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Expert Insights

Click the name of one of our experts below and see what advice they have for you as you plan for 2020.

Seth
Pricing

Susan
D&O Structure

Brendan
Hard Market

Emily
Reps & Warranties

Jane
International

Sean
Life Science

Dan
Cyber

Priya
Corporate Governance
1.0 D&O MARKET UPDATE
1.1 US Markets

Given the current dynamics in the directors and officers liability (D&O) insurance market, all companies are wise to review their D&O program structure and limits. With carriers seeking higher premiums and retentions in 2020, alternatives to consider may include: adjusting the ABC/Side A program mix, opting for a higher retention, introducing co-insurance to the B/C insuring agreements (which impacts the company but not individual directors and officers), or moving to a Side A-only tower. Regardless of your company’s profile, the experienced team at Woodruff Sawyer will negotiate viable alternatives tailored to your needs that can minimize the impact the D&O environment may have on your company in 2020.

The market for D&O insurance in the United States (US) is in the midst of a fundamental reset, and D&O carriers have little optimism that the current litigation environment will improve. As a result, we expect D&O premiums and retentions to continue to increase in 2020. As we accurately predicted in last year’s Looking Ahead Guide, D&O insurance rates rose throughout 2019 for the first time in a decade. Insurance carriers have tightened their underwriting approach, resulting in not only higher premiums and retentions but also reductions of total capacity offered. Carriers consistently cite the following factors to justify their current underwriting approach and D&O market appetite: (1) securities class action frequency is at an all-time high, (2) suit severity and costs have increased, making excess layers too cheap relative to risk, and (3) the US Supreme Court’s decision in Cyan, Inc. v. Beaver County Employees Retirement Fund has fueled litigation volatility for all registered offerings, especially IPOs.

While 2018 was a record-breaking year for filings and 2019 is on pace to match it, the prior two years were also high water marks. So what has changed today?

The competitive environment on the insurance carrier side has evolved. Various D&O market leaders have reported publicly unsustainable loss ratios for years. The underwriters were signaling that they were

Securities class action frequency is at an all-time high.

The likelihood of a public company being sued is now 4.6%, and that jumps to 8.4% when M&A cases are included. The litigation rate for S&P 500 companies is a staggering 9.4%.
receiving inadequate compensation for the D&O risks assumed, but new carrier entrants strove for market share and the competition kept prices down. Today, that is no longer the case. Armed with this same litigation data and, for some, painful loss experiences, the newer carriers that were once interested in winning market share by competing on the primary layer are no longer doing so. As a result, there is less capacity and less competition in the marketplace for the primary layers of D&O insurance programs, the very layer most critical to renewal pricing and retentions.

Based on the results of our 2019 Underwriters Weigh In survey, we expect to see more carriers withdrawing from the primary market in 2020.

Further, the D&O marketplace is still reeling from the US Supreme Court’s decision in Cyan and the uncertainty is increasing costs for companies that have recently done an IPO or are planning one in 2020. Cyan allows plaintiffs that allege a violation of the Securities Act of 1933 (Section 11 claim) to bring suit in both state and federal courts. The rules and predictable processes put in place since 1998, when Congress enacted the Securities Litigation Uniform Standards Act (SLUSA), are no longer being applied. As a result, suits are currently being brought in multiple jurisdictions (including in multiple state courts) and without the automatic stay of discovery found in federal court. Carriers, concerned about the costs and complexity of defending securities class actions in multiple jurisdictions and under various state and federal laws, have reacted to the uncertainty by demanding large premiums and retentions for every IPO company, regardless of the amount expected to be raised or the anticipated market capitalization. An IPO company today can expect pricing and retentions that are three to five times larger than they would have experienced pre-Cyan.
The three-year strict liability window for Section 11 claims means that even companies that had an IPO pre-Cyan are subject to this uncertainty and, as a result, will experience price and retention increases in 2020 at renewal.

With suit severity and costs increasing, insurance underwriters are saying that excess layers are also too cheap relative to the risk they are assuming. The 2018 median cash settlement of $11 million was well above the 10-year average of $7.9 million. Excess D&O layers are priced as a percentage of the underlying rate and, for years, competition for these excess layers has driven that rate-on-line lower. Over the past decade, even when the primary or first excess layers were able to achieve a rate increase, healthy capacity and competition on the excess layers helped mitigate overall price increases. Indeed, excess capacity was abundant. That dynamic changed in 2019 and we expect these conditions to persist throughout 2020 as well.

