



D&O LOOKING AHEAD

D&O Considerations for 2025

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Expert Insights

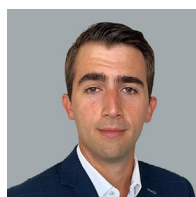
Click below and see what advice our experts have for you as you plan for 2025.



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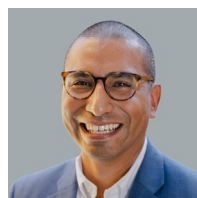
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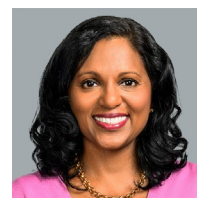
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Market Update

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1.0 D&O Market Update

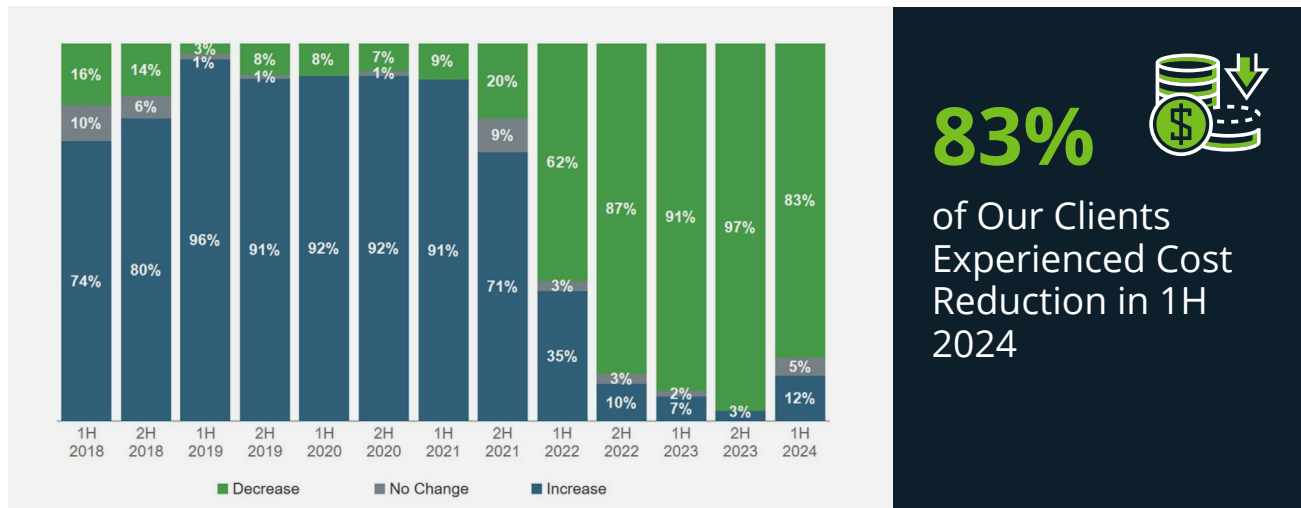
1.1 Rates for Public Companies

In a market known for volatility, public company D&O (directors & officers) insurance has certainly lived up to its reputation in recent years—pricing has been on a roller coaster, fluctuating between skyrocketing increases and precipitous drops. The hard and soft market cycles have caused participants’ D&O program limits and cost to yo-yo up and down, leaving many to long for a period of calm and stability.

Now in its 12th edition, Woodruff Sawyer’s *Looking Ahead Guide* helps our clients stay ahead of D&O trends. Indeed, our annual [Underwriters Weigh In™ survey](#) has successfully predicted much of the volatility and changes in the market that emerged in recent years.

In this year’s *Guide*, we will help you look around the corner to the challenges and opportunities that lie ahead in 2025. To do this, we start with a review of market trends in pricing, retentions, and D&O litigation.

Public D&O Annual Renewal Results for Cost Change Over 6.5 Years*



*Data shows percentage of clients who experienced flat or change in renewal premiums for ABC program and does not indicate percentage premium increase or decrease.

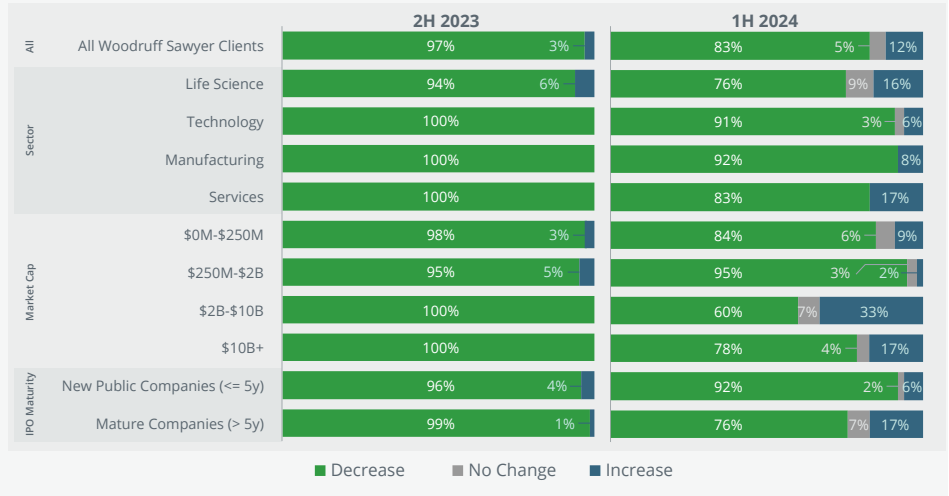
Source: Woodruff Sawyer Annual Client Renewals

In mid-2024, the market is in transition, with premium decreases slowing. Among Woodruff Sawyer’s clients, 83% of public companies enjoyed premium relief, but for the first time in 18 months, the number of increases and flat renewals are up.

Market Results by Risk Profile

One of the difficulties in applying the overall trend to a specific company is that premiums are impacted by multiple variables. Though the vast majority of clients received a decrease in premium in the first half of 2024, when we segment the data by risk type, the renewal experiences are varied.

Public D&O Annual Renewal Cost Change By Business Segment in 2H 2023 and 1H 2024*



All Public D&O Client Segments Saw Insurance Cost Reduction

*Data shows percentage of clients who experienced flat or change in renewal premiums for ABC program and does not indicate percentage premium increase or decrease.

Source: Woodruff Sawyer Annual Client Renewals

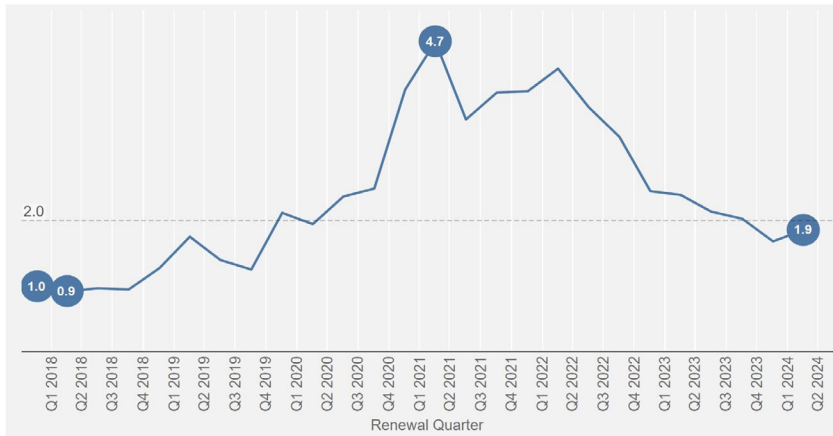
Prior to the latest hard market, the vast majority of public companies (other than mega-cap public companies) purchased D&O insurance limits at the 75th percentile of settlements. That level of insurance felt unaffordable to many companies during the hard market, particularly for IPO companies. Thus, one of the consequences of the hard market was that companies became more comfortable taking on additional risk from potential securities suits and bought D&O limits at the 45th and 50th percentiles.

The right amount of insurance to purchase is, of course, a business decision. To be sure, there will always be companies that choose to under-insure no matter what D&O insurance costs. However, for everyone else, 2025 will give those companies that deferred on price and accepted more risk than preferred a compelling opportunity to reassess their D&O program limits and structure and take advantage of a favorable market.

2024 Premium Rates Still Favorable

The D&O insurance market saw premiums peak in Q1 2021, rising sharply to 4.7 times Q1 2018 levels. The market turned dramatically in 2022, when new capital, attracted by high rates, entered the market and drove pricing down. By Q2 2024, premiums have dropped to 1.9 times the 2018 baseline price, something we haven't seen since 2019.

Public D&O Insurance Market Rate Index (Q1 2018 = 1.0)




Public D&O
Insurance Market
Rates Near 2020
Levels

Source: Woodruff Sawyer Annual Client Renewals

Mature Public Company Premium Rates

We're years removed from the peak pricing of the hard market, and we're finally seeing alignment in the indexes for recent IPO programs and mature public companies. As a reminder, during 2021, the average price for the first \$10 million of D&O insurance for an IPO company more than quadrupled. Mature companies also experienced painful rate increases over that period, but their starting price points were much lower. As premiums decreased during the soft market, larger decreases on IPO programs were necessary for pricing to return to a level commensurate with their mature public company counterparts.

The graphic below represents Woodruff Sawyer's Market Rate Pricing Index™ data for mature companies (those that have been public for 5+ years). When we look at data for mature public companies alone, the median pricing in Q2 2024 is 1.8 times the Q1 2018 rate. Pricing peaked at 2.3 times in Q3 2021 (significantly below the 4.7 times for all public companies).

Public D&O Insurance Market Rate Index for Mature Companies* (Q1 2018 = 1.0)

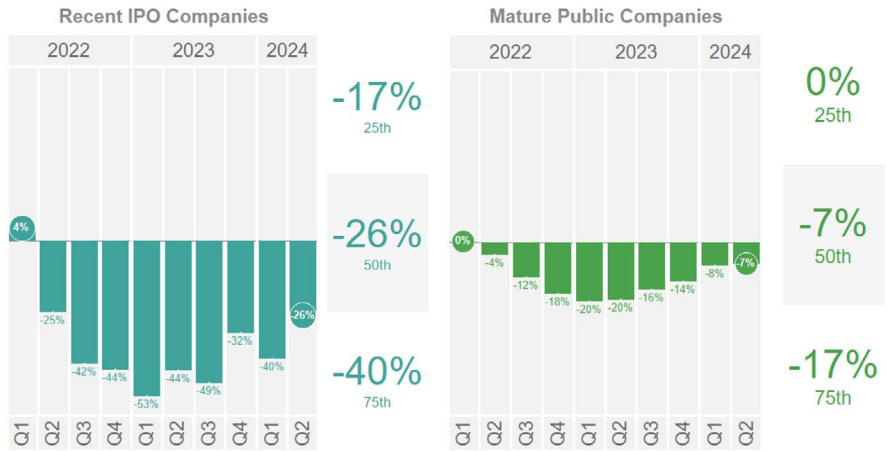


Mature Companies Experienced Moderate Increase During the Same Period

Source: Woodruff Sawyer Annual Client Renewals
 *Companies that have been public for 5+ years

It took multiple renewal cycles, but the discrepancy in volatility for D&O premiums for mature and recent IPO companies has notably converged. That was achieved, as illustrated in the side-by-side graphic below, by recent IPO companies getting larger decreases. In Q2 2024, mature companies experienced a median pricing decrease of 7%, whereas recent IPO companies saw a larger drop of 26%. For clarity, the cost of D&O insurance for IPO companies is still higher than for mature public companies. However, it is a welcome relief for IPO companies to see such a dramatic decline in price and volatility compared to what was happening in the hard market.

