SIDE "A" DIRECTORS AND OFFICERS LIABILITY COVERAGE

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Corporate scandals and an ever increasing scrutiny of the performance of senior management resulted in the implementation of Sarbanes-Oxley and an elevated level of accountability from shareholders. The number of well publicized lawsuits has increased substantially and the potential that officers and directors might be sued has been increased dramatically. Corporate governance rules have taken a toll on the ability of corporations to find and retain quality outside board membership.

- Traditional Side "A" coverage is pure directors and officers liability coverage.
- It provides insurance for directors and officers for claims when the corporation is not permitted to indemnify them (by state law) or is financially unable to do so.
- Having this coverage in place assists corporations in attracting and retaining talented, quality "outside" individuals to serve as directors or officers despite the extensive and potentially costly personal liability that might be imposed on them.
- Increased responsibilities and penalties that Sarbane-Oxley places on senior management raised the bar in terms of potential liability for directors and officers of all corporations <u>including</u> those that are not publicly traded. This heightened scrutiny left these individuals with concerns over the available limits of coverage available in their Directors and Officers Liability policies.
- With most D&O contracts now blending in coverage for the corporation or (entity), coverage can quickly become eroded by litigation potentially leaving little if any limit available for claims against the D's & O's personally.
- Where the "entity" is involved in a claim, allocation of the defense costs as well as settlements and judgments naturally arise between the corporation and individual D's & O's.
- Sarbanes-Oxley prohibits corporations from making "personal loans" to directors and officers, which could mean that a publicly traded "entity" might not be able to advance defense costs.
- The primary carrier could <u>deny coverage</u> due to adverse terms and conditions of the primary policy leaving the individuals bare of D&O coverage.

- The primary policy could be rescinded by the carrier, which could be based on the same circumstances of a lawsuit which was filed as a potential claim, leaving the individuals without coverage.

- The primary carrier could wrongfully refuse coverage, leaving it up to the individual D's & O's to proceed against the primary carrier for defense or indemnity.

- The primary carrier might not be able to financially indemnify under their primary policy because of financial problems, a major concern at the moment with so many banks under severe financial distress.

There's little doubt today that directors and officers are becoming a more significant focus for plaintiffs attorneys all across the county. This could drive the quality individual to avoid any potential liabilities by refusing to accept a Board position.

Side "A" D&O coverage has thus grown in importance as no one expects these liabilities to be diminished by changes in laws, regulations or regulatory mandate. Rather, we expect these issues will continue to become more and more critical for corporations and their board members. Side "A" D&O is a product that will satisfy many of those concerns and is quickly becoming a critical component to a corporation's insurance portfolio.