Carriers’ concerns about suit severity are not limited to securities class action suits. Carriers are also concerned about the suit severity with derivative actions, where shareholders are suing individual Ds and Os on behalf of the company. They view derivative suit severity as on the rise, having seen notable and high-profile insurance settlements (PG&E, 21st Century Fox, and Wells Fargo, to name a few) tapping into the "Side A-only" insurance. Carriers have determined that a portfolio of thinly priced excess layers with large limits and A-Side policies cannot support the number and size of recent settlements. In 2020, we anticipate carriers will continue to seek higher excess follow rates and closely manage their exposed capacity.

1.2 Self-Insured Retention Trends Are Increasing

Self-insured retentions (SIRs) are on the move again, and are unfortunately moving higher. In the trailing 12 months (through August 2019), slightly more than 40% of Woodruff Sawyer clients have seen their SEC retention increase, but mostly in small increments. In some cases, the retention increases reflect the end of many years of having a $500,000 (well below market) SIR, particularly for companies with a market capitalization under $500 million.

In 2020, most public companies will see SEC retentions in the $1 million to $2.5 million range. One of the most common shifts in the trailing 12-month period has been the move up to a $2 million SIR. For companies with market caps above $10 billion, we have seen fairly consistent carrier insistence that the SIR move to $5 million or higher. Note as well: in the trailing 12 months, very few of these increases are resulting in a significant premium savings; this will remain true in 2020.
1.3 Pricing Trends from CIAB: Rates Are Up

The Council of Insurance Agents & Brokers' Commercial Property/Casualty Market Survey reports that in the second quarter of 2019, the average D&O rate increased 4.3% over the prior quarter. Fifty-eight percent of the respondents saw rates increase in Q2, and 12% experienced a rate increase of at least 10%.
1.4 Woodruff Sawyer Client Renewal Pricing

Renewal premiums went up in 2019. Difficult market conditions continue to push both premiums and retentions higher for most renewals. Unless there is a large shift in the market, most clients should anticipate some sort of increase in premium in 2020. As always, the severity of the increase will depend on your company’s specific risk profile.

Woodruff Sawyer is helping clients meet these challenges with diverse tactics, including: adjusting the ratio of ABC to Side A on your program, introducing co-insurance, considering extended aggregates where appropriate, shifting to a Side A-only program, or even exploring indemnification trusts. Whatever your priorities, Woodruff Sawyer can help you meet your business goals.

In looking at renewal trends for our clients for this Looking Ahead Guide, we included companies of all sectors and sizes. In many cases, and unsurprisingly, in light of dynamic market conditions, the renewal program changed limits or structure. In these cases, for the purposes of this report, we adjusted the premium to reflect a common limit to better understand the pricing changes on a year-over-year basis.

For the trailing 12 months through August 2019, Woodruff Sawyer clients experienced the following:

- 4% of companies had decreased premiums
- Most decreases occurred in Q4 2018.
- Decreases ranged from 4% to 19%.
- All were companies with market capitalizations under $500 million.
- Half of the decreases involved an increase in retention and/or change of primary carrier.
12% of companies had flat renewal premiums

• Clients in the manufacturing, services, and financial services sectors dominate the renewals that came in flat.
• The vast majority of the clients in this category also had no change in their retentions.
• A few clients achieved a flat renewal by moving to a new primary carrier (i.e., would have had an increase if they had renewed with their incumbent primary carrier).

84% of companies had increased premiums

• Increases are wildly diverse, ranging from 3% to 284%.
• Smaller increases were experienced by non-tech/life science clients and mature public companies with no litigation.
• Triple-digit percentage increases hit large clients that had at least one of the following factors:
  > A triple-digit percentage increase in market capitalization
  > A recent securities class action lawsuit
• Triple-digit percentage increases still did not necessarily result in the highest premium in their class and thus also reflected an adjustment from past aggressive pricing.
• The median increase is 23%, but that is trending higher with partial data in Q3 2019.
• Eight percent of clients moved to a new primary carrier, suggesting that staying with the incumbent primary carrier would have resulted in an even greater premium increase.