Median Cost Change Trend for Newly Public and Mature Public Companies*



Annual Cost Reduction Experience Varies by Public Company Maturity

Source: Woodruff Sawyer Annual Client Renewals
 *Companies that have been public for 5+ years

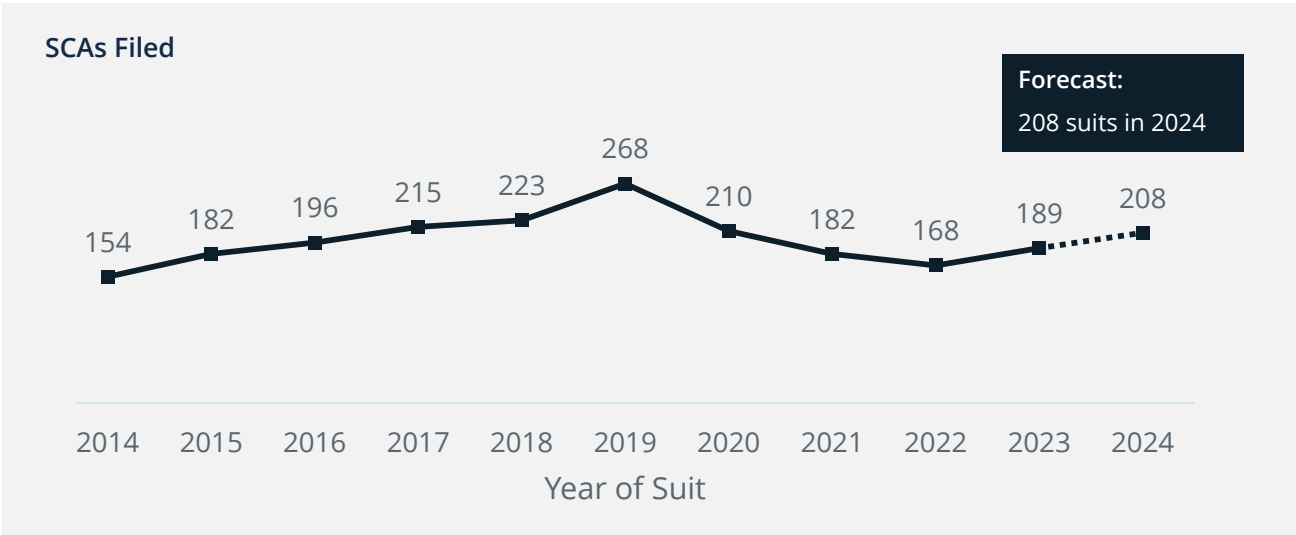
Although we're still in a soft D&O market, the rate of decline in premiums for both newly public and mature companies has decelerated and will likely continue to do so in 2025. [Underwriter sentiment predicted the hard market in 2021; their response to whether rates will continue to go down today and moving forward should not be ignored.](#) Over the last three years, fewer and fewer underwriters have predicted premiums would go down (40% in 2022, 30% in 2023, and 21% today).

Our own forecast is that all public companies will continue to have an option for D&O program cost savings—but more likely from new market entrants than their incumbent insurance carriers. Established carriers will work hard to keep rates at what they deem reasonable to avoid the dynamic of underpricing today only to then be forced into hard market pricing or leaving the D&O market altogether. In 2025, we'll continue to see new carriers take more risk to build market share while established carriers will carefully defend their turf, all while keeping a watchful eye on claims trends.

Securities Class Action Lawsuit Trends

Tracking securities class action suits and settlements helps measure whether underwriters are receiving adequate rate to cover existing and future losses. Each case is different, but the sheer volume of claims can be an indicator of potential future severity. Over the last 10 years, SCAs peaked in 2018–2020, when 233 SCAs were filed per year on average. That period was followed by hard market pricing in 2021.

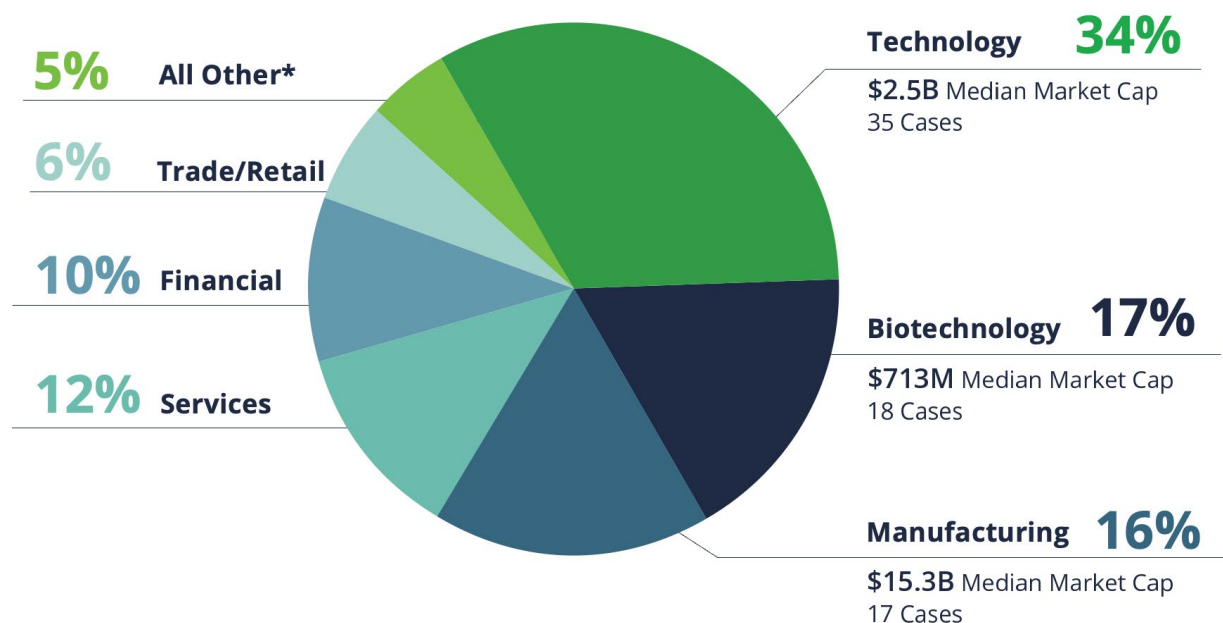
SCA Filings on Track to Match 2020 Number



So far, 2024 has seen brisk filing activity. In the first half of 2024, there have been 104 securities class action suits filed, compared to 95 filings in the first half of 2023—an increase of 10%. If the trend continues, 2024 will have more than 200 filings, the first time this threshold will be crossed since 2020.

The top three industries sued in the first half of 2024 are the same as last year: technology, biotechnology, and manufacturing. Suits filed against technology companies make up 34% of all suits filed. US bank failures and bankruptcies in 2023 increased the number of financial institutions sued last year, but the industry has recovered in 2024 and settled back to historic suit rates, representing 10% of the total.

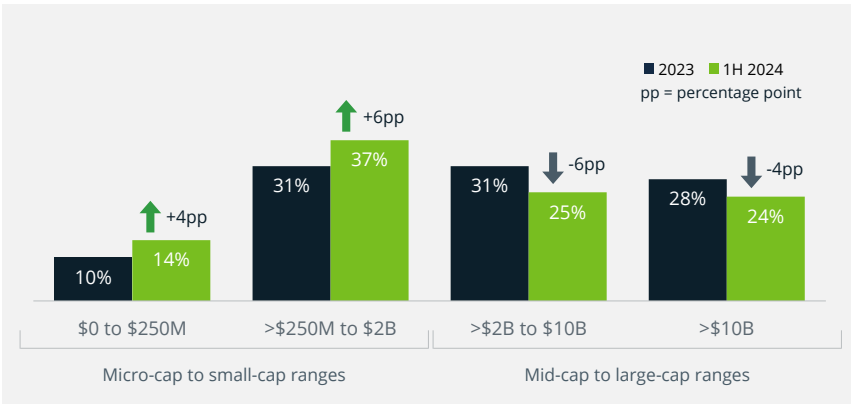
SCA Filings by Industry (1H 2024)



*All Other = Energy, Mining, and Transportation

One notable 2023 trend was the rise of mature large cap companies being targeted by the plaintiffs' bar. While large brand name companies continue to be sued (e.g., Boeing, Toyota, Intel, and UnitedHealthCare), plaintiffs in 1H 2024 have shifted focus to smaller market cap companies. Suits brought against micro-cap and small-cap companies have increased by 10 percentage points over the same period last year.

A Shift in 1H 2024 in Size of Companies Being Sued

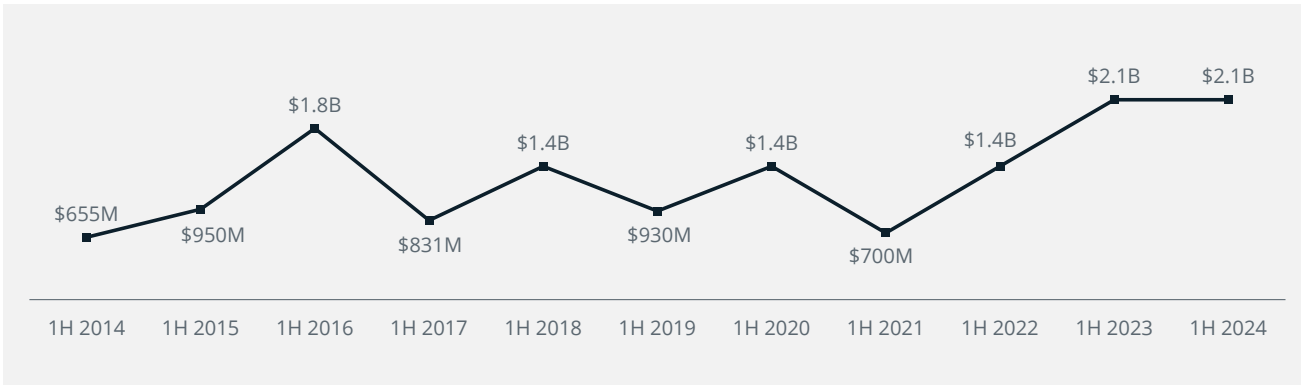


Movements in the Size of Companies Sued in 1H 2024: Plaintiffs Focus on Smaller Companies

Larger Settlements Dominated 1H 2024

There were 41 settlements in the first half of 2024 for a total of \$2.1B, which puts this year on the same footing as 2023's record-breaking first half.

\$ Paid Out in First Six Months of Each Settlement Year (1H 2014 to 1H 2024 - Excluding \$1B+ Settlements)



The three top settlements in the first half of 2024 were Apple (\$490 million), Under Armour (\$434 million), and Alphabet (\$350 million). The impact of the larger settlements can be seen in the average and median figures set forth below for 1H 2024 as compared to 2023 and the previous 10 years.

