

Market Outlook

Provided to you by Brady, Chapman, Holland & Associates

2022 Directors and Officers Liability Insurance

Over the past few years, there has been a shift in the directors and officers (D&O) market, with double-digit rate increases and lowered capacity becoming the norm for most businesses. Looking forward, the D&O market is anticipated to continue to be challenging for many insureds. In these market conditions, it's predicted that many businesses will experience rate increases, fewer markets, lower available limits, more robust underwriting and higher retentions during 2022. Yet, the pace of these rate increases appears to be decelerating for 2022 renewals relative to 2021.

Developments and Trends to Watch

- **COVID-19 concerns** —The COVID-19 pandemic initially forced many organizations to make adjustments to their workplaces. While the nation's economy largely reopened in 2021, recurring hot spots of COVID-19 infections and new coronavirus variants have caused many organizations to keep making changes—such as adopting back-to-work plans and implementing COVID-19 vaccine mandates. As such, senior leadership teams have faced scrutiny based on their pandemic responses, leading to allegations of mismanagement, increased litigation and related D&O claims. According to industry experts, these D&O claims are expected to press on into 2022, while current claims may take years to resolve.
- **Cybersecurity struggles** — Cyberattacks continue to increase in both cost and frequency. When cyberattacks occur—whether it's a data breach, ransomware incident or phishing scam—their costly consequences can often lead to D&O claims since the decisions made by directors and officers are often intensely scrutinized following a cyberattack. Potential D&O losses can arise from allegations such as directors and officers failing to take reasonable steps to protect stakeholders' personal or financial information, implement controls to detect and prevent a cyberattack, and report the incident or notify the appropriate parties.
- **Environmental, social and governance (ESG) topics** — ESG activism has made a noticeable impact on the D&O market. Specifically, extreme weather events have contributed to a surge in climate change litigation, much of which alleges companies and their boards of directors have failed to adequately disclose the material risks of climate change. In addition, greenwashing—a deceptive marketing practice in which companies produce misleading information to trick consumers into believing their products, services or mission have more of a positive impact on the environment than is accurate—has become a rising issue. As stakeholders and investors take more legal action in this area, greenwashing could become the subject of future litigation. Conversations about management compensation and pay transparency are also gaining prominence as more companies link executive incentives to ESG-related metrics. However, linking ESG and pay may not be practical since there is no clear guidance on a “good” ESG performance measure.

| 2022 Price Prediction

Private/nonprofit entities:

+5% to 35%

Public Companies:

+5% to 25%

| Tips for Insurance Buyers

- Work with your insurance broker to educate yourself on key market changes affecting your rates and how to respond using loss control measures.
- Examine your D&O program structure and limits alongside your insurance professionals to ensure they are appropriate and take market conditions and trends into account.
- Work closely with senior leadership to identify any ongoing risks that may arise from the pandemic and determine a course of action that prioritizes the needs of your stakeholders.
- Ensure your senior leaders follow safe financial practices (e.g., timely payments, educated investments, accurate documentation and reasonable reimbursement procedures).
- Be sure your senior leadership team is actively involved in monitoring workplace cybersecurity threats.

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