We are mindful that Woodruff Sawyer's book of business differs from the overall D&O market, with over half of renewals belonging to clients in the life science and technology sectors—industries with higher-than-average litigation frequency, and thus higher-than-average pricing shifts. To be sure, market conditions for these sectors are somewhat more volatile; they also provide an effective bellwether for broader market trends and underwriter sentiment.
2.0 HOT TOPICS
2.1 Securities Class Action Lawsuits

The high frequency rate of litigation against public companies continues unabated.

In the last 10 years, through the end of 2018, the rate of securities class action suits filed against public companies has more than doubled—it is up 105%. If litigation in the second half of 2019 continues at the same rate as the first half, that percentage will jump to 151%. If suits in the second half of 2019 are filed merely at the same rate that they were for the first half, 2019 will be on track to exceed the already elevated litigation rates of 2017 and 2018.
One factor driving this increased litigation rate is the fallout from the Supreme Court's *Cyan* decision. The *Cyan* decision allows litigation over registration statements (e.g., S-1 registration statements used in IPOs and other offerings) to be filed in state courts (instead of exclusively in federal courts).

Given how lucrative these cases are for plaintiffs, even when the case itself is of relatively low quality, it's no surprise that the percentage of suits being brought in state court has increased.

In a piece of good news, however, *Cyan* hasn't particularly raised the risk profile for companies conducting follow-on offerings.

### 17 Section 11 Lawsuits Filed in the First Half of 2019

- **2018**
  - Section 11 Suits Filed in 4 States

- **2019**
  - Section 11 Suits Filed in 7 States

18% bigger share of all lawsuits compared to 2018.
2.2 Derivative Suits

Derivative suits—breach of fiduciary duty suits brought by shareholders on behalf of a company against the company’s directors and officers—are an increasing threat for directors and officers.

This is a particularly **personal threat** for directors and officers because companies cannot indemnify their directors and officers for these settlements; either insurance pays or the directors and officers have to make personal payments to settle the suit.

Event-driven derivative suits catch headlines, cause embarrassment, and lead to enormous settlements. The $240 million settlement in the Wells Fargo derivative suit is a cautionary tale.

The Wells Fargo settlement is just one of many large derivative suit settlements we've seen in recent years. Other memorable settlements include:

- PG&E: $90 million
- Yahoo: $29 million
- 20th Century Fox: $90 million
2.3 M&A Litigation

By now we are all used to seeing merger objection suits when public companies are acquired. These suits continue to be filed, although they are now happening in federal instead of state court. A ray of sunshine, however, is the decline in appraisal suits filings. Moreover, recent coverage litigation suggests that appraisal rights suits may be covered by D&O insurance policies in some circumstances.

The Supreme Court ruling in Cyan isn't just a problem for IPOs; Cyan is causing expensive headaches for mature public companies, too. Post-Cyan, public companies that register their shares to use as currency for M&A deals are being sued in state court.

We saw this trend start in 2018, and the trend will continue through the rest of 2019 and into 2020.

Just because an M&A deal closes and various merger objection suits have been settled, that doesn't mean a company is out of the woods yet. As we've noted in earlier reports, M&A integration issues are one of the leading causes of securities class action suits.

2.4 Cyber Stumbles

When it comes to the board's role in cyber-risk oversight, the pressure continues to mount as the stakes get higher and higher. Three areas of concern are fines, derivative suit settlements, and securities class action lawsuits.

In 2019, European regulators came out of the gate with a large fine against Google. Not to be outdone, the United States Federal Trade Commission approved a $5 billion fine for Facebook related to the Cambridge Analytica scandal.

As regulators continue to grapple with data breach, privacy, and other cyber-related issues, the pressure on regulators to impose ever-greater fines will not relent.

Derivative suits will also continue to be filed against directors and officers of companies that cyber stumble. The $29 million settlement by Yahoo! in 2019 was the first monetary derivative suit settlement to be paid in a data breach case. Now that plaintiffs have breached this dam, we should expect to see more cases of this type.

