protection Suite
 - SEC Investigation Entity Coverage
 - Improvements to terms and conditions

Macro Market Update – D&O Overview

Capacity

- Stable & Significant
 - Majority of markets maintain A.M. Best Ratings of A or better
 - Insurer solvency fears have subsided
 - \$1.125B+ in "theoretical" capacity available in the market, less for FI risks

Coverage

- Insurers remain willing to provide coverage improvements (if requested)
 - Primary terms & conditions are very broad and heavily manuscripted
 - In 2010, Chartis launched its new "Executive Edge" D&O form and competitors promptly released amendatory endorsements in response.
 - In 2011 Chartis launched its "Investigation Edge" form that provides entity coverage for SEC investigations. Competitors' response to be seen.
 - Excess layers are much improved, although some work yet to be done.

Limits

- Some insurers seeking to expand their limits in order to capture more premium, in particular A-Side layers

Retentions

- Remain stable for most insureds
- Higher retentions do not always equate to meaningful savings

Pricing

- How low can it go?
 - Pricing below 2000 levels despite frequency and severity trends
 - Primary Pricing – Very competitive for most insureds, more interest in primary positions as excess pricing is thin
 - Excess Pricing - More competitive than primary
 - Anticipate a competitive pricing environment through at least the first quarter of 2011
 - Industry & Individual results do matter – be prepared and continue to differentiate your company.

D&O Pricing Index through Q3 2010: Premium per million in limits, base year 2001

Quarterly Index of D&O Pricing

D&O Pricing

Q1 2002 – Q3 2010 | Base year: 2001 = 1.00



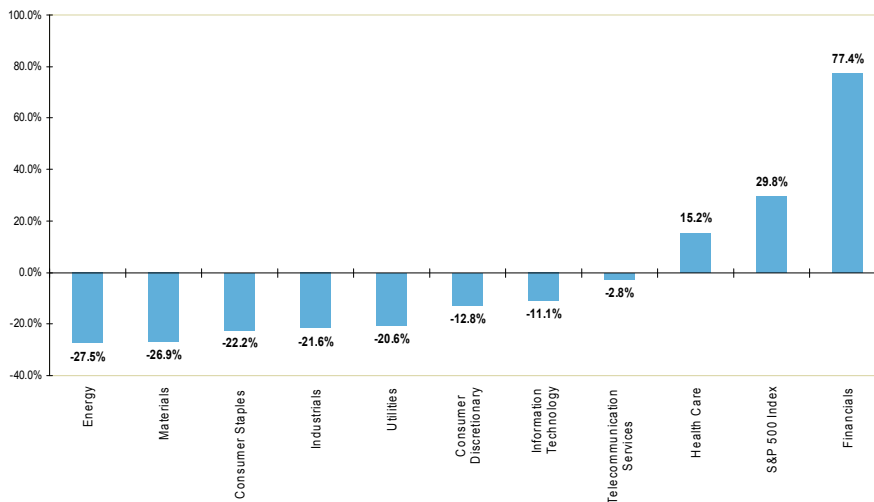
Source: Aon FSG Quarterly D&O Pricing Index.

Aon Risk Solutions | Financial Services Group
A Division of Aon Risk Services Central, Inc. | October 18, 2010



