

A QUICK WORD ON QUICK TAKE

Welcome to the newest publication from the Willis HRH Executive Risks Practice. *Quick Take* is the latest in a series of publications including our longstanding *Alert* series and our recently launched *First Word* publication (geared toward the financial services sector) that form part of our commitment to explaining and anticipating the Executive Risks issues facing organizations of all kinds. *Quick Take* analyzes one issue at a time and offers concise actions to take in response. We know you don't have a lot of time, and that's why we've designed a tool to help you work smarter and faster – and help you better protect your directors and officers and your company.

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CHANGING FACE OF D&O CLAIMS

ISSUE

When company fortunes fall, Director & Officer (D&O) claims rise – and the current recession has proved the rule. But the nature of the claims themselves is changing and risk managers and executives of public, private and nonprofit companies need to be aware.

HOW ARE CLAIMS CHANGING?

- Derivative claims, the odd exception for decades, are on the rise now and increasingly accompany securities class actions.
- Opt-outs, or plaintiffs avoiding a securities class action to bring an independent securities claim, are becoming more common.
- Regulatory actions are expected to increase in frequency, size and scope – and stir up D&O claims in their wake.

- eDiscovery costs are driving up the cost of litigation across the board.
- For global companies, the complications of cross-border litigation are becoming the norm.

IMPACT

Risk management and legal teams may be unprepared for the increasing complexity of D&O claims.

- The filing of multiple claims in different jurisdictions with different lead plaintiffs can initially overshadow the D&O claims themselves.
- Defenses best suited for securities class actions may not be effective against derivative, ERISA and opt-out suits.
- Multi-jurisdictional disputes are not only expensive but can require an increasingly sophisticated strategic response.
- Costs of defense and settlement can be expected to increase as a result of these factors.

ACTION

- In assessing your D&O exposures, understand what claims may look like and where they may be brought.



- Conduct a limit analysis and use securities loss modeling.
- Address claim issues when placing the policy, not when the claims are made: review policy provisions regarding notice of claims, choice of defense counsel and claim management *before* binding.
- Evaluate the appropriateness of A-Side coverage in your D&O program.
- Be strategic: consider Fiduciary/D&O cross marketing and check the experience of your insurers.
- Get to know your broker's and your carriers' claim representatives before any claims have been filed.

CONTACT

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