Business interruption losses due to cyber breaches are not new, but a securities class action lawsuit against a company related to business interruption losses due to cyber breaches is new. Long predicted by cyber liability experts like Lauri Floresca, FedEx is the unfortunate target of this type of securities class action suit. No doubt, plaintiffs will find more targets in 2020.
2.5 Foreign Filers

As a class of business, foreign filers trading in the United States historically enjoyed lower pricing for their D&O insurance than domestic filers.

In 2019, that all changed. The increasing number of lawsuits and the cost of settlements for foreign filers finally caught up with the market. The result? Dramatic increases in the cost of D&O insurance. There is no reason to expect D&O insurance prices for foreign filers to decrease in 2020.

2.6 #MeToo

2018 saw the explosion of the #MeToo Movement in corporate America—and the movement has continued to march on in 2019. Boards have had to move swiftly to address the issues.

Some corporations have been sued; others have "merely" had to deal with significant workforce disruptions—including, in one notable case, the massive and well-publicized Google walkout.

#MeToo has even had an impact in M&A. To avoid inadvertently acquiring a difficult problem, buyers are now asking for the inclusion of a "Weinstein Clause," by which they mean representations that a company does not have a #MeToo-type problem lurking beneath the surface. The representations and warranties insurance market has responded by offering coverage for this exposure.

2.7 ESG and Politics in the Boardroom

"ESG" is shorthand for environmental, social, and governance issues. As other commentators have noted, investor interest in these issues has reached a tipping point.
Boards may be ready and willing to rise to the challenge. Unfortunately, an impediment to success is the lack of consistent, industry-wide agreements on what these terms mean and how to measure them.

That does not, however, mean that boards are off the hook. A number of third parties have jumped in to offer definitions and measurement standards.

Boards in 2020 will need to refine (and for some, select for the first time) the working definitions and measurable goals they have selected for their companies—and to then be clear in their disclosures about these choices.

In addition, boards will want to stay in front of political issues that may impact their companies, whether due to a consumer campaign or as a result of employee activism.

2.8 Government Investigations and Prosecutions

Like the ocean, it’s never a good idea to turn your back on the government. Directors and officers must always be vigilant when it comes to legal compliance. For example, the Foreign Corrupt Practices Act (FCPA) is a perennial favorite of regulators, and the Securities and Exchange Commission’s whistleblower program shows no sign of easing up.

Everyone thinks they understand insider trading rules, and as a result, can sometimes become a little casual about them. The SEC and the US Department of Justice (DOJ) continue to bring insider trading cases, showing that it doesn't pay to joke around about these matters.

2.9 Ways to Reduce Your D&O Insurance Premiums

The difficult D&O insurance litigation environment is one of many reasons we are seeing the D&O insurance market reset pricing. Companies are using this as an opportunity to re-examine their D&O insurance purchase decisions.

In 2020, we expect companies to continue to examine the data driving their purchase decisions. In some cases, companies will elect to retain their traditional programs. In other cases, we will see a radical restructuring of D&O insurance programs.
3.0 UNDERWRITERS WEIGH IN
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 our Looking Ahead Guide, we surveyed 34 insurance carriers with which we place D&O insurance around the world. We asked questions regarding the current risk environment, risk appetite, and future pricing expectations.

Our survey includes responses from top D&O carriers including: AIG, AXA XL, Chubb, Lloyd's, Tokio Marine HCC, Old Republic, and Great American.
Is D&O risk going up?

The three years of data increasingly reflect the escalating negative sentiment of D&O underwriters. We remind our readers that the 2019 response is on top of already very negative sentiment from 2017 and 2018. D&O underwriters are not optimistic about the prospects for an improving litigation environment.
Are companies as aware as they should be about the risk and cost of D&O litigation?

Underwriter responses to this question may reflect the reactions of clients that saw significant premium increases in 2019. Many clients are surprised by the amount of premium and SIR increases, something insurance underwriters are hearing loudly and clearly.

2019 SURVEY RESULTS

<table>
<thead>
<tr>
<th>Year</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>2017</td>
<td>32%</td>
<td>68%</td>
</tr>
<tr>
<td>2018</td>
<td>31%</td>
<td>69%</td>
</tr>
<tr>
<td>2019</td>
<td>16%</td>
<td>84%</td>
</tr>
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</table>

84% of underwriters think that companies are not as aware of the risk and cost of litigation as they should be.
Industry-wide, do you expect D&O insurance premium rates for mature public companies to go up, stay the same, or go down?

