

# Protecting Your Clients Against Management Liability, Professional Liability/E&O and Cyber Liability Exposures During the Economic Fallout From the Covid-19 Pandemic

During challenging economic times such as these, your clients understandably will be under significant pressure to reduce operational costs, including insurance costs. Faced with such pressures, many of your clients may ask you to consider taking certain drastic steps regarding lines of insurance coverage that Socius regularly places for these clients, such as canceling policies mid-term, non-renewing policies, reducing coverage limits, or choosing lower-priced alternatives that provide inferior coverage. Other clients might decide to forgo altogether adding new lines or limits of coverage that you recommend.

Our overriding goal during challenging economic times is to help your clients keep in place the best insurance coverage possible. In fact, maintaining optimal levels of insurance that we place for you is perhaps more vital than ever for protecting your clients' financial viability during tough times, because your clients face many continuing or increased risk exposures and therefore need to transfer their risks as economically and efficiently as possible through insurance. Examples:

## Directors & Officers Liability

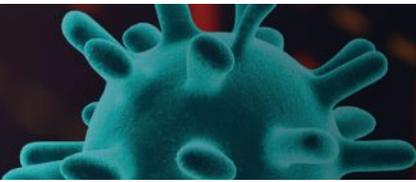
- Shareholder claims against management and the Board due to operational decision they make—up to and including cessation of operations—in response to economic challenges.
- Claims by creditors against management and the Board if the entity is insolvent or files for bankruptcy or receivership.
- Claims by shareholders, or the entity on the other side, in M&A transactions.
- Management's exposures to actions by tax and other regulatory authorities when ceasing operations.
- For publicly traded clients, recent record-level securities litigation frequency trends have continued in 2020, and now public companies face additional exposure to claims related to the pandemic's economic fallout—adverse financial results, falling stock prices, public disclosures and guidance, etc.

## Employment Practices Liability

- Employee wrongful termination claims and regulatory proceedings arising from layoffs and furloughs, and discrimination claims and regulatory proceedings arising from the later hiring/rehiring of employees.
- Retaliation claims by employees voicing concerns about Covid-19 exposure at work.
- Breach of employment agreements due to terminations or reductions in pay.
- Heightened Wage & Hour claims by employees as employers change work schedules or have employees work remotely.

## Fiduciary Liability

- Claims by employees against 401(k) administrators for their investment options and advice before and after the stock market fall caused by the pandemic, and/or for failure to execute employees' investment decisions in a timely fashion in the current volatile stock market.
- Claims by employees against members of management for mismanaging other benefits programs.



## Professional Liability/Errors & Omissions

- Notwithstanding a struggling economy, provisions in many customer/client contracts still require companies to carry specified minimum levels of E&O insurance. Most healthcare organizations and practitioners are required to carry specified levels of professional liability coverage in order to maintain their licenses.
- Claims against professionals—attorneys, accountants, financial advisers, etc.—by their clients arising from services related to helping those clients navigate through difficult times. Malpractice claims against law firms nearly doubled from previous years' averages as the economic crisis of 2008-2009 kicked off the Great Recession.
- Claims against companies providing pandemic-related services—e.g., intensive cleaning, IT services for companies increasing their online sales presence or allowing employees to work remotely, etc.

## Cyber Liability

- Hackers and cyber criminals do not rest during economic downturns—numerous recent news articles suggest that they have stepped up their attacks on companies as management and employees are distracted by the pandemic and economic conditions.
- Companies face heightened cyber exposures as employees access networks using their own computer equipment while working remotely.

## A Final Cautionary Note about Claims-Reporting

All of the lines of insurance described above are “claims-made”, i.e., they require that all claims occurring during the policy period be reported to the carrier as soon as practicable after your clients become aware of the claim, but no later than either the end of the policy period or, in many cases, the end of a short post-expiration window of time. Further complicating the situation, these policies also give your clients the ability to report “potential claims” prior to the end of the policy period.

Navigating the claims-reporting process under claims-made policies can be complex and tricky even during normal economic times, since what constitutes a “claim” is often broadly defined, and some of your clients might therefore not always be aware that a “claim” has even occurred. However, the timely reporting of claims becomes even more critical when adverse economic circumstances compel your clients to make insurance decisions that result in terminating or altering coverage (e.g., canceling or non-renewing policies, reducing coverage limits or changing retentions, ceasing coverage when acquired, etc.), or that result in changing carriers.

As always, Socius stands ready to help you and your clients understand and comply with the claims-reporting requirements of claims-made policies, and to help your clients secure additional time in which to report claims through the purchase of extended-reporting-period or run-off coverage options, if available. Never hesitate to consult with your Socius representative regarding your clients' claims or claims questions.

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[SociusInsurance.com](http://SociusInsurance.com)

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San Francisco, Walnut Creek, Los Angeles, CA; Elgin, Chicago, IL; Birmingham, AL;  
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