Average & Median Settlement Costs Rise Significantly in 1H 2024

	10 Years (2014–2023)	2023	1H 2024
Settlement \$	\$25B	\$3.4B	\$2.1B
Average	\$30M	\$37M	\$52M
Median	\$9M	\$13M	\$19M
75 th Percentile	\$24M	\$37M	\$36M

Note: Excluding settlements \$1B and higher

While we expect to see the average and median settlement amounts drop as the second half of the year unfolds, larger dollar settlements are a trend that is not going away in 2024. With fewer IPO and de-SPAC companies entering the market, suits against established companies with large market caps are now resulting in cases that take longer to settle and often result in larger settlement dollars.

De-SPAC Litigation Slowdown

New SEC rules implemented in January 2024 were designed to align the risks and liabilities of companies going public via a de-SPAC transaction more closely with the liabilities of companies going public via a traditional IPO or direct listing. Filings against de-SPAC companies had already dipped in 2023 and continue to cool in 1H 2024. In 2023, 14% of all SCAs filed were against de-SPAC companies—that figure has dropped to 8% so far this year.

Only two of the eight cases filed against recently de-SPACed companies included claims related to the de-SPAC merger. All eight had Section 10b-5 claims and were sued within three years of the de-SPAC merger. These newly de-SPACed companies are like IPO companies when it comes to having to operate under the scrutiny of their larger shareholder base and the investment community.

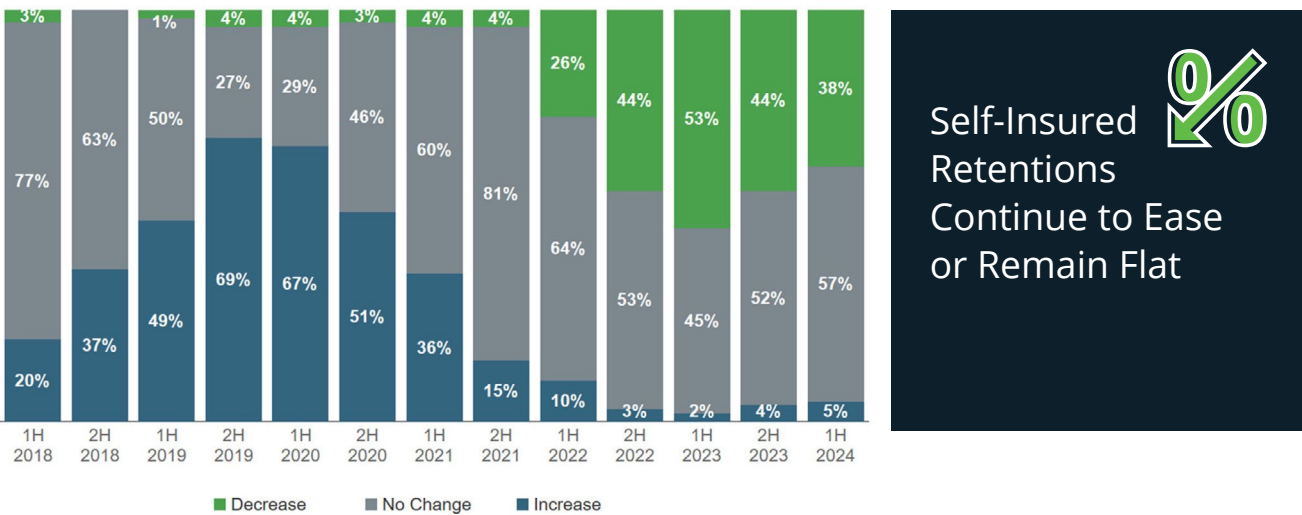
Given the improved governance and litigation trends, de-SPACs will likely continue to find favorable pricing and self-insured retention options in the D&O market in 2025.

1.2 Self-Insured Retention Trends

During the first half of 2024, 95% of Woodruff Sawyer’s public company D&O clients renewed with a flat or lower [self-insured retention \(SIR\)](#), in line with 2023 results. We predict this trend will hold in 2025, as [98% of surveyed underwriters expect retentions for mature public companies to stay the same or go down.](#)

Watch Now: SIR versus Deductible

Public D&O Annual Renewal Results for Retention Changes Over 6.5 Years*



*Data shows percentage of clients who experienced flat or change in retention and does not indicate percentage retention increase or decrease.

Source: Woodruff Sawyer Annual Client Renewals

During the IPO boom and hard market of 2021, new public companies had no option but to accept high self-insured retentions. Those same retentions came down quickly and precipitously during the soft market cycle. For new IPO companies today, [26% of underwriter survey respondents predicted that retentions for new public companies have room to go down in 2025.](#) There was, however, a strong competing sentiment from some underwriters surveyed that there isn’t much more room for those retentions to fall and, given the ‘33 Act exposure, it’s a mistake for the market to cut retentions on those risks much further.

Hot Topics

In the decade-plus that Woodruff Sawyer has published the *D&O Looking Ahead Guide*, we have often had “good news” in this Hot Topics section. Unfortunately, this year there isn’t much good news when it comes to D&O litigation risk. However, forewarned is forearmed. This perspective can turn what could be a parade of horrors into actionable insight. After all, the only really bad risk is the one you didn’t see coming.

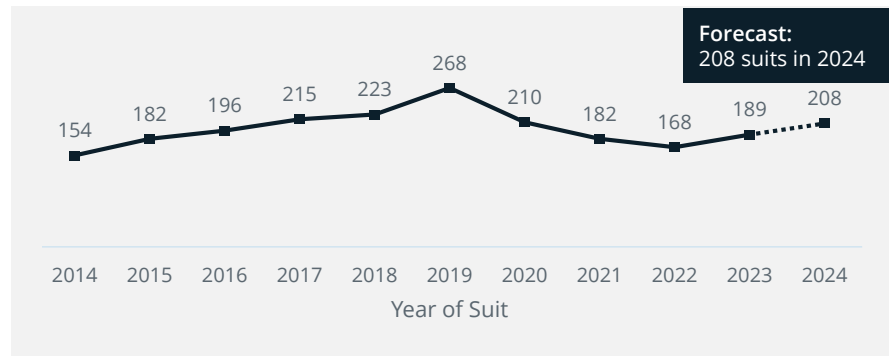
2.0 Hot Topics

2.1 More Securities Class Action Filings

A review of securities class action litigation through the first half of 2024 shows that the plaintiffs' bar is off to a roaring start, as noted in the D&O Market Update section of this *Guide*. They are on track to file more cases than they did in 2023—perhaps the highest number since 2020.

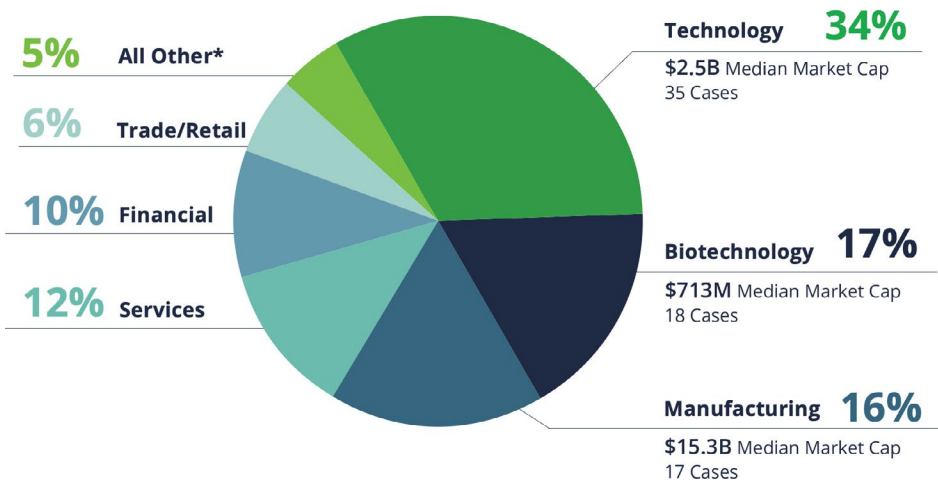
Why the rise in filings? It's certainly not being fueled by an abundance of IPO and SPAC market activity. Notably, the plaintiffs' bar's focus has been on companies with a market capitalization of \$2 billion or less. This is a shift from 2023, when the focus was on companies with a market capitalization of over \$2 billion.

SCAs Filed



Plaintiffs also continue to focus on technology and biotechnology companies, as explained in the D&O Market Update section. Interestingly, while manufacturing has taken third place when it comes to industry focus for plaintiffs in the first half of 2024, the median market capitalization of manufacturing companies sued is \$15.3 billion. This is many times greater than the median market capitalization of technology (\$2.9 billion) or biotechnology companies (\$713 million) sued in the first half of 2024.

SCA Filings by Industry (1H 2024)



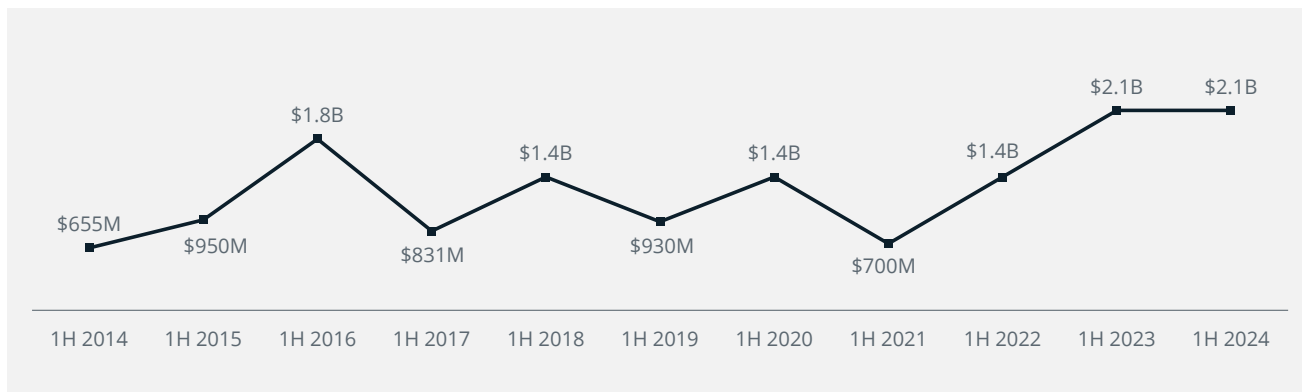
*All Other = Energy, Mining, and Transportation

Woodruff Sawyer's [Databox Mid-Year Report](#) provides more details about the rate of securities class action lawsuit filings, including by industry, market capitalization, and vintage.

2.2 Bigger Securities Class Action Settlements

The first half of 2023 was a record high for securities class action settlements. Unfortunately, 2024 settlement amounts are competing with 2023 numbers, as noted in the Market Update.

\$ Paid out in First Six Months of Each Settlement Year (1H 2014 to 1H 2024 - Excluding \$1B+ Settlements)



Compared to the first six months in each of the last 10 years, [the first six months of 2023 set records](#) when it comes to securities class action settlements. This is not welcome news for carriers.