This is a dramatic change compared to 2018 and is consistent with the underwriters’ increasingly negative view over the past three years. This response is also consistent with Woodruff Sawyer’s view that the litigation environment has had a fundamental reset.

2019 SURVEY RESULTS

<table>
<thead>
<tr>
<th>Go Up</th>
<th>Stay the Same</th>
<th>Go Down</th>
</tr>
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<tbody>
<tr>
<td>28%</td>
<td>20% 48%</td>
<td>0% 24% 0%</td>
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97% of underwriters expect D&O premiums to go up.
Industry-wide, do you expect D&O self-insured retentions for mature public companies to go up, stay the same, or go down?

This answer reflects what we are seeing in the market: underwriters are largely unwilling to offer the low SIRs of 2016 and 2017. Underwriters are insisting on higher SIRs and will not let clients buy down this amount with higher premiums as could often be done in 2018. For some lower market cap companies, these higher retentions may mean that it makes sense to reduce the total limit they are purchasing.
Will you quote the primary layer for most public companies?

The D&O insurance market dynamics in 2019 were especially difficult because of the continuing loss of underwriters willing to quote the primary layer. Based on these responses, we expect to see more primary underwriters withdraw from the market. A leading indicator that the market is about to soften will be when more underwriters provide a “yes” response to this survey question.
**Q6**  
Will you quote excess layers for most public companies?

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<tr>
<th>Year</th>
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<th>No</th>
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<tr>
<td>2017</td>
<td>92%</td>
<td>8%</td>
</tr>
<tr>
<td>2018</td>
<td>92%</td>
<td>8%</td>
</tr>
<tr>
<td>2019</td>
<td>92%</td>
<td>8%</td>
</tr>
</tbody>
</table>

It is no surprise that underwriters are saying “yes” to quoting excess layers. After all, they actually have to stay in business. As always, this question has no pricing parameters. Given the rate at which excess layer pricing has increased, it’s not unexpected that most underwriters are willing to write excess layers.
Will you quote stand-alone Side A insurance for most public companies, assuming a stable balance sheet?

The economy has been good; as a result, it’s not surprising that underwriters are willing to write the part of a D&O insurance program that is most likely to respond in the case of bankruptcy. We know that pricing for Side A is going up, and expect that underwriters will continue to offer quotes for this part of D&O programs.
Is the governmental regulatory environment getting more or less difficult for public companies and their Ds and Os?

While there is not consensus, it is clear that a majority of D&O insurance underwriters do not see the current regulatory environment as getting easier and less expensive when it comes to risk.

65% of underwriters say the environment is becoming more difficult.
Who is the most critical person at a company when you think about mitigating D&O risk?

No dramatic swings here, although we observe that underwriters continue to be very focused on the CFO. This is consistent with the fact that it’s often people in the finance department who meet with D&O underwriters. To the extent a company has a strong and seasoned general counsel, including this person in underwriting meetings may be an opportunity to influence underwriters’ views of a company’s risk profile more positively.
4.0 EXPERT INSIGHTS
4.1 Pricing

Q. Is there any class of D&O insurance that will see price decreases in 2020?

A. Unfortunately, most everyone is seeing a price increase in the current market, and I expect that this will persist into 2020. Even companies whose risk profile significantly changes for the better—for example by spinning off a troubled part of their business—are likely to see a premium increase in 2020. For this reason, all companies should engage in a robust underwriting process at the time of renewal so that your company can develop any available competitive options as a way to drive down overall cost. This is at least a way to mitigate what might otherwise be a greater-than-necessary cost increase.
4.2 Alternatives to Traditional D&O Program Structures

Q. What tools do we have to help navigate this volatile D&O market?

A. 2020 is a year to customize your renewal and, in particular, identify how much risk transfer is right for your organization. The top priority is always protecting individual directors and officers with an appropriate amount of Side A insurance, but how much balance sheet protection is warranted based on the escalating costs of B/C-Side coverage? In terms of structure, there are creative ways to rebalance and in some cases introduce concepts like higher retentions, coinsurance, or quota shares. In certain cases, a multi-year structure might even make sense.
4.3 Navigating a Hard D&O Insurance Market

Q. How do I ensure that I am using best practices to effectively navigate the current hard market?

A. It is critical to take a systematic and disciplined approach to the process. First and foremost, start the renewal process early. Given the current hard market, an initial pre-renewal strategy meeting should take place at least four months prior to the renewal effective date.

