

# The D&O insurance market is soft

*What you can do to take advantage of changing market conditions.*

BY STEPHEN J. WEISS AND THOMAS H. BENTZ JR.

**G**OOD NEWS for policyholders — nearly everyone in the D&O insurance business agrees that the market is soft. Premiums are down, capacity is up, and terms and conditions continue to improve. In short, it's a buyer's market.

What does this mean for you? It means that you have a long-awaited opportunity to obtain meaningful improvements to your D&O insurance protection. Here are a few tips to help make the most of the soft D&O insurance market.

## 1. Start the Renewal Process Early.

Probably the first decision you need to make is whether you should try to obtain alternative quotes or renew with the incumbent with terms and conditions "as expiring." Alternative quotes can be quite useful even if you do not intend to change insurers. Competition can provide a check on pricing as well as terms and conditions.

To obtain quotes, you may be required to complete multiple applications. The sooner you complete the applications, the sooner you can obtain quotes and the more time you will have to compare alternatives and make decisions about which insurer offers the best coverage for your premium dollar. Starting early is especially important in a soft market as insurers introduce new policies and/or change terms and conditions to compete for your business. You will likely need extra time to consider your alternatives.

A late start in the renewal process (especially for larger D&O programs) can leave you without sufficient time to consider the coverage implications of using one insurer versus another. Mak-

ing a switch to save 10 percent in insurance premiums may sound like a good idea unless it turns out that the switch costs you \$10 million or more because the new policy cuts back on coverage by using a broader exclusion.

## 2. Understand Your Current Coverage.

Before you can take full advantage of the soft market, you need to under-



**Stephen J. Weiss** (left) is a partner in the law firm of Holland & Knight LLP and is one of the nation's leading authorities on D&O and management liability insurance. **Thomas H. Bentz Jr.** also practices insurance law with the firm, with a focus on D&O coverage counseling and policy negotiation.

stand what your current policies do and do not cover. The best place to start is to create a list of the types of claims that you believe present the greatest risk. Then, working with your broker and insurance professional, consider whether your current policies would respond to those claims. Running a coverage analysis on a few worst-case claim scenarios can highlight potential coverage gaps in your protection and provide you with a good starting point for your renewal negotiations.

This type of analysis can be especially

effective in a soft market because insurers are more willing to make changes to plug potential gaps in coverage when they are competing for your business. For example, if you let your incumbent insurer know that you are considering a move to another insurer because its policy offers coverage for employed lawyers, the incumbent may be willing to add similar coverage to retain your account. In most cases, an insurer will add this coverage at little or no additional cost.

## 3. Know the Market.

In the last year, and particularly in the last several months, many insurers have granted requests for coverage enhancements that they had firmly refused to negotiate in the past. Perhaps the most striking example is that some insurers are now willing to provide an endorsement that makes their policies fully non-rescindable. Such an endorsement was practically unheard of just six months ago. Among the many other examples of recently available enhancements are improvements to the conduct exclusions, sub-limited coverage for derivative demand investigations, and a more insured-friendly definition of "application."

Knowing what is available upon request is key to taking advantage of the soft market conditions. To do this, you need someone on your insurance team who regularly negotiates with insurers.

## 4. Choose Your Insurers Wisely.

While a soft market can provide a valuable opportunity to improve your pricing and coverage, these conditions will eventually end. So, before changing insurers to lower your premiums or enhance your coverage terms, you should consider the potential insurer's track record for paying valid claims and whether the insurer is truly committed to the D&O insurance market. Lower premiums do you no good if moving your account to a new insurer jeopardizes your ability to get a claim paid. ■

The authors can be contacted at [steve.weiss@hklaw.com](mailto:steve.weiss@hklaw.com) and [thomas.bentz@hklaw.com](mailto:thomas.bentz@hklaw.com).