These results are being driven by an increase in the number of suits that are settling for over \$20 million. Consider too that large settlement cases are typically ones for which the duration of litigation is longer. A long duration means that litigation defense costs are also very large, something to consider when deciding how much D&O insurance to purchase.

2.3 Also Large: Derivative Suit Settlements

Is everything that goes wrong at a company a fiduciary duty violation? The plaintiffs' bar might say yes, and they are certainly focused on the opportunity to extract big settlements from breach of fiduciary duty suits brought derivatively.

The Delaware Chancery Court has been more friendly to this type of litigation so far in this decade than in the past. The result is that plaintiffs have notched some significant wins in the last few years, including Wells Fargo's \$240 million settlement (fake customer accounts), Boeing's \$237.5 million settlement (two jet crashes), and McKesson's \$175 million settlement (opioids). Two derivative suit settlements in 2024 are notable for their size:

Premier	\$71M	Company restructuring to eliminate dual-class structure that involved a \$473.5M early termination payment on tax receivable agreements with certain investors and directors
Walgreens	\$36M	Leadership failed to limit retail pharmacies from dispensing unreasonable amounts of opioids

What’s more, plaintiffs are getting more aggressive about their fees, at least if the recent award in *Dell* for 26.67% of the \$1 billion settlement is any indication, not to mention the recent plaintiff fee request for \$6 billion in the *Tesla* case.

Derivative suits are particularly challenging for board members when the suits implicate the duty of loyalty (referred to as a *Caremark* claim). This is because Delaware, New York, and California corporations can’t pay the settlement in these cases, something that underscores the importance of having adequate D&O insurance—especially “*Side A*” insurance, the type of insurance that responds on a first dollar basis when company indemnification isn’t available.

2.4 Speaking of Oversight: Artificial Intelligence

No “hot topics” right now would be complete without mentioning artificial intelligence. And while AI might be a mid-term competitive threat or opportunity for many companies, the AI hype has somewhat abated in 2024 as compared to 2023.

But boards: beware. Even if AI isn’t a specific focus for your company, it may well be seeping into the cracks. For example, AI may be increasingly embedded in software services your company is using. You don’t have to be a techno-pessimist to be concerned about programs going rogue. The *board’s oversight role* is more important than ever.

Also: Will there be AI regulation? Of course, the answer is yes. The European Union, never one to sit out a regulatory opportunity, is already out with the *AI Act* and its four-level risk framework. The United States does not have any federal AI regulations so far. *States*, however, are stepping into the breach, with large states like *California* contemplating more than 30 separate proposals. Moreover, even in the absence of a full suite of AI regulations/laws, regulators are leveraging existing frameworks to investigate and bring enforcement actions.

2.5 Also, Speaking of Oversight: Reincorporating Out of Delaware

Let's say you are a CEO who would rather not have too much oversight. Then you might not want your company to be incorporated in Delaware.

All empires crumble, and we may be watching the beginning of the end of Delaware's status as the favorite state for companies to incorporate. The business community's belief in the Delaware Chancery Court as a bastion of pro-business judicial outcomes, while not yet eviscerated, has certainly been challenged by some recent rulings.

Consider the [Tesla compensation case](#). After the court struck down the shareholder-approved CEO compensation package (and to be sure, the court made some very good points), the package was put back to the shareholders. Shareholders then promptly approved the package again, this time with even more enthusiasm. At the same time, the shareholders also agreed with Elon Musk's proposal to reincorporate out of Delaware and into Texas.

Not every company has a charismatic CEO who can convince shareholders to reincorporate out of Delaware, or bottomless pockets to fund litigation. But we should certainly expect new founder/CEOs with dreams of controlling their companies to [consider incorporating outside of Delaware](#) in the first place.

2.6 Still Speaking of Oversight: SEC v. R.R. Donnelley

We all know that the SEC has a significant oversight role for public companies. The agency has not been at all shy about exercising oversight when it comes to cyber issues (see, e.g., the SEC's efforts to bring enforcement action against public companies).

The biggest news on this front has been the implementation of the new cyber rules, including the weaponization of these rules.

But it turns out the SEC isn't waiting to go hard at public companies it thinks handled a cyberbreach inadequately. Case in point is the [\\$2.125 million penalty](#) R.R. Donnelley agreed to pay the SEC in connection with a breach that took place at the end of 2021.

On the one hand, the SEC commended Donnelley for its cooperation, including by providing the SEC information without a subpoena. On the other hand, the SEC's decision to characterize Donnelley's troubles as a violation of the internal accounting controls provision of the Securities Exchange Act of 1934 was aggressive. Two [dissenting commissioners](#) persuasively pointed out that computer systems were never meant to fall under the internal accounting rules. But here we are.

All empires crumble,
and we may be
watching the
beginning of the end
of Delaware's status
as the favorite state
for companies to
incorporate.

2.7 Speaking of Cyber: Nervous CISOs

With this much focus by plaintiffs and regulators on cyber breach disclosure issues, it's no surprise that CISOs feel unsettled. This is the natural reaction to seeing the [SEC charge and prosecute](#) the CISO of SolarWinds.

On one hand, *SolarWinds* is an extraordinary case with what seems to be really unfortunate facts, including damning quotes the SEC included in its complaint. On the other hand, SolarWinds is vigorously defending its CISO and has accused the SEC of cherry-picking the damning quotes. In addition, in March of 2024, a group of [more than 50 prominent individuals and groups](#) from the cybersecurity community called for the dismissal of the SEC's suit.

This high-stakes case will play out in time. For now, it may be helpful for CISOs to remember that they, like all employees, are typically covered under public company D&O insurance policies for securities claims. There are also [other steps CISOs can take](#) to protect themselves.

2.8 Speaking of Nervous: Kidnap & Ransom Insurance

When it comes to D&O issues, we are usually talking about liability issues. But in an uncertain world, it's worth taking a moment to think about physical security. Most companies don't talk about kidnap & ransom insurance because you don't want to put a target on the backs of your people. However, over time, this lack of conversation has caused some companies to think this insurance is unimportant.

Be sure that someone at your company is asking about this insurance. The cost is low, and the coverage is [surprisingly broad](#). And you never want to be in the position of needing it and not having it.



Most companies don't talk about kidnap & ransom insurance because you don't want to put a target on the backs of your people. However, over time, this lack of conversation has caused some companies to think this insurance is unimportant.



2.9 More Reasons to be Nervous: Shadow Trading and Ephemeral Messaging

The SEC's focus on new rules has not prevented them from [innovating](#) when it comes to enforcing the existing rules against illegal insider trading. They have had recent success prosecuting shadow trading, which is trading in securities of one company as a consequence of learning secret information about another company. The [conviction](#) the SEC secured against an executive of Medivation is worth studying: The executive learned that his company was about to be acquired by another company, decided this was a sign of industry consolidation, and so decided to purchase shares of a third company in the same industry. Turns out, that's illegal insider trading.

Also, do you use encrypted or ephemeral messaging in your daily life? To the extent that you handle material, nonpublic information, you may want to reconsider doing so. The SEC takes a skeptical—if not actually hostile—view of these systems. As demonstrated in [SEC v. Wygovsky](#), the SEC will assume the worst if they find out insiders who trade are using these systems.

2.10 Some Room to Breathe: SEC's Climate Rules

The SEC has been on a multi-year journey to implement [new climate disclosure rules](#). The agency's new rules became effective in [March of 2024](#)—only to have the courts snatch defeat from the jaws of the SEC's rule-implementing victory. The SEC voluntarily [stayed the new rules](#) in April 2024 pending judicial review.

However, corporations are by no means out of the woods regarding climate disclosure compliance. Corporations doing business outside of the United States still must comply with the rules of other countries. Within the United States, various states have also started to implement serious climate disclosure rules. [California is one state leading the way](#) with disclosure requirements that will apply not just to public companies but to private companies as well.

In addition to the cost of compliance, all this new disclosure inevitably creates opportunities for regulators and plaintiffs to use their hindsight glasses to sue and prosecute companies for disclosure errors.

2.11 Good News: Bankruptcy

Bankruptcy is never good news—but the bankruptcy of Silicon Valley Bank did provide us with some valuable information about protecting directors and officers in bankruptcy. SVB had a large D&O program that included a combination of classic [ABC D&O insurance](#) and stand-alone [Side A D&O insurance](#). There is plenty of insurance limit, but when individual directors and officers wanted to use the ABC policies, the creditors committee objected. The committee thought the ABC policy proceeds should be held back for the estate.

The bankruptcy court, however, landed on the side of the [individual directors and officers](#). Specifically, the bankruptcy court noted and followed the “priority of payments” provision in the ABC policy that specifically contemplated that directors and officers have first dibs on the policy proceeds. Good news, indeed.

2.12 Elections

Elections have consequences, including when it comes to D&O risk. Different political parties can have very different policies when it comes to things like global security, economic and monetary policy, taxes, tariffs, regulations, governmental enforcement postures, and disclosure rules. At the time of this writing, the presidential election looms large in the United States, and there are significant national elections taking place in the rest of the world as well. This fall will be a good time for boards to hear directly from political experts on topics that are most consequential for their companies. It’s also a good idea to implement or refresh corporate policies on political speech in the workplace.

Learn more:
Board Education
Resource Guide



Underwriters Weigh In™ Survey

Good brokers are first and foremost advocates for their clients. As part of this advocacy, good brokers also listen to their insurance carrier partners to better understand their view of the world, including their current appetite for risk. Woodruff Sawyer is in conversation with insurance carriers every day. For this section of Looking Ahead, we surveyed more than 40 insurance carriers with whom we place D&O insurance worldwide. We asked questions about the current risk environment, risk appetite, and future pricing expectations.

As we have in past years, we asked underwriters to share their thoughts regarding their answer to each question if they wanted to do so.*

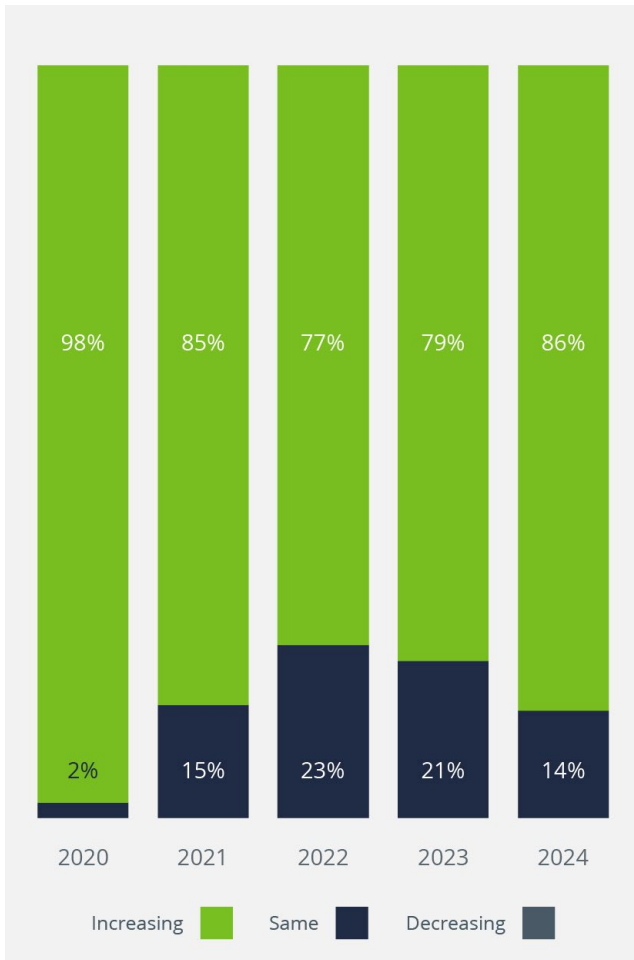
*Underwriter comments have been edited for clarity and length.