Consider having D&O insurer meetings at a client’s corporate headquarters. Take your key D&O underwriters on a tour, show them your products, and have the CEO and even other executives stop in for a few minutes just to say hello. In my previous life as a D&O underwriter, that was always a very important (and often overlooked) part of understanding the DNA and personality of the company. That personal dynamic is lost if there is no forum for direct communication with your underwriters and if you meet at a location other than the corporate headquarters.

Finally, make sure to articulate strong corporate governance to the D&O insurers. While financial information is readily accessible to D&O insurers via SEC filings and earnings transcripts, D&O carriers have no independent insight into a company's adherence to strong corporate governance principles. Strong corporate governance is a critical component of a company's D&O risk mitigation strategy profile. D&O insurers often reward a company’s improved risk profile with broader terms and conditions and lower pricing.

Brendan Williams
Senior Vice President, Southern California Practice Leader

READ BRENDAN’S BIO >
4.4 Reps & Warranties

Q. What can we expect when it comes to Reps & Warranties insurance?

A. We have seen two main ways the use of Reps & Warranties insurance has broadened out:

1. **Use by strategic acquirers continues to gain steam.** Our large and strategic technology acquirers are now on their third and fourth policies. This trend will continue for the same reason it gained steam so quickly in the private equity market: Reps policies streamline the deal process and cut down on friction during negotiation.

2. **Reps policies continue to be increasingly used for smaller deals.** Most of the insurance carriers are now willing to consider writing policies for smaller deals. We are seeing policies as small as $5 million in limit being priced efficiently—though it remains the case that reps policies probably make the most sense for bigger deals.

A long-standing belief had been that it’s better to have an escrow than insurance, especially if you can get a large escrow. We are now seeing an evolution in this thinking. While it is "easier" to target an escrow because it’s available cash, the types of Reps & Warranties given and the very heavily negotiated indemnity language can actually make it harder to utilize than a buyer imagines. On the other hand, once Reps & Warranties insurance is introduced into the process, the representations and warranties given are often more buyer-friendly and the indemnification package much less heavily contested.
4.5 International

Q. Why are D&O premiums increasing so dramatically for US foreign filers?

A. Insurers are increasing rates significantly as a reaction to:
- Increased frequency of securities class action suits generally
- Claims arising from new sources (event-driven derivative suits like #MeToo and increased litigation in US state courts)
- Rising defense costs
- Larger settlement values
- Insurers' decision to strengthen reserves for existing claims

Q: What can a foreign filer do to optimize the D&O insurance renewal process?

A: We strongly recommend that senior management engage in the underwriting process. Meeting the insurers in person and cultivating new relationships with alternate insurers can help create competition and differentiate the company. The market will set the price, but having more insurers be part of the discussion can help secure capacity and create options. Companies with strong balance sheets are considering if this is the year to transition to less balance sheet protection in favor of more capacity devoted to Side A DIC insurance.
**4.6 Life Science Companies**

**Q. Why is the D&O market for life science IPO companies so challenging compared to prior years?**

**A.** Life sciences companies that are contemplating an IPO are facing a market that is materially different from years past. Premiums and retentions for life science IPOs have significantly increased since mid-2018 following the US Supreme Court decision in *Cyan*. The specter of increased state court litigation for Section 11 claims has had a chilling impact on the public D&O markets. Insurance carriers anticipate, and have already begun to see, increased expenses associated with defense costs in state court.

