2024 Midyear Market Outlook

D&O Insurance

Although most public companies experienced ongoing directors and officers liability (D&O) premium increases from 2018-21, the market has begun softening in recent years. According to industry data, two-thirds of public companies saw modest rate decreases going into 2022, while nearly all of such policyholders encountered significant premium declines during 2023, with the average rate drop sitting at 17.5% by the fourth quarter of the year. These improving conditions are likely the result of new market entrants and growing capacity for higher excess layers of coverage, which have fostered increasingly competitive market dynamics. Despite the D&O segment having also started to stabilize for private and nonprofit companies, these organizations are still deemed higher risk by insurance carriers than their public counterparts. As such, industry research confirmed that rates for these policyholders have continued to increase, albeit at a slower pace than in prior years.

In 2024, favorable market conditions have persisted thus far. In fact, industry data revealed that D&O premiums for public companies decreased by an average of 29.9% per $1 million in policy limits during the first quarter of the year, representing a considerable acceleration in rate drops. Nevertheless, softening conditions may not be here to stay. A new report from credit rating agency Fitch Ratings stated that, in spite of solid underwriting profits in 2023, the D&O segment's strong performance may not be sustainable in the long term due to falling premium revenues and, subsequently, a greater potential for market volatility. Even so, industry experts anticipate that most insureds will encounter favorable pricing conditions for the remainder of 2024, whereas policyholders in challenging industries or with poor loss history could be susceptible to possible rate jumps and coverage difficulties.

Developments and Trends to Watch

- **Generative artificial intelligence (AI) exposures—**Even though generative AI technology has the potential to help corporate leaders boost efficiencies in the boardroom and promote improved decision-making capabilities, it also carries unique risks. Namely, if generative AI systems are implemented incorrectly, they could end up producing widespread errors. Stakeholders may hold senior leaders accountable for AI-related failures in these instances, prompting costly lawsuits and subsequent D&O losses. What's more, legislation regarding generative AI technology and its use in the boardroom is constantly changing. Current legislation primarily requires businesses to establish policies that define this technology's responsibilities in their corporate decision-making operations and maintain oversight of such tools to reduce the risks of potential issues. Considering these regulatory concerns, senior leaders who don't comply with applicable AI legislation could face significant legal penalties and associated D&O losses.

- **Environmental, social and governance (ESG) issues—**In the last few years, senior leaders have been held more accountable for upholding their companies' commitments to ESG initiatives by stakeholders, regulators and the public, fueling increased litigation against such leaders and associated D&O claims. Climate change has been a key focus of recent ESG-related litigation, which alleges that senior leaders have not fully disclosed the material risks of climate change or promoted eco-friendly operations. Another ESG-related litigation trend centers around diversity, equity and inclusion (DEI) initiatives, with such lawsuits often alleging that senior leaders have failed to establish diverse boards, neglected to ensure an inclusive working environment, or made misleading statements regarding their DEI efforts and accomplishments. Complicating matters, growing political polarization has resulted in different parties being at odds over certain ESG concerns, ultimately placing additional pressures on senior leaders as they decide which initiatives make the most sense for their companies. As this polarization continues, senior leaders could be increasingly vulnerable to ESG-related litigation and associated D&O claims from individuals and organizations on both sides of the political spectrum.

Tips for Insurance Buyers

- Examine your D&O program with insurance professionals to ensure it takes market trends into account.

- Establish clear policies on the proper use of generative AI tools in corporate decision-making processes.

- Encourage your senior leadership team to select suitable ESG initiatives. Be sure your corporate leaders conduct their due diligence and provide proper reporting as it relates to certain ESG concerns.

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