Q1

Is D&O risk going up?

2024 Survey Results: **Once more, no underwriters think D&O risk is decreasing.**



Woodruff Sawyer Commentary

Given how tumultuous and anxiety-inducing the current political environment is, it's surprising that 14% of underwriters think D&O risk is the same. However, the "same" category may be right, given the overall strength of the economy. Having said that, the increase in D&O risk severity is a real problem.



Underwriter Comments



Derivative claims are becoming more prevalent and we are seeing payouts where we hadn't in the past.



Social inflation, increasing settlement dollars... Will likely see an increased "AI-washing" exposure.

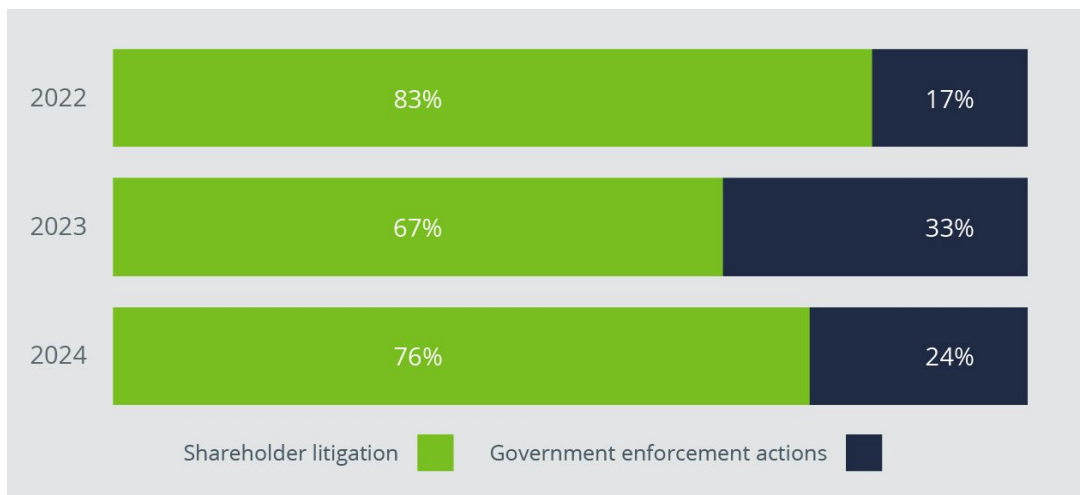



Regulators needing to bring claims in federal court will be more expensive than administrative hearings.

Q2

As you look out into 2025, should companies be more worried about shareholder litigation or government enforcement actions?


2024 Survey Results: **Just over 3 out of 4 underwriters think that companies should be more worried about shareholder litigation in 2025.**




 **Woodruff Sawyer**
Commentary

Underwriter concern about government enforcement actions almost doubled from 2022 to 2023, but it eased a bit this year. Beliefs about the result of the US presidential election may have had a material impact on this question.

 **Underwriter Comments**

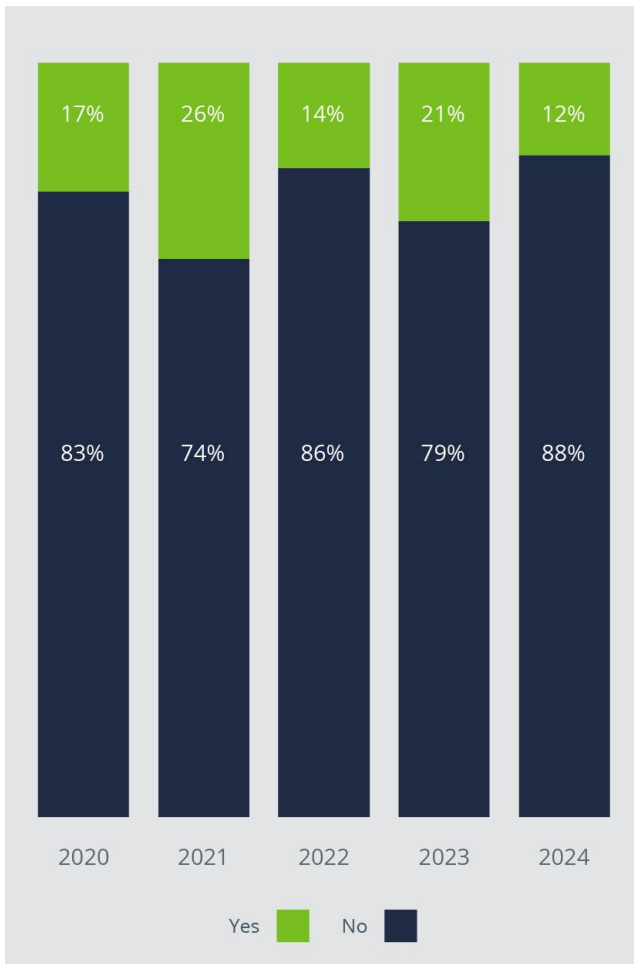
 Large public organizations that are consumer-facing/carry personal data should be very wary of their regulatory exposure.

 Government enforcement actions may lighten depending on which administration gets elected into office in the presidential election.

Q3

Are companies as aware as they should be of the frequency and cost of D&O litigation?

2024 Survey Results: **88%** of underwriters think that companies are not as aware of the frequency and cost of litigation as they should be.



Woodruff Sawyer Commentary

This year's percentage is up from 79% last year, signaling underwriter skepticism about clients' ability to accurately assess their risks. To be sure, the hard market caused many companies to underbuy D&O insurance. Once a board anchors to a certain percentile of coverage—high or low—it can be hard to move the anchor.



Underwriter Comments



Brokers need to do a better job of educating their buyers as to the cost of D&O claims. They are more concerned with appeasing their clients and afraid of losing the accounts than being honest about market conditions.

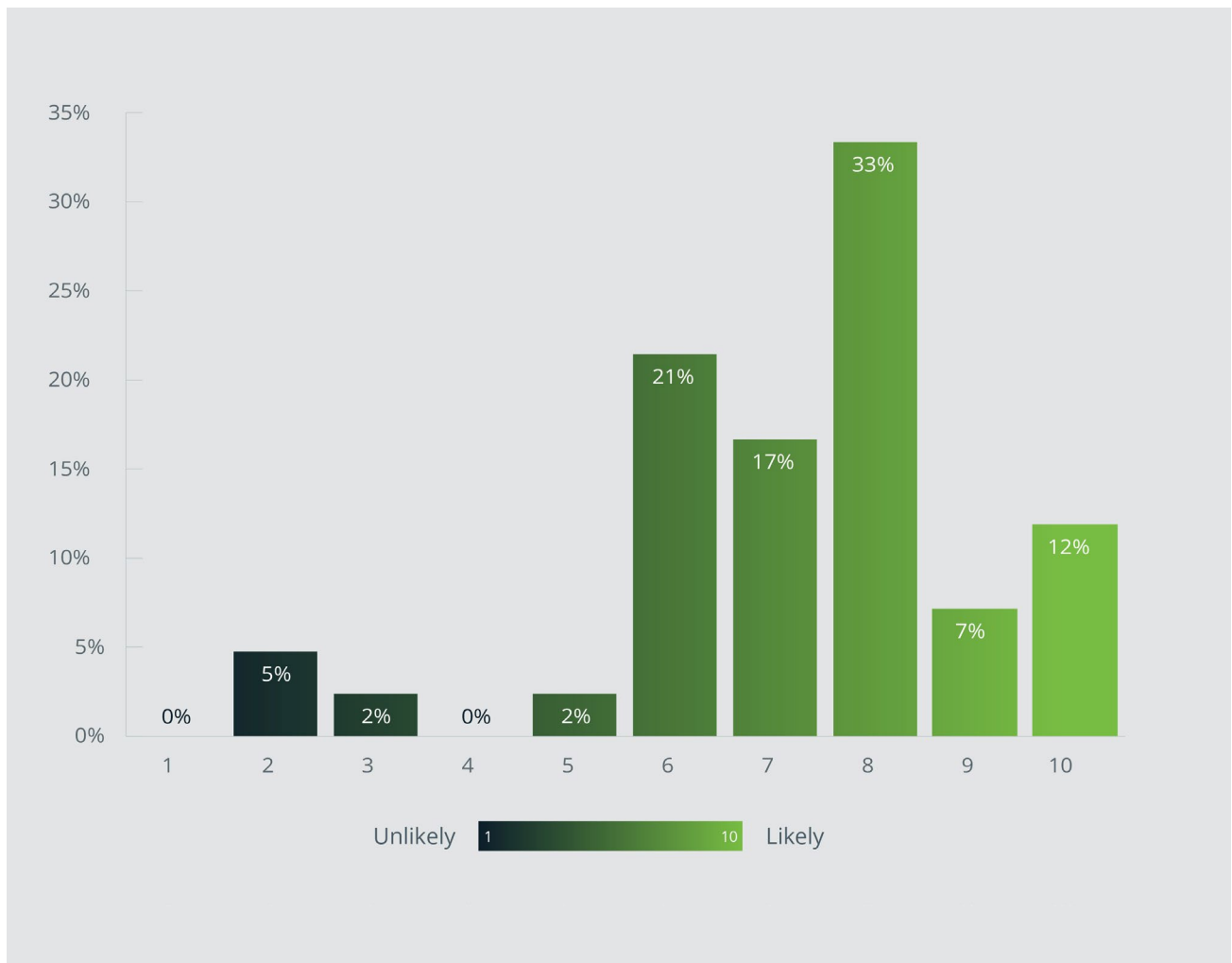


Everyone thinks they are a great risk until they have a claim. There are some terrible companies out there that think they deserve a fourth year of premium savings. They probably shouldn't even be able to buy insurance. The reality is that companies with scars on their backs are much better partners.

Q4

On a scale of 1 to 10, how likely are we to see a material amount of litigation and regulatory enforcement actions regarding “AI Washing” due to companies overhyping a product or service’s use of AI? 10 is 100% likely.

2024 Survey Results: One-third of underwriters rate as eight out of 10 the likelihood of seeing a material amount of litigation and regulatory enforcement actions because of companies engaging in “AI Washing.”





Woodruff Sawyer Commentary

This is the first year we asked this question. The results show that AI is likely to be an important and newsworthy topic in the coming years. Over half of underwriters are deeply skeptical of AI claims. Given their expectation for litigation on this front, we expect that underwriting questions in this arena will become increasingly pointed.