In addition to the increased exposure related to state court litigation, life science IPOs are notoriously volatile due to the binary nature of data read out. The result is drastic increases in premium and retention for biotech IPOs. The life science community tends to see many serial CFOs who have taken part in IPOs in the past. These CFOs often expect D&O insurance pricing and retentions to be similar to what they experienced in the past. The dynamic nature of today’s market often requires dramatic re-education for many current insurance buyers.
4.7 Cyber

Q. What can boards of directors do when it comes to fulfilling their fiduciary duties with respect to cyber security?

A. There is no question that boards are increasingly being asked to include cyber security within their oversight responsibilities. The SEC, via their interpretive guidance issued in 2018, has said that companies should have proper procedures in place to inform investors of cyber security risks and incidents in a timely manner. This guidance is not very specific, and most companies will want to be more prepared.

We recommend companies focus their cyber security oversight efforts in three ways. First, create appropriate policies and procedures to respond to a cyber security incident, both from a technical and communication perspective. Second, identify a cyber security framework that can serve as a platform from which to have substantive discussion with the board on cyber security preparedness issues. Third, quantify potential loss scenarios and look to mitigate the financial impact through dedicated cyber insurance.
4.8 Corporate Governance

Q. Other than loading up on expensive D&O insurance, what can boards do to mitigate their risk of D&O litigation?

A. Corporate governance has never been more important for a board when it comes to D&O litigation and risk management. Smart boards are doing more than ever when it comes to member education. They are either attending events put on by universities or others or they are asking their advisors to come into the boardroom to brief them on how to avoid being the next Wells Fargo, Yahoo!, or Wynn Resorts-style cautionary tale, splashed across the pages of the Wall Street Journal. Boards are also looking for guidance on what the next set of scandals might be. With investors increasingly newly focused on ESG (environmental, social, and governance) issues, the increasing politicization of corporate America, and the 2020 presidential election around the corner, boards have a lot of landmines that can be identified and ideally avoided.
5.0 CONCLUDING PERSPECTIVE
A MESSAGE FROM

Carolyn Polikoff
National Commercial Lines Practice Leader

This year's D&O Looking Ahead Guide offers a look forward at a time when having a trusted broker on your side is more essential than ever. Due to the increased frequency and severity of security class action suits and other factors described in this Guide, the public D&O landscape has been deteriorating in the eyes of carriers for several years. Most carriers haven’t been seeing profits through D&O underwriting for years and dismal investment income hasn’t given them much room for error in pricing business. As a result, they are turning to premium increases to recoup their losses—causing dramatic changes for the D&O landscape in recent months.

It's notable that, in last year's Looking Ahead Guide, we asked carriers about their predictions for 2019. The responding underwriters signaled moves in the market that have come to fruition. These changes are now resulting in significant premium increases and upward adjustments on retentions.

Experienced brokers know this: the insurance industry is cyclical, and typically runs independently of other business cycles. Hard markets usually don't last for long, but that doesn't make being in one in any way less painful for insureds.

Woodruff Sawyer has successfully navigated insurance cycles for our clients for 100 years. We have been here before, which makes us well-positioned to help clients through this difficult cycle. Our teams are exceptionally good at looking for ways to innovate existing solutions in the face of change, solving complex issues for our clients in all types of markets. We employ various cost-mitigation strategies in markets like the one we currently find ourselves in, exploring alternate program structures like adding co-insurance, replacing ABC with Side A DIC, moving to a Side A-only program, and more.

Especially in hard markets, leveraging a systematic, focused approach to each renewal is crucial. It's in times like these that our steadfast commitment to achieving the best results for our clients—being a champion for our clients' success—ensures that they continue to feel protected, supported, and able to focus on growing their business.
Additional Resources

D&O Notebook >
Cyber Insights >
M&A Insights >
P&C Insights >
DataBox >
Woodruff Sawyer Events >
About Woodruff Sawyer

As one of the largest insurance brokerage and consulting firms in the US, Woodruff Sawyer protects the people and assets of more than 4,000 companies. We provide expert counsel and fierce advocacy to protect clients against their most critical risks in property & casualty, management liability, cyber liability, employee benefits, and personal wealth management. An active partner of Assurex Global and International Benefits Network, we provide expertise and customized solutions to insure innovation where clients need it, with headquarters in San Francisco, offices throughout the US, and global reach on six continents.

If you have any questions or comments regarding the Looking Ahead Guide, please contact your Woodruff Sawyer Account Executive or email us at: LookingAhead@woodruffsawyer.com.

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