D&O Pricing Relativity: by S&P Sector and S&P Index

% Difference vs. All Other Sectors, or vs. All Other Indexes: Trailing 12 months

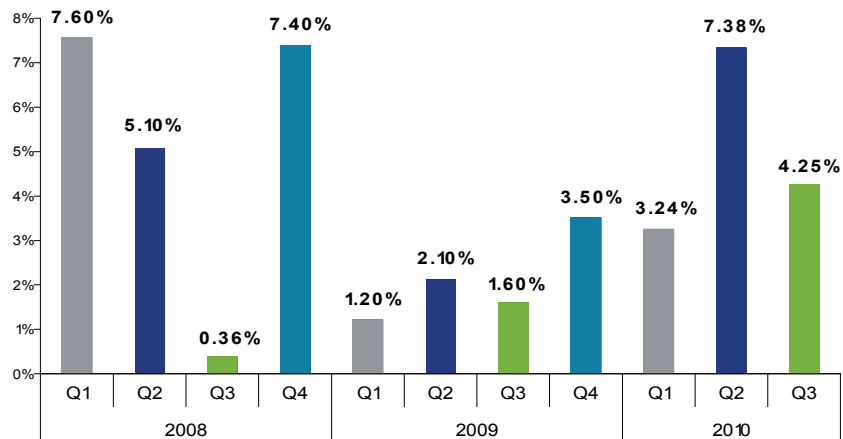


Theoretical D&O Capacity

Carrier	AM Best / S&P	Maximum Capacity (\$M)	Carrier	AM Best / S&P	Maximum Capacity (\$M)
ACE Bermuda	A+ / AA-	\$50	Endurance Bermuda	A / A	\$25
ACE U.S.	A+ / AA-	\$15	Endurance US	A / A	\$25
ACE Westchester	A+ / AA-	\$25	Freedom Specialty (Scottsdale)	A+ / A	\$20
Alterra	A / A-	\$25	Great American	A / A+	\$25
Arch Bermuda	A / A+	\$25	Hartford	A / A	\$25
Arch U.S.	A / A+	\$25	HCC	A+ / AA-	\$25
Argo Re	A / NR	\$25	Hudson	A / NR	\$15
Aspen Specialty	A / A	\$10	Ironshore	A- / NR	\$25
AWAC Bermuda	A / A-	\$25	Iron-Starr Excess Agency Ltd	A / NR	\$15
AWAC U.S.	A / A-	\$25	Liberty	A / A+	\$25
AXIS Bermuda	A / A+	\$25	Lloyd's of London	A / A	\$50
AXIS U.S.	A / A+	\$25	Monitor (W.R. Berkley)	A+ / A+	\$10
Beazley U.S.	A / NR	\$10	Navigators	A / A	\$25
Berkley Pro (W.R. Berkley)	A+ / A+	\$15	Old Republic	A+ / A+	\$15
Catlin	A / A	\$15	RLI Corp	A+ / A+	\$25
Chartis Excess Liability Bermuda	A / A	\$50	RSUI	A / NR	\$15
Chartis Excess Liability U.S.	A / A	\$50	Swiss Re	A / A+	\$50
Chartis	A / A	\$50	Torus	A- / NR	\$10
Chubb	A++ / AA	\$25	Travelers	A+ / AA-	\$25
Chubb Atlantic	A++ / AA	\$25	Valiant	A / A-	\$10
CNA	A / A-	\$25	XL Bermuda	A / A	\$50
CODA	A+ / AA-	\$25	XL U.S.	A / A	\$50
Crum & Forster	A / A-	\$15	Zurich	A+ / AA-	\$25
CV Starr	A- / NR	\$15			
Total Market Capacity					\$1,220

Limit Purchasing Decisions

Percentage change of total aggregate limits purchased by public companies: Quarter vs. Prior Year



Carrier Relationships

- Yes, they still matter.
- Underwriting meetings can assist in differentiating the risk.
- Claims relationships matter too.
 - As pricing declines, and terms broaden, important to consider claims handling abilities and experience of carriers.
- Consistent communication is essential to establishing and maintaining good relations.

Coverage Enhancements

- Pre-Claim Inquiry Coverage
- Personal Protection Suite
- SEC Investigation Entity Coverage
- Improvements to Terms and Conditions
- Stay Tuned for Further Developments and Enhancements

Claims Developments: View from the Insurer

- “Return to normalcy.”
- Slow down in financial sector claims.
- Uptick in private company enforcement matters.
- Bump up claims: Breach of fiduciary duty.
- Waiting for the next “Big Thing.”

Recommendations for Effective Insurer Relationships in the Current Market

- Develop a plan for controlling costs:
 - Commitment by counsel
 - Discovery game plan
- Contingency planning: address the worst case scenario from day one.
- Develop a realistic resolution strategy.
- Appropriate involvement of coverage counsel: e.g. mediation sessions.

Developments in Coverage Terms

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D&O Coverage

- All D&O Insurance Policies are not necessarily equal
 - “Off the Shelf” Terms are not usually the best terms
 - Policy language is highly negotiable
 - Little standardization, so can’t take the “cheapest is the best” approach

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“Hot Button” Issues for Directors

- Covering your “A” (Side)
 - Coverage of “last resort”
 - Premised on Indemnification Failure
 - Statutory Prohibition
 - Bankruptcy

“Hot Button” Issues for Directors

- Covering your “A” (Side)
 - Typical Sources of Side A Coverage
 - Primary (A, B, C) Program
 - Separate Excess/DIC Tower
 - Broader Coverage
 - Limited Exclusions
 - Fully Non-Rescindable

“Hot Button” Issues for Directors

■ Severability

- Two Main Areas of Concern
 1. Exclusions
 - Minimum of Fraud and Personal Profits
 2. Application Representations
 - Death Penalty (Rescission)
 - Near Death Experience (Claim Coverage Exclusion)

Questions & Answers

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Mark Your Calendar

- We hope that you will join us for the remaining sessions of the NDI Checkpoint Web Conference Series.
 - **April 20, 2011:** Investment Committee Responsibilities
 - **May 18, 2011:** Sustainability in the Boardroom
 - **June 15, 2011:** Whistleblower Provisions of the Dodd-Frank Act
 - **July 20, 2011:** Director and Corporate Secretary Duties in Foreign Countries
 - **November 16, 2011:** RiskMetrics Group 2012 Institutional Investors Issues

Thank You

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