

Editorial

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D&O Claims? OK, Don't Tell Us...We Just Love To Be Kept In The Dark

We believe that an informed insured is a better insured...that insureds ultimately learn from their mistakes...as "mistakes" may be defined as claims to which potential monetary value has been assigned.

Therefore, we view with considerable dismay the idea that Directors & Officers liability insurance underwriters do not, as a rule, release claim reserve information to their insureds. We think this is wrong. We think is counter-productive. We know of no other example in the property and casualty insurance business where an insured is denied access to information about case reserve activity for liability claims by the underwriter reserving those claims.

The argument that D&O underwriters like to make is that all case reserve activity on their loss run is proprietary information. We find this hard to swallow. We come from the old school. In the old school we had a few rules, and we think they bear repeating:

1. Where there is privity of contract between an insured and an insurer, it is in everyone's interest to cooperate with as much information as possible.
2. The way you get an insured's attention is when his or her wallet has been impacted, or is about to be...everything changes when pain in the wallet occurs: risk management awareness is heightened, claims adjustment and defense issues take on new meaning, people start paying attention.
3. Insurers do not withhold valuable information from insureds. The potential value of a claim is valuable information, as it assists in the preplanning of deductible and/or retention expense and helps the insured understand the impact that this class of claims may be having on his business. To deprive the insured of information which can improve business operations is just dead wrong and contrary to the fundamental principles of insurance underwriting.



What's the sense of having a website if you can't write your own editorial?

4. There are two areas of potential claim activity that may involve significant reputational risk for an insured. The first is in the area of professional liability. For a health care providers, for example, very few items can damage a reputation more than a significant, well-publicized professional liability loss. In the world at large, D&O liability reigns supreme as the single biggest reputational risk issue. What will make the papers fast is when your board of directors has been sued...and in particular...for what reason they are being sued. In enterprise risk management...the first rule is to protect assets...of which "goodwill" and the loss thereof creates reputational risk.



**Insured to D&O Underwriter,
"Gee...I just asked for a little
claims information!"**

There are only a handful of D&O underwriters in the United States. Of that handful, certain companies like AIG and Chubb dominate portions of the middle market for D&O coverage. It would appear that the idea of not releasing case reserve financial information to insureds is an idea universally accepted by the industry. It makes you sort of wonder why this is so. I can think of no other example, anywhere in the property and casualty insurance industry of where all underwriters seem to take a similar position on the single issue related to the release of case reserve information.

Where privity of contract exists, confidentiality agreements should be easy to enforce. So how come...even when the idea of a confidentiality agreement is proffered...D&O underwriters still won't help their insureds understand the risk management and financial implications of their actions?

If I didn't know better...I would think that an industry-wide position on this issue might just cause, how shall we say it, a little problem with what used to make insurers quake in their boots...which is a potential violation of the McCarron-Ferguson Act.

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**D&O Underwriter to Insured,
"You want claims information?
Take *THAT*, sucker!"**

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