

2024 D&O Insurance

Market Outlook

Industry data shows that most publicly traded companies experienced ongoing directors and officers liability (D&O) insurance rate increases from 2018-21; however, by the start of 2022, only one-third of such policyholders encountered rising premiums. This market moderation pressed on in 2023 as rates continued to soften. These improving conditions are likely the result of new market entrants and growing capacity for higher excess layers of coverage, which have fostered increasingly competitive market dynamics. Although the D&O segment also started to stabilize for private and nonprofit companies, these organizations are still deemed higher risk by carriers than their publicly traded counterparts. As such, industry data confirmed that rates for these policyholders have continued to increase, albeit at a slower pace than in prior years. Heading into 2024, industry experts anticipate that favorable market conditions will likely persist. Yet, policyholders operating in challenging industries or possessing poor loss history could remain susceptible to possible rate jumps and coverage difficulties.

Developments and Trends to Watch

- **Artificial intelligence (AI) exposures**—Even though AI technology has the potential to help corporate leaders boost efficiencies in the boardroom and promote improved decision-making capabilities, it also carries unique risks. Namely, if AI systems are implemented incorrectly, they could end up producing widespread errors. In these instances, stakeholders may hold senior leaders accountable for AI-related failures, prompting costly lawsuits and subsequent D&O losses. What's more, legislation regarding AI technology and its use in the boardroom is constantly changing. Current legislation primarily requires businesses to establish policies that define AI technology's responsibilities in their corporate decision-making operations and maintain oversight of such tools to reduce the risks of potential issues. Considering these regulatory concerns, senior leaders who don't comply with applicable AI legislation could face significant legal penalties and associated D&O losses.
- **Environmental, social and governance (ESG) issues**—In the last few years, 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. Climate change has been the main focus of recent ESG-related litigation, which alleges that senior leaders have not fully disclosed the material risks of climate change or promoted eco-friendly operations. In response to these concerns, the U.S. Securities and Exchange Commission (SEC) proposed changes to its climate change disclosure rules for publicly traded companies in 2022, thus requiring companies to share more details on their climate-related risks, associated mitigation measures and greenhouse gas emissions. Several international leaders followed suit in 2023 and proposed similar requirements. Altogether, such requirements could exacerbate climate change litigation and subsequent D&O losses for noncompliant companies.
- **Cybersecurity concerns**—Decisions made by senior leaders are often intensely scrutinized following cyberattacks. Possible D&O losses can arise from allegations such as senior leaders failing to take reasonable steps to protect stakeholders' personal or financial information, implement controls to detect and prevent cyberattacks, and report incidents or notify the appropriate parties. Amid increasing ransomware threats and rising digital warfare exposures, cybersecurity has become a worldwide D&O concern. Compounding these risks, the SEC officially voted in favor of and adopted final rules that amended and enhanced its cybersecurity disclosure requirements for publicly traded companies in 2023. The implementation of these final rules could result in further litigation and associated D&O losses for noncompliant companies going forward.

Tips for Insurance Buyers

- Examine your D&O program alongside insurance professionals to ensure it takes market trends into account.
- Establish clear policies regarding the proper use of AI tools in corporate decision-making processes.
- Promote eco-friendly initiatives among your senior leadership team. Furthermore, be sure your corporate leaders conduct their due diligence and provide proper reporting as it relates to climate change concerns.
- Ensure your senior leadership team is actively involved in monitoring your organization's unique cyber risks and implementing proper cybersecurity practices to help prevent and respond to potential incidents.



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