Underwriter Comments



2026 and beyond are when we'll see the tide go out and who was swimming without a bathing suit.



With the over-promotion trend seen so far, many companies are already blurring the line of what their true capabilities in machine learning are compared to generative AI breakthroughs. Regulators are watching. (AI wrote this)



There's already been at least 3 "AI washing" claims. Gensler has already warned the street the commission will be seeking out "AI washing." AI is all the rage right now and executives want their companies to be associated with AI—they have a fine line to walk when communicating their AI capabilities.

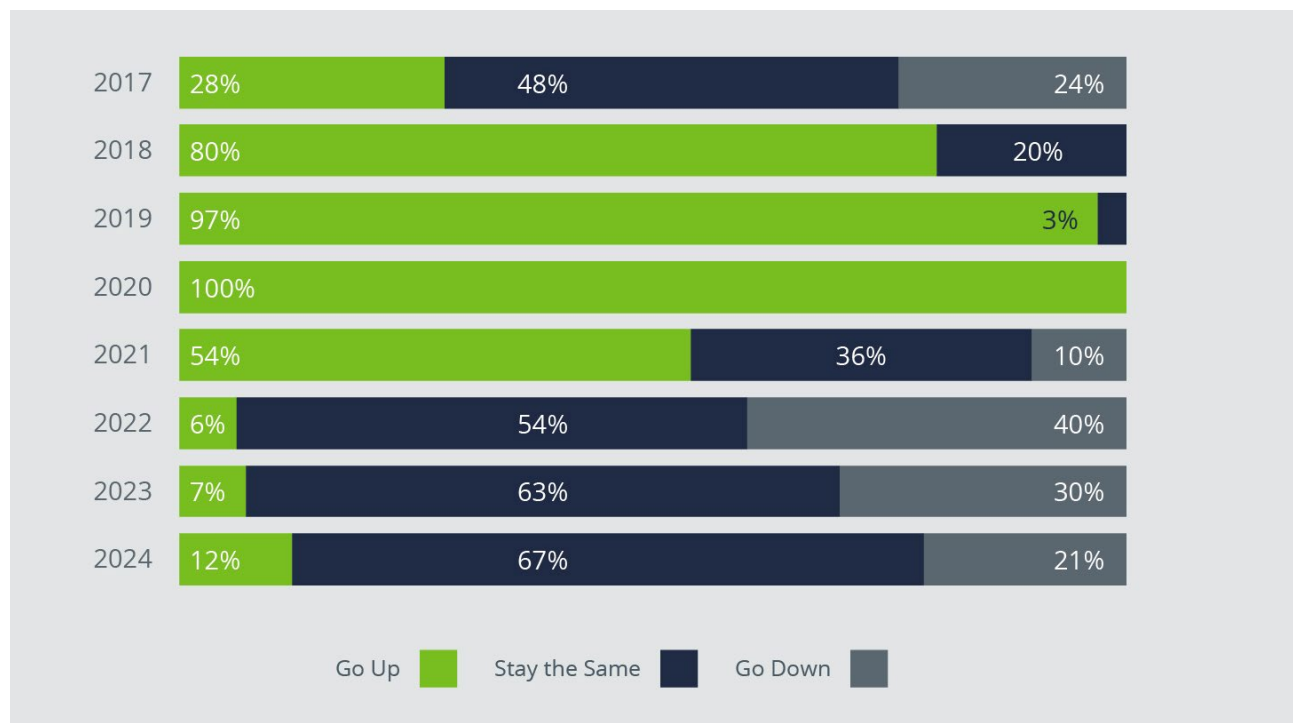


It looks pretty clear that it is going to be a nasty bubble, and companies will make a lot of nonsense up to jump on the bandwagon.

Q5

Industry-wide, do you expect D&O premium rates for mature public companies to go up, stay the same, or go down?

2024 Survey Results: **88% of underwriters expect D&O premiums to stay the same or go down.**



Woodruff Sawyer
Commentary

The 2021 answer to this question predicted the break in the hard market. The answers this year may presage a winding down of the soft market of the last few years.



Underwriter Comments



The pricing is so thin, particularly in the mid excess layers, that something has to give at some point . . . there is still enough capacity from “newer” markets to fill gaps as needed, so no major price correction yet, although established markets will likely start holding the line more.



pre-hard market pricing CREATED THE HARD MARKET



Rates will continue to go down until insurers realize that they are making an underwriting loss—and by then its too late for some. Time to put our tin hats on...!!



What is there to stop it from going down? Maybe not double-digit decreases but pressure will still be applied on price terms and conditions. We actually are thinking that this will continue for at least another 2-3 years.



I think reinsurance is increasingly ceding commission, which will put pressure on retail carrier bottom line.



Rates should level off as overall SCA and derivative litigation continues to increase.



Rates have come down too far too fast and needs to reflect the continued exposure of SCA frequency and severity.

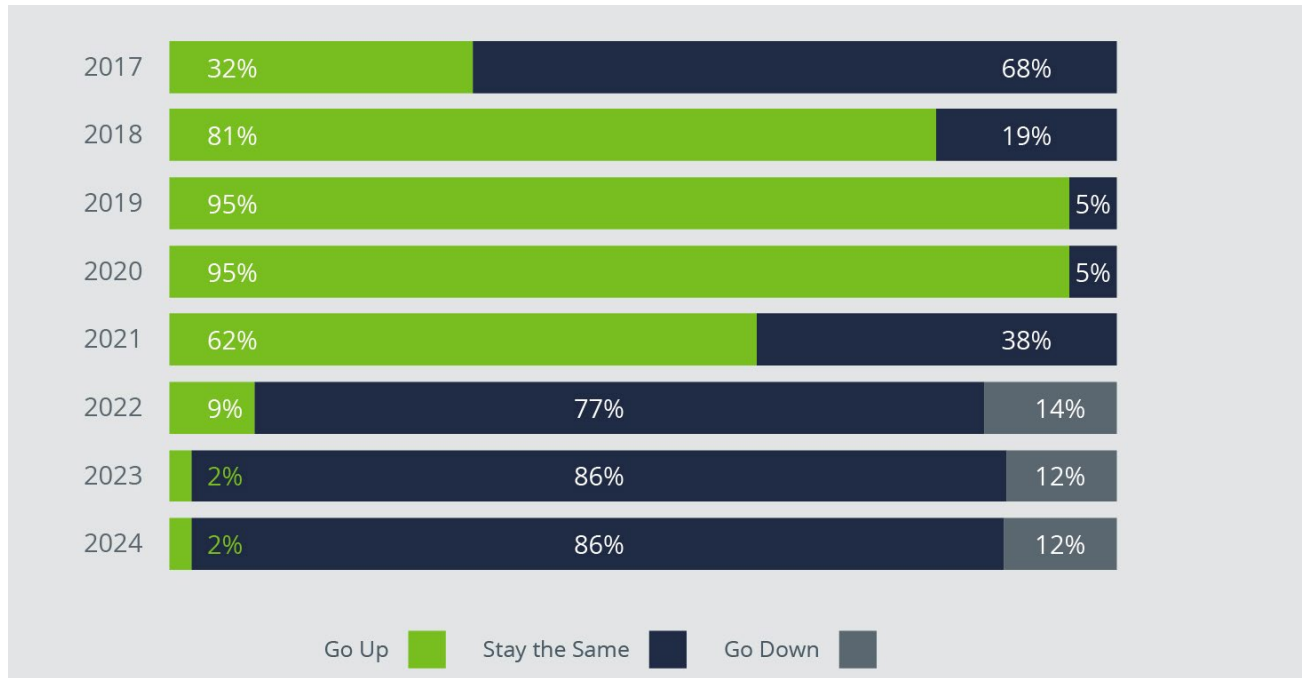


[!]f there isn't any rationality next year the market is back to 2018 rate levels, [we are] screwed. People will shut down, get fired and the market will fall apart again. It's just dumb. All of it.

Q6

Industry-wide, do you expect D&O SIRs for mature public companies to go up, stay the same, or go down?

2024 Survey Results: For the second year in a row, 98% of underwriters expect D&O self-insured retentions (SIRs) for mature public companies to stay the same or go down.



Woodruff Sawyer Commentary

The repeat of this result underscores our observation from last year: underwriters have essentially given up on attempting to increase SIRs for mature public companies. This answer forecasts continued stability for SIRs in 2025.



Underwriter Comments



While they should be going up due to the effects of social inflation, the market hasn't focused on that facet of coverage and is generally likely to remain consistent.



We expect to see continued pressure on all Terms & Conditions as well as price and retention to go down.

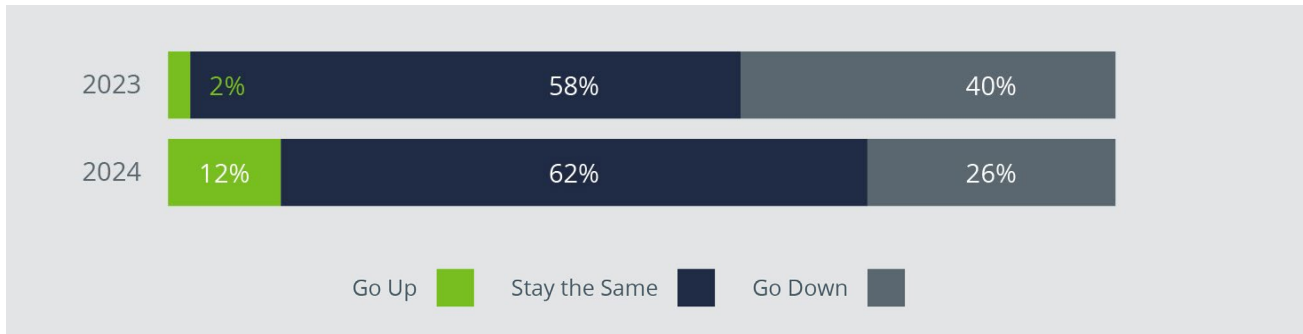


SIRs have also come down...to effectively the minimum that is rational, given the data.

Q7

Industry-wide, do you expect D&O SIRs for newly public companies to go up, stay the same, or go down?

2024 Survey Results: **26% of underwriters expect D&O SIRs for newly public companies to go down (versus 12% for mature public companies).**



Woodruff Sawyer Commentary

New public company SIRs have decreased markedly in the past couple of years. There may not be much further to go, but some additional decline still looks possible.



33 Act exposure is frequently being ignored or heavily discounted and that's reflected in the retentions of newly public companies. This is a market mistake.



Underwriter Comments



This is more hope than judgement and primary carriers are also screwed if it goes down more.



I think we're still working off the elevated retentions from the SPAC/IPO/de-SPAC craze.

