

THE US: AN INSURABLE FUTURE?

D&O, EPL, Fiduciary & Pollution
Liability

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Directors & Officers

- 1990's saw wider coverage, yet premiums decreased
- Late '90's irrational equity expectations & unprecedented level of corporate fraud
- Now average D&O SEC class action suit is \$30m with many rising over \$100m -
 - Cendant \$2.83b & Lucent \$600m + many more
- In addition to severity, frequency is also increasing

Directors and Officers

- Suits from financial restatements not slowing down - Ave. 330 per year
- Sarbanes Oxley not helping
- Plaintiffs bar prepared for more of the same
- Some Reinsurers starting to pull back
- Average defendants capitalization - \$530m
- Private, non profits, trusts & partnerships - all have seen increase in claims freq and severity

Employment Practices Liability

- Cover for
 - Sexual Harassment
 - Wrongful Termination
 - Discrimination
 - Retaliation
- Frequency and severity up
- Class actions becoming the norm
- Firms with brand recognition are targets

Employment Practices Liability

- High level of punitive damages
- Defense costs high
- High level of public publicity
- Current issues
 - Outsourcing, working women with children, ageing workforce, poor economy, higher jobless rate.

Fiduciary Liability

- Cover
 - Mismanagement of employees' pension plans - poor investment of funds as well as advice to employees
 - Providing interpretation of those plans
 - Handling records or admin of enrollment
 - Termination or cancellation of employees under the plan
- All new rules for what was a sleepy cover
- ERISA calls for Fiduciaries to be **proactive**

Fiduciary Liability

- They are managing the employees' funds.
NOT THE COMPANIES!
- Average loss at an all time high
- Most frequent claim is Employee Benefit Plans
- Companies with mergers, acquisitions or divestiture twice as likely to have a claim regarding Employee Benefit Plans
- Current issue: Tag along suits from stock drop

Pollution Liability

- CERCLA & Love Canal changed everything
- 1238 Superfund sites today initially 200
- Still not widely purchased - Most purchases are based on 3rd party requests - RCRA, regulations or investors
- 10 year ago EPA focus on Land fills & Heavy industry...today smaller companies producing hazardous materials. Dry cleaner TCE pollution a major problem.
- Variety of chemicals today greater than in the past

Pollution Liability

- More Environmental Awareness, yes in the US!
- Better techniques to discover pollution
- Higher anger levels when it happens
- This is regulated more than any other area in the US
- It is regulated Federally but administered locally at the State level
- Pollution has become a main stream BOARD LEVEL management issue

The Future of Them All

- Common Elements: Personal Behaviour
- Poor judgment results in serious Financial, Property or Bodily Injury
- New limits of loss levels set in 3 out of 4
- The Greed and Deceit has fostered a “No Tolerance”

The Future of Them All

- Expectations: Don't let it happen again or else...
- Biggest Issue for D&O, EPL and Fiduciary
 - Baby boomers retiring during a period of long term poor economic performance
 - '99 \$242b surplus - '02 \$222b under funded
 - A slow drip of more fraud and deceit stories coming out. Total erosion of trust
- Potentially the largest pollution issue is ground water contamination...we can't live without water and what will be your cost to clean it?

To Assure Future Insurability -

- The Following Need to Change:
 - Move to Anticipating Risk vs Reacting to Risk
 - Asking the Tough “What if? “ questions
 - “That won’t happen.” is not the correct answer
 - The force of the market is *not* an appropriate rating tool.