



A New Inflection Point: How the Intersection of ESG and the Board Impacts D&O Insurance Webinar



A New Inflection Point: How the Intersection of ESG and the Board is Impacting Directors & Officers Liability Insurance

Manufacturers Alliance Webinar

January 19, 2022

Maureen Gorman, Managing Director, New York, NY

David Carlson, Managing Director,

Jack Flug, Managing Director, New York, NY

A business of Marsh McLennan

1. Introduction
2. Landscape
3. What is the Balancing Act Facing Boards of Directors ?
4. D&O Insurance Landscape
5. What are insurance underwriters expecting from manufacturers as we continue to operate in a protracted difficult insurance market?
6. New Developments – Insurance Enhancements
7. Key Take-Aways
8. Closing Remarks & Questions

Agenda

Polling Question #1

Does your organization have a dedicated resource for Sustainability/ESG? E.g. Chief Sustainability Officer, Sustainability Task Force. Etc.

- Yes
- No
- Not sure

Introduction: The ESG landscape today

- Terminology
 - ESG
 - Sustainability
 - Stakeholder Capitalism
- Cultural and societal shifts around ESG
 - Rise in Stakeholder Capitalism/Responsible Capitalism
- SEC Developments – e.g. formation of task force and statements
- Other regulators/Influencers

Introduction: The ESG landscape today

***Individuals want to work for, buy from,
and invest in organizations with like
minded values.***

Polling Question #2

Have you had ESG related requirements imposed on your organization as part of the client procurement process?

- Yes
- No

What is the balancing act that Directors and Officers are facing?

- It's the dawn of a new balancing act for the board, and the pressure to act is coming from all sides:
 - Customers are filing class-action suits against companies they allege have made false claims about the sustainability of their products.
 - Employees are choosing where to work based on how socially responsible their current and prospective employers are.
 - Regulators are demanding more detailed disclosures on climate-related matters, diversity and inclusion, and more.
 - Investors are targeting boards of directors in litigation, alleging breaches of their duty to address ESG.
- Has the mindset, complexion and skills of the Board adapted as a result of these changes?
- Board service has evolved over the last few decades, requiring directors to be knowledgeable on more issues facing companies than ever before: risk management, financial concerns, corporate governance, material disclosures—the list goes on. This reflects the growing complexity of the business environment, with environmental, social, and governance (ESG) issues permeating many conversations these days, including in the boardroom.

What is the ESG landscape as it relates to Directors & Officers Liability Insurance?

- The D&O Insurance market has been challenging for the past few years: pricing, terms , and conditions
- However, new entrants are coming in to the market to creating some softening of terms if not competition. (better for some)
- Nothing stands still in terms of underwriter areas of focus. Rewind the discussion 10 years ago and ESG was barely on the register – only a handful of people were talking about. Fast forward to today and it is rising on the list of important areas of focus.
- Clients are anxious to show why they are good risks, and underwriters are looking to attract the best accounts with the best risk profiles which they believe will be the most profitable.
- ESG is an issue rising in prominence as the discussion rises in importance.

How can your organization differentiate itself in the eyes of underwriters?

- Organizations that fail to distinguish themselves with underwriters from an ESG perspective will likely be treated conservatively in terms of higher premiums, higher retentions and restricted coverage.
- Organizations that go above and beyond when it comes to their commitment to ESG could reduce their total cost of risk.
- What can you do to differentiate your organization?
 - Become educated on the broad array of ESG issues facing your organization.
 - Understand the methodologies and criteria used by the organizations assigning you an ESG rating.
 - Be authentic in your actions.
 - Demonstrate an understanding of your fiduciary responsibilities.
 - Share your commitment to ESG through voluntary disclosure and work with outside advisors

Polling Question #3

Do you think that over the next six months the focus on ESG will impact how you run your organization?

- Yes
- No

Currently Available ESG D&O Enhancements

Marsh [E]nvironmental, [S]ocial, [G]overnance Initiative

Law Firm Participants



- With more to come....

Objectives of the Marsh ESG Initiative

- Collaboration with clients to be leaders in the ESG space.
- To generate recognition by insurers of companies going above and beyond with respect to their ESG commitments.
- Insurers should draw a connection between exemplary corporate ESG hygiene and improved D&O insurance coverage terms.

What ESG Work Qualifies?

- Review or “audit” of ESG disclosures and statements to identify areas of concern.
- Implement comprehensive ESG frameworks that focus on a variety of areas within the E, S, & G categories.
- Review of M&A Transactions.
- Comprehensive Board training, and more..

Insurance Carrier Participants



- With more to come....

Benefits to Clients

Retention Decrease for ESG Matters

- Range of **20% - 50%**
- Insurer recognition that in the event of a claim, the client is better-positioned to defeat allegations.

ESG-Related Proxy Fight

- Sublimit to defend against activist shareholders
- Subject to lower retention.
- Insurer recognition that client is positioned to defeat proxy challenge.

- **Who's eligible?** Clients that work with attorneys to perform ESG audits or similar work.
- **What to provide?** Scope of services from law firm; answers to underwriter questions.
- **Case-by-Case Consideration.** Insurers retain discretion of whether to offer any enhancements.

Books & Records Cost Enhancements

- First dollar B&R costs and no retention; or
- Separate sublimit for B&R for carriers that combine with DDI

Increased Derivative Demand Sublimit

- Increase or added derivative demand investigation sublimit for ESG-related matters.

Takeaways:

The topic of climate change, and ESG more broadly, is not going away. ESG concerns have been gaining traction with governments, regulators, and other stakeholders, and are likely to be part of the boardroom conversation for many years to come.

There are many more constituencies focused on a variety of ESG topics, and they have a wide range of tools with which to voice their concerns. Boards need to be able to identify and prioritize key issues.

The concerns around how companies are addressing ESG will continue to rise on the list of important concerns for underwriters of directors and officers liability insurance (D&O). Companies will need to substantiate board level understanding and oversight of key ESG risks to D&O underwriters. It will be incumbent upon insured's to show that the board is keeping abreast with the evolving ESG landscape and those issues relevant to the company's business.

Companies should review their insurance coverage in light of the changing landscape. Boards of directors and their advisors should undertake a full and careful review of all aspects of risk that influence their insurance coverage, and review the provisions of their D&O policies.

Questions?