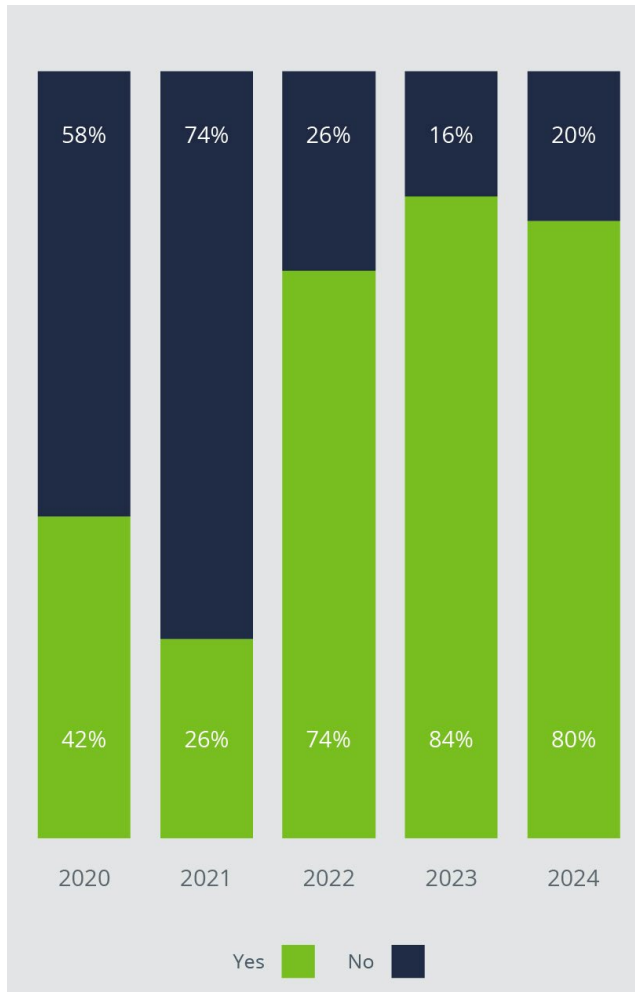


We're probably another year or two away from them actually feeling the kind of pain that will show them that the historical numbers just don't support what they're doing.

Q8

Will you quote the primary layer for most public companies?

2024 Survey Results: **80%** of underwriters will quote the primary layer of D&O insurance.



Woodruff Sawyer Commentary

A vast majority of underwriters being willing to quote the primary layer continues to be a major driver of the soft market. While down slightly from 84% last year, eight of 10 underwriters are still willing to quote the primary layer for most public companies.

Underwriter Comments

What kind of D&O market participant is unable or unwilling to quote primary deals?

We have wide industry appetite, but rates need to be adequate.

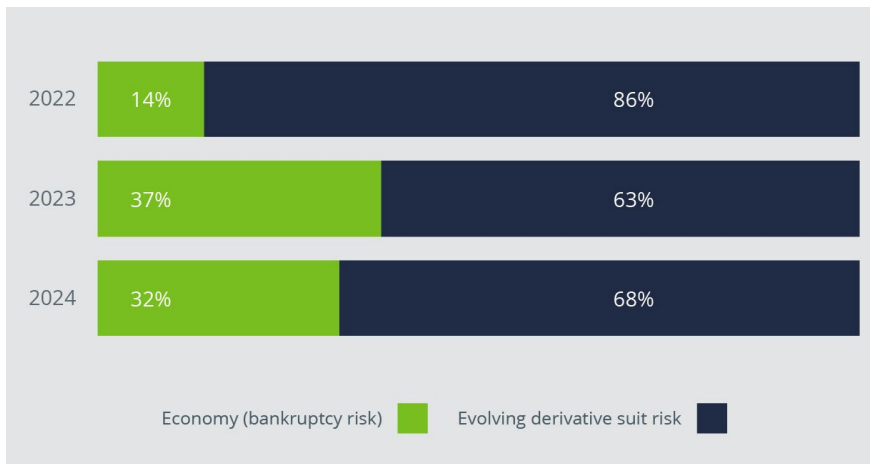
Won't necessarily quote competitively. Many brokers are just gathering quotes for the sake of gathering quotes, so now everyone has to release primary figures, though no one's actually looking to bind a primary with 85% of these quoting carriers.

Outside our underwriting strategy at this time.

Q9

As you think about quoting Side A in 2025, do you anticipate being more concerned about the economy (bankruptcy risk) or evolving derivative suit risk?

2024 Survey Results: **68% of underwriters anticipate being more concerned about evolving derivative suit risk when they think about quoting Side A in 2025.**



Woodruff Sawyer Commentary

We started asking this question out of curiosity about what is driving Side A pricing. What we are discovering is that the answer is complicated in an environment where derivative suit risk and bankruptcy risk are going up at the same time.



Underwriter Comments



While bankruptcies are increasing, it's tougher to underwrite to derivative suit risk.



While we are seeing larger derivatives being brought, there are very good proactive defenses companies can have in place.



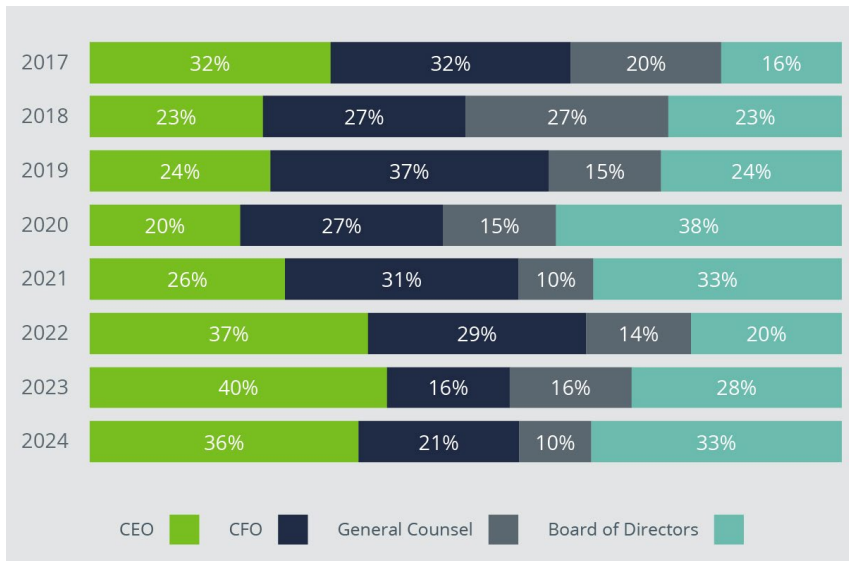
Really hard to choose between these. Ultimately, derivatives are a massive severity issue now, and I can only see Delaware law getting less favorable.



It's likely a bit of both—economic uncertainty and more BK filings, but equal weight given to derivative lawsuits [because they] continue to be a major issue.

Q10 Who is the most critical person at a company when you think about mitigating D&O risk?

2024 Survey Results: **36% of underwriters think the CEO is the most critical person at a company when they think about mitigating D&O risk.**



Woodruff Sawyer Commentary

This question turns out to be a weathervane that reflects underwriters' view of the current environment. Given underwriter concerns about derivative suits in particular, the focus on the board of directors is not a surprise.



Underwriter Comments



Tone at the top becoming more prominent, starting with CEO and board members.



They usually are the corporate secretary or close with the corporate secretary that can establish and advise the board on the proper governance procedures. They can demand long form minutes. Recommend the early formation of a Special Committee, etc.



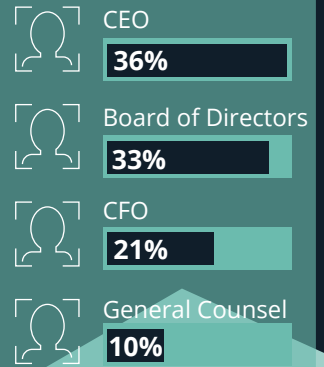
Restatements remain a material driver of settled claims, though this is the most "priced-in" risk we underwrite to. Everything else is driving the unexpected loss.



Probably the GC... The GC is also supposed to advising on when the board should expand, or contract (with head count), based on if the board is missing specific expertise or if the board has too much expertise in one area.

D&O LOOKING AHEAD 2025

Underwriters Weigh In™ Survey



36% of underwriters think the CEO is the most critical person at a company when they think about mitigating D&O risk.

AI Washing

52% of underwriters rate the likelihood of seeing a material amount of litigation and regulatory enforcement actions because of companies engaging in "AI Washing" as eight or higher.



of underwriters think that companies are not as aware of the frequency and cost of litigation as they should be.

76% of underwriters think that companies should be more worried about

Shareholder
Litigation

Government
Enforcement
Actions

Side A ↗

68% of underwriters are more concerned about evolving **derivative suit risk** when they think about quoting Side A in 2025.



80% of underwriters will quote the primary layer of D&O insurance

2025

100% of underwriters believe that D&O risk will either increase or remain the same.

D&O Premiums

88% ↓ or =

of underwriters expect D&O premiums to stay the same or go down.

Self-insured Retentions

Underwriters expect D&O SIRs to

12%

Mature public companies

26%

Newly public companies

- Derivative claims are becoming more prevalent
- Social inflation, increasing settlement dollars
- Will likely see an increased "AI-washing" exposure

Expert Insights

Susan Miner

Clark Morton

Stephen Quintana

Jane Njavro

Emily Maier

Lenin Lopez, Esq.

Walker Newell, Esq.

Priya Huskins, Esq.



4.0 Expert Insights

4.1 D&O for Companies Ready to Go Public

Q:

We've been in the queue for some time waiting for the IPO window to open. What, if anything, can be done on the D&O front?

A:

For starters, if you've dabbled in public company D&O prices in the past, it's time to look again with a fresh pricing model. Due to an oversupply of D&O capacity, premiums and retentions for IPO companies are at roughly just 25% of recent peak levels.

You might also consider taking a fresh look at your insurance limits. On the one hand, some companies are now planning to go public at a lower valuation, so perhaps they need less D&O insurance. On the other hand, many companies were deliberately under-buying when they anticipated going public while D&O insurance pricing was astronomical. These companies may now want to pivot to buying a more typical amount of insurance.

Note that with the current competitive environment, it's a good time to see if you can expand your policy terms to get more coverage as part of your private company D&O renewal. This allows you to enjoy broader coverage now while also establishing continuity for difficult coverage elements for your IPO in the future.

As a reminder, there is also a keen advantage when you carefully select your carrier partners.



Susan Miner

Senior Vice President,
Management Liability

[Read Susan's Bio >](#)

Read Now

[Guide to D&O Insurance for IPO and Direct Listing Companies](#)

Learn how to navigate the complexities of launching your program and aligning it with your IPO process.

[The Essential Guide to D&O Insurance Placement for Foreign Filers Going Public on a US Exchange](#)

Our guide details five key stages foreign filers need to know when placing D&O insurance ahead of an IPO or direct listing.

4.2 Restructuring D&O Programs

Q:

Are there opportunities to remodel my public company D&O program in light of the softer D&O market?

A:

During the D&O hard market, IPO companies and mature public companies often ended up with sub-optimal insurance programs. These programs often had extremely large [self-insured retentions \(SIRs\)](#), low limits, and an outsized amount of [Side A insurance](#) compared to [ABC insurance](#).

The more recent soft market gives insurance buyers a chance to take a strategic approach to restructuring their programs.

As a starting point, most companies have been able to secure more comprehensive coverage at lower costs, allowing them to allocate corporate dollars more efficiently and effectively. While some companies have taken advantage of the soft market to drive the greatest savings possible, many other companies have used a portion of the savings to reinvest in additional D&O limits or shift the ratio of ABC to Side A insurance back to a traditional structure. In addition, most companies can now lower their SIR significantly, which enhances balance sheet protection.

