

## What The Heck Is Going On With D&O Rates?

By: Eric Shapiro - Regional President

***If you have been paying any attention to management liability insurance, you have probably noticed that rates are increasing more quickly and consistently than we have seen in years. And while commercial rates are up across the board, management liability & professional lines, along with umbrella rates have seen the biggest rate increases in 2020. Cyber appears to be the next area poised for rate increases in 2021. And it is not just D&O, but other management liability lines, such as EPL, that are being affected.***

### **EPL**

2020, will be remembered for the year that ushered in a global pandemic that changed the way we work, socialize, and think about how we interact in the world. In the insurance industry, it will also be remembered for its effect on how insurance carriers adjusted their rates as well as terms and conditions associated with D&O and EPL. Several trends are contributing to this. Discrimination is becoming a focus on two fronts: there is a very real expectation in the market that furloughs, terminations, and the subsequent re-hiring process, due to the COVID-19 pandemic, will create an onslaught of wrongful termination and re-hiring discrimination claims. Also, the social unrest sparked by multiple incidents such as the George Floyd and Breonna Taylor murders, have shown a light on increased scrutiny regarding issues of racial discrimination. [Business Insurance](#) reports experts are warning of a possible increase in D&O claims related to discrimination and a lack of diversity at the board level for many companies.

And as if employers did not have enough to deal with regarding COVID-19, the U.S. government signed a number of coronavirus stimulus bills into law in 2020, including the Families First Coronavirus Response Act (FFCRA). This bill broadens employee rights and benefits to include expanded reasons for leave, increased entitlements, reduced length of tenure for leave eligibility, and enhanced unemployment insurance coverage. Under FFCRA, private employers with less than 500 employees are required to provide Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA) to their employees under certain circumstances relating to COVID-19. Employers who fail to acknowledge and comply with the new laws could easily find themselves embroiled in a costly EPL claim.

### **D&O**

To be fair, the upward swing of D&O rates started before the pandemic, but COVID-19 has certainly exacerbated the rise. And what distinguishes D&O liability insurance from other coverages concerning COVID-19, is the expansive range of claims that may emerge. According to [Property Casualty 360](#), the D&O lawsuits related to COVID-19 are varied. They range from companies' inadequate health and safety precautions to prevent the spread of the virus, to failing to inform shareholders of, and even downplaying the significant impact of COVID-19 on business, to false and misleading claims by companies about their ability to provide goods or services related to the pandemic. Mismanagement claims can arise if a company fails to comply with employment-related rules and regulations, bleeding from EPL into D&O. Management liability has become a minefield that astute agents and brokers need to pay close attention to.

## Cybersecurity

Cyber is yet another coverage that has seen premium/rate increases as well as heightened scrutiny in the underwriting process by insurance carriers offering this coverage. Cyber attacks have increased during COVID-19 crisis as malicious actors have exploited network vulnerabilities resulting from remote work environments. According to [Insights by Jones Day](#), there has been a dramatic increase reported in two types of cyberattacks during the COVID-19 crisis: (i) ransomware attacks where hackers use malware to encrypt a company's data, then demand a cryptocurrency payment to provide decryption keys, and (ii) fraudulent transfer schemes, where hackers send forged emails to targeted employees to induce them to transfer funds to offshore accounts. [ZDNet](#) reported a 715% increase in ransomware attacks in 2020. Not only are there substantially more ransomware demands, but the severity of those demands has increased tremendously. And according to [Risk Management](#), cyber liability has also become a significant D&O concern. Although standalone cyber may cover some risks, D&O insurance may also be needed when shareholders and regulators file lawsuits over cyber incidents.

## Excess Layers

An additional issue that is exacerbating the market is that excess rates-on-line are going up even more so than primary rates. Typically, excess limits are priced as a percentage of the underlying policy. In prior years, those rates could have been as low as 50% to 60% of the layer below. Now excess rates are averaging 75% to 80% of the layer below. So not only are excess players getting increases based on the primary premium increasing, they are also enjoying higher increases due to the higher rates-on-line.

## The Bottom Line

It is getting harder and more expensive to obtain D&O, EPLI, and Cyber coverage. In addition to rising prices, coverage may also become more restricted. [Property Casualty 360](#) warns that more COVID-19 exclusions are being added and will continue to be added to new and existing policies. Exclusions vary greatly and need to be thoroughly vetted by agents and brokers. The underwriting process has become more arduous with many carriers requiring supplemental COVID questionnaires. And finally, getting affordable excess coverage as carriers decrease existing limits offered is also becoming more difficult.

The above trends will likely impact all policyholders. So:

- Policyholders should brace for continued rate increases, increased deductibles, and policy restrictions.
- Agents, brokers, and their clients must work together to evaluate and find suitable coverage.
- Risk Management is essential.

***Please contact your Socius producer to discuss available coverage solutions.***



**Eric Shapiro**  
*Regional President*

email: [eshapiro@sociusinsurance.com](mailto:eshapiro@sociusinsurance.com)  
direct: (813) 281 4401

**833-476-2487**  
**[SociusInsurance.com](https://www.sociusinsurance.com)**

## OFFICE LOCATIONS

San Francisco, Walnut Creek, Los Angeles, CA; Elgin, Chicago, IL; Birmingham, AL;  
Miami Beach and Tampa FL; Philadelphia, PA; and New York, NY.



License# 0D6077