

## DIRECTORS & OFFICERS INSURANCE

Insurance Recovery attorneys at Howrey have extensive experience negotiating, mediating, litigating and arbitrating disputes under D&O policies.

Many corporate policyholders have been facing issues relating to corporate restatements, stock option claims, shareholders actions, and SEC investigations. Not surprisingly, corporate directors and officers have seen a dramatic increase in claims against them for these types of allegations. Howrey recognizes the changing landscape and the need to maximize insurance coverage to protect directors, officers and the company from the high cost to defend claims and liability resulting from settlements or judgments.

Insurance Recovery attorneys at Howrey have unparalleled experience in handling a wide variety of claims under directors and officers (D&O) insurance policies, including claims relating to SEC investigations, derivative suits, and class actions. Our experience also spans a vast array of legal issues including notice and reporting of claims, so-called personal conduct exclusions, “insured v. insured” exclusion, application of retentions, proper exhaustion of underlying coverage, and the prioritization of competing claims for policy proceeds.

We have extensive experience negotiating, mediating, litigating, and arbitrating disputes under D&O policies. Some of our engagements in this area include:

- Representation of Sun-Times Media Group and group of former directors and officers of company named as defendants in securities class actions and derivative case. Successfully defeated insurers’ motion to stay or dismiss the insurance coverage case on forum *non conveniens* grounds in favor of a Canadian insurance proceeding, and obtained a ruling requiring insurers to immediately advance defense costs. Obtained more than \$100 million in insurance settlement.
- Representation of a mutual fund complex in enforcing rights to coverage under D&O and Professional Liability insurance policies for damages and defense costs arising from regulatory action and class action involving alleged “market timing” and “late trading” activities purportedly in violation of mutual fund prospectus. Case is ongoing.
- Representation of a major coal mining client in action against its D&O insurer involving coverage for a shareholder derivative action. The case was mediated and favorably resolved before trial.
- Representation of various high-profile former directors and officers of Qwest, a telecommunications company, in negotiating entitlement to and guidelines for use of a \$200 million indemnification trust funded with insurance proceeds and settlement of a multimillion dollar derivative suit.

- Representation of Sony Pictures Entertainment, Sony Pictures Corporation, and John Calley in federal court litigation against MGM Corporation and Danjaq over the rights of James Bond film franchise, and in pursuing coverage from D&O and errors & omissions carriers for this matter.
- Representation of a major software distributor with respect to coverage rights relating to private actions and SEC investigations of stock option grant practices.
- Representation of Ohio manufacturing company in mediation that successfully resolved underlying securities class action and disputes with D&O insurers.
- Obtained coverage under D&O policy for president of company in HUD debarment proceeding.
- Representation of former CEO of major company facing both civil and criminal actions, and obtained defense for these actions under D&O policy.
- Obtained multiple millions from insurance companies to settle action against Broadwing Inc.
- Representation of a financial institution in a number of D&O insurance claims arising out of securitization of sub-prime mortgage loans against a number of insurance companies. Successfully mediated all claims with the insurers.
- Representation of a managed care company sued in class action for securities fraud seeking coverage under D&O policies.
- Successfully resolved significant claims for insurance coverage under D&O policy for securities class action and derivative suits pending against a Northwest-based healthcare provider.
- Representation of an integrated products company in the Silicon Valley seeking coverage under a D&O policy for alleged multimillion dollar stock option backdating issues. Case is ongoing.
- Successfully oversaw the resolution of claims for insurance coverage by former directors and officers for securities class action and derivative suits pending against one of the nation's largest hair care franchise organizations in the country.
- Representation of a private Wisconsin high school, its Board of Directors, and the Trustees of a school trust in coverage issues arising from an underlying lawsuit by a contingent beneficiary of a \$200 million trust.
- Representation of a financial institution seeking coverage under D&O policy for class action for mismanagement of loan portfolio.
- Representation of Chemtura Corporation in coverage matters relating to securities and derivative claims arising out of the formation by merger of the present company.

- Representation of a financial institution's risk retention group regarding coverage for securities and derivative claims filed against member institutions.
- Resolved coverage dispute with D&O and general liability insurers relating to former executive's disability claim.

Insurance Recovery attorneys at Howrey regularly write articles and speak at seminars about D&O insurance issues:

- David W. Steuber and Donald R. Erlandson, "Covering Officers" *Daily Journal* (August 17, 2007)
- Andrew M. Reidy and Kyle S. Cohen, "Personal Conduct Exclusions in D&O Policies," *The Insurance Coverage Law Bulletin*, Vol. 6, no. 7 (August, 2007)
- Catherine J. Serafin and Andrew M. Reidy, Taking Stock: "Now Is The Time To Check D&O Policies To See If Improper Stock Options Practices Are Covered," *Corporate Counsel*, (November 2006)
- Lester Brown, "To Plea or Not to Plea? Can I afford it? Will My D&O Carrier Defend Me?," *Risk*, 2<sup>nd</sup> Quarter, (2006)
- Andrew M. Reidy and Catherine J. Serafin, "Timing is Everything: Look to your D&O Coverage Now if Facing Allegations of Improper Option Grants," *Risk*, 3<sup>rd</sup> Quarter, (2006)
- Catherine J. Serafin and Andrew M. Reidy, "Is Insurance The Silver Lining For Stock Option Claims?," *Securities Law 360*, (August 11, 2006)
- Andrew Reidy, "Key Battlegrounds In Seeking Coverage For Corporate Mismanagement Under D&O Policies," *International Journal Of Disclosure and Governance*, Vol. 3, no. 2 (June, 2006)
- Mary Craig Calkins, "D&O Audits: Pre-Purchase Negotiations Can Maximize Insurance Protections," (May, 2006), American Conference Institute's 12th Annual D&O Liability Insurance Conference
- Mary Craig Calkins, "I Want a Divorce! Update on D&O Liability Insurance Rescission and Severability Battles," (March, 2006), American Bar Association
- Mary Craig Calkins, "Five Key Questions to Enhance D&O Insurance Coverage," *Directors and Boards*, (Winter, 2005), Annual Director's Guide to D&O Insurance
- Mary Craig Calkins, "D&O Liability Insurance: Rescission, Severability And A Checklist To Maximize Coverage," *The Review of Securities & Commodities Regulation*, (September, 2005)
- Mary Craig Calkins, "Policyholder's Checklist to Avoid Rescission and Increase D&O Protections," *American Conference Institute's 11th Annual D&O Liability Insurance Conference*, (June 17, 2005)

- Andrew M. Reidy and Catherine J. Serafin, “Unilateral Rescission? Not So Fast,” *Risk*, (Summer, 2004)
- Andrew Reidy and Catherine Serafin, “The Defense Must Go On: An Insurance Company’s Rescission Defense Does Not Pre-empt Its Obligation to Defend Its Insured,” *The Insurance Coverage Law Bulletin*, Vol. 3, no. 4 (May, 2004)
- Mary Craig Calkins, “As the Dust Settles: The New D&O Landscape As Insureds Deal With the Corporate Governance Crisis,” American Bar Association (March 2004)
- Mary Craig Calkins, “Directors and Officers Insurance In A Period of Corporate Scrutiny – You Can’t Do Business Without It!” 2004 Institute for Corporate Counsel sponsored jointly by USC and the Los Angeles County Bar Association (March 2004)
- Mary Craig Calkins, “Simple Steps to Maximize Your D&O Coverage in a Post-Enron/Tyco/Sarbanes-Oxley World,” *American Bar Association Website*, (December, 2003)