Best of all, in the current market, it's possible to re-expand contractual terms, often without paying more premium.



Clark Morton

Senior Vice President,
Management Liability

[Read Clark's Bio >](#)

4.3 The Board's Role in Cybersecurity

Q:

What's the board's role in overseeing cybersecurity risk at the company and why does it matter?

A:

Boards have a unique role in helping their organizations manage cybersecurity threats. While they don't have day-to-day management responsibility, they do have oversight and fiduciary responsibility. Boards can be held liable for cyber incidents if they fail in their oversight responsibilities, and both cyber insurance and D&O insurance play a critical role in protecting boards from the financial implications resulting from a cyberattack.

It's critical that board members ask the executive team and cybersecurity experts the right questions about how the company is protecting its critical assets from theft, loss, or destruction by way of a cyberattack. Boards should be informed regularly about cyber threats, the company's levels of cybersecurity protection, and the company's preparedness to respond when an incident occurs. Since no business can be 100% secure, it's also helpful to understand whether the company purchases an appropriate amount of cyber insurance and D&O insurance.

Board members can ensure the company is allocating adequate attention and investment to protecting against cyberattacks, and that includes a thoughtful approach to insurance protections—in addition to investment in people, processes, and technologies.



Stephen Quintana

Senior Vice President,
Cyber/E&O/Media Liability

[Read Stephen's Bio >](#)



Read Now

[Looking Ahead: Cyber Liability Insurance Concerns in 2024](#)

We share key insurance market themes that emerged throughout the past year and predictions for the following year.

[The New Hacker Playbook: Weaponizing the SEC's Cyber Disclosure Rules](#)

Hackers are now weaponizing the SEC's cyber disclosure rules. What does this mean for companies?

[Is Your Board Prepared for the Growing Risk of Ransomware Attacks?](#)

Learn some practical ways boards can approach preparing for a ransomware attack.

4.4 The Foreign Filer Market

Q:

What is happening in the foreign filer market?

A:

Unlike in prior years, the market for D&O insurance for US foreign filers is competitive, with an abundant supply of capacity. Indeed, after years of the difficult market, the foreign filer market is closer to the pricing and terms a US domestic company would see. Many insurers are willing to offer [ABC coverage](#), and an even broader group will provide [difference in conditions \(DIC\) A-side coverage](#). In other good news, the super-high [self-insured retentions](#) are now behind us. Self-insured retentions have stabilized around \$2.5 million for mid-size companies. We also see the policy coverage terms are favorable to insureds.

Having said that, claims data point to increased regulatory activity and a continued higher rate of litigation for foreign filers. In the first half of 2024, we've seen internationally headquartered companies make up 15% of securities class action filings. Lastly, the geopolitical environment remains unsettled, and the conflicts in Europe and the Middle East remain serious concerns.

Litigation rates and geopolitical concerns can be consequential. For example, we will likely see the availability of insurance capacity decline if the number of filings increases significantly—all the more reason to consider carrier stability when choosing which D&O carriers you want on your insurance program.



Jane Njavro

Senior Vice President,
Management Liability

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Read Now

The Essential Guide to D&O Insurance Placement for Foreign Filers Going Public on a US Exchange

Our guide details five key stages foreign filers need to know when placing D&O insurance ahead of an IPO.

Foreign Subsidiaries and D&O Insurance: Are You Prepared to Place?

Learn about some common reasons US-based companies place a local D&O policy in foreign jurisdictions.



Watch Now

Whiteboard Breakdowns: Why Would a Company Need a Local D&O Policy?

4.5 R&W Insurance and Slow Deal Activity

Q:

How is the reps and warranties insurance (RWI) market responding to the slowdown in deal activity?

A:

The dynamic RWI market is responding in some interesting ways. Firstly, we've seen premiums drop to historic lows not seen since 2018. In addition, for the first time ever, insurance carriers are reducing their minimum self-insured retentions. The lowest retentions used to be 1% of equity value; now 0.5% is standard. Moreover, first-dollar, zero-retention coverage is available for fundamental representations.

Secondly, carriers are branching out on what they write. The secondary market, where private equity buys positions in other private equity funds or sells portions of their own funds, was written by just a couple of markets last year—that number has now risen to half a dozen. Insurance carriers are also putting resources behind M&A-adjacent products like tax opinion policies that can be placed in the normal course of business instead of just in an M&A context. A much wider market for contingent liability is also developing, one that is again more enthusiastic about coverage outside of an M&A context.



Emily Maier

Senior Vice President,
Head of Transactional
Insurance

[Read Emily's Bio >](#)



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[M&A Looking Ahead Guide](#)

Get analysis and valuable predictions into the private equity and transactional markets.

[Guide to Reps & Warranties Insurance](#)

As R&W insurance becomes increasingly mainstream, learn more about this evolving coverage.



Watch Now

[Whiteboard Breakdowns: Parts and Dynamics of a Reps & Warranties Policy](#)

This short video explains how a reps and warranties policy is put together.

4.6 Officer Exculpation Explained

Q:

What is officer exculpation, and should my company consider adopting it?

A:

As of 2022, Delaware corporations can include in their certificates of incorporation a provision that reduces the possibility of certain senior officers facing financial monetary liability for breaches of their fiduciary duty of care. Before this amendment, Delaware law only allowed corporations to limit (i.e., exculpate) personal liability of directors for breaches of their duty of care. Knowing this, and with the understanding that officers have the [same fiduciary duties as directors](#), the plaintiffs' bar more frequently pursued a strategy of bringing duty of care claims against officers. The 2022 amendment was intended to curb this trend.

For most Delaware corporations, [extending exculpation to officers](#) is low hanging fruit when thinking of how best to lessen frivolous litigation and protect its officers. Delaware corporations must take the affirmative step of putting officer exculpation provisions in their certificates of incorporation. For private corporations, this should be a relatively easy exercise. Public companies will need to include this as a proposal in a proxy statement. We help our clients think strategically through this issue, including how this can impact a D&O insurance renewal.



Lenin Lopez, Esq.

Senior Vice President,
Management Liability

[Read Lenin's Bio >](#)

4.7 Risk Management for Venture Capital & Private Equity Firms

Q:

How should venture capital and private equity firms and other asset managers be thinking about regulatory risk and insurance as we approach 2025?

A:

In the past few years, federal agencies—most significantly, the Securities & Exchange Commission (SEC)—have pursued an aggressive regulatory agenda for asset managers. Increased rulemaking, exam, and enforcement activities have led to an increased compliance burden and higher legal risk. Regulators have adopted or proposed several significant new rules in the last year alone. The most sweeping of these—the SEC’s Private Fund Adviser Rules—were struck down by the court system. Other new regulations, however, appear to be here to stay. Notable examples include amendments to Regulation S-P (which create new incident response requirements) and proposed AML/KYC/CIP regulations for investment advisers (with exam authority delegated to the SEC). Over time, higher regulatory risks may translate into higher losses for carriers, which might in turn drive higher premiums and truncated coverage.

Today, however, ample supply and competition in the marketplace means asset managers—particularly those who run a tight compliance ship—can expect strong pricing and coverage terms. If career staff at the SEC and other agencies have their way, strong regulatory scrutiny of the asset management industry should continue apace—potentially driving costs higher in future years. If, on the other hand, 2025 brings significant changes in the government’s attitude, lower risks could drive an even more favorable insurance climate for responsible asset managers.



Walker Newell, Esq.

Vice President,
Management Liability

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**Insuring Fund Liability Risks:
A Guide to GPL Coverage for
Venture Capital and Private
Equity Firms**

Learn about the basic coverage modules within a General Partnership Liability insurance (GPL) program.



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4.8 D&O Claims

Q:

When do I need to personally pay attention to a D&O claim?

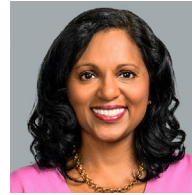
A:

As an officer or director, you will want to pay special attention if you are personally named in litigation—and this goes double if we are talking about a breach of fiduciary duty suit brought derivatively.

Derivative suits are not indemnifiable by the company you serve in most states (including Delaware, California, and New York). This makes your D&O insurance enormously important since either the insurance pays or you do personally.

Everything is fine if you have plenty of insurance—but what if you don't? If there is a lot of simultaneous litigation, it's all too easy to run up huge legal bills. In the normal course, these bills will be paid by insurance, but sometimes that may drain the limit of insurance that could otherwise have been used to pay your derivative suit settlement.

To avoid this situation, have a regular briefing on the state of litigation that includes all legal bills to date. This way, if needed, you can put a stop to depleting the insurance to pay legal bills, preserving more insurance to settle what could be an uncomfortably large derivative suit. Purchasing a robust amount of [Side A insurance](#) will also help.



**Priya Cherian
Huskins, Esq.**

Senior Vice President,
Management Liability

[Read Priya's Bio >](#)



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[Insurance Claims Best Practices: 5 Tips for a Seamless Claims Process](#)

The frequency and cost of commercial claims have increased in recent years—here's how to make the process go smoothly.

Concluding Perspective

A message from Andy Barrengos, Chairman & CEO

5.0 Concluding Perspective

A message from Andy Barrengos, Chairman & CEO

Our annual *D&O Looking Ahead Guide*, now in its 12th year, has been instrumental in keeping our clients informed about D&O risks and market trends, aiding them in navigating the evolving D&O landscape and preparing for insurance renewals in a way that takes advantage of current market opportunities. This year's *Guide* delves into numerous notable and newsworthy topics, including the continuation of the current soft market, notwithstanding the return of an increasing number of securities class action lawsuits and astronomical settlements. Understanding these trends and hot topics equips you to make informed, evidence-based decisions on risk management and insurance.

Beyond this *Guide*, Woodruff Sawyer offers a wealth of resources across risk management categories, with expertise encompassing all areas of commercial risk and insurance, including:



Management Liability



Cyber



Property & Casualty



Employee Benefits



Private Client Services

We have experts with specialized insurance knowledge, supported by recent team expansions across the firm. Every business today must safeguard against cyberattacks and other network vulnerabilities, so we've added more Cyber specialists who have extensive knowledge of incident response, privacy law, and complex cyber issues. Our D&O team continues to expand its corporate governance expertise that



Additional Resources



Whiteboard Videos

Making the Complex Simple in 3 Minutes



D&O Notebook

D&O Insurance, Corporate Governance, IPOs, Board Issues



SPAC Notebook

IPOs, Transactional Insurance, SPACs, de-SPACs,
Mergers & Acquisitions



Cyber Notebook

Cybersecurity, Market Trends, Privacy Laws and Regulations



M&A Notebook

Private Equity and M&A, Reps and Warranties Insurance, Litigation Trends



P&C Notebook

Premium and Risk Trends, Workers' Comp, Claims Volatility



Guide to D&O Insurance for IPOs and Direct Listings



Guide to D&O Insurance for Foreign IPOs and Direct Listings



Guide to D&O Insurance for SPAC IPOs



Guide to D&O Insurance for De-SPAC Transactions



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