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Market Conditions

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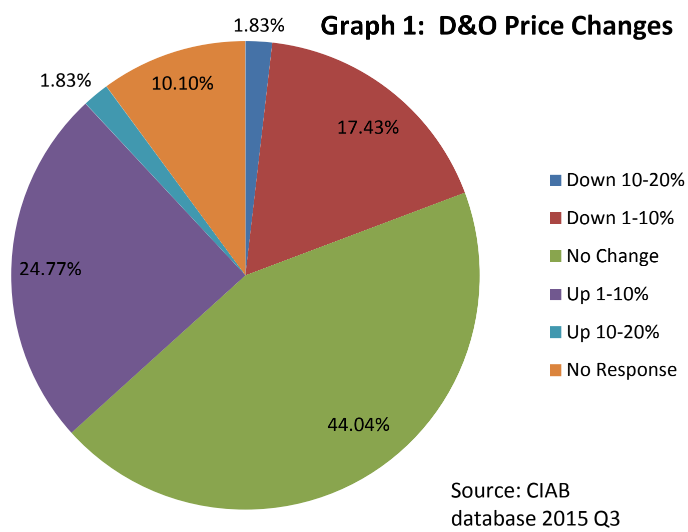
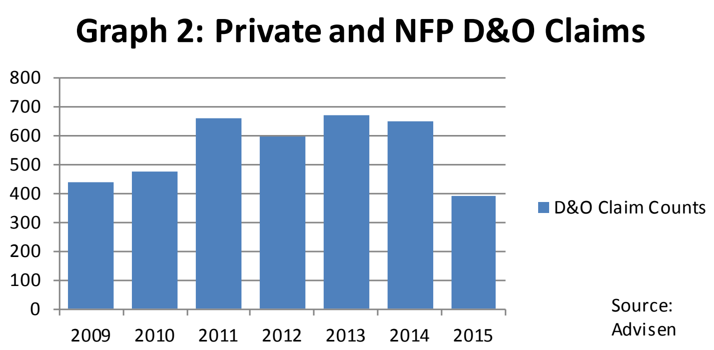
Private and Nonprofit Directors & Officers Liability

By Heidi Roberts

As the U.S. economy continues to recover, so too have the businesses of most of our private and nonprofit clients. As a result, D&O markets generally have seen marginal rate increases from 0% to 5%, whereas previously rate increases ranged from 5% to 10% when there was no change in financial condition, exposures or losses. CIAB survey results for Q3 2015 (graph 1) further illustrate the improving market, with 61% of commercial insureds receiving flat or decreasing renewals. The survey results for the same period in 2014 showed only 43% of commercial buyers saw flat or lower rates on renewal.



There is a longer tail on D&O claims, with insurance companies still paying out losses from lawsuits that occurred during the financial crisis. Given the broad entity coverage provided under private and nonprofit policy forms, insurers often find themselves paying both *more* and *more expensive* claims, leading them to be especially concerned with the implications of increasing claim frequency (shown in graph 2) and the long tail associated with these claims. Market pressures have continued to abate these concerns and bring downward pressure on D&O rates.



In addition to the softening market, we have seen many coverage enhancements; some carriers are providing zero-dollar retentions on D&O Sides B&C for smaller nonprofit accounts. There has also been a higher frequency of automatic renewals and multi-year policy terms in the small to mid-market space for lower risk and financially stable insureds.

For all other insureds, underwriters are more disciplined, remaining committed to fully understand the operations of the company as well as the leadership during the quoting process. This is especially true for startup companies and other classes of business where there is higher risk, such as family-owned companies.

The capacity for D&O remains vast, but frequently an insured requires higher D&O limits than may seem reasonable to a primary carrier, so excess placements are needed when the primary carrier cannot provide the requested capacity.

There has been an uptick in merger and acquisition activity. As a result, there are more questions asked about change in control and protection from the insureds during the transaction. Thus, we are discussing the implications of the transactions with the markets and are placing more run-off policies. Additionally, more of our clients are forming employee stock ownership plans (ESOPs), which clearly have direct implications on fiduciary liability coverages. From a D&O perspective, many carriers are also excluding any D&O claim that pertains to an ESOP.

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More discussions are also being held with clients regarding the implications of security and privacy liability on D&O as the frequency of cyber liability claims has increased. A cyber claim can cross over into D&O when there are allegations that the directors and officers did not put the proper safeguards or coverage into place. In addition, there are more first-time buyers of D&O due to the heightened awareness of this coverage and the fact that smaller organizations are more able to afford it. Carriers have begun to add a cyber module to their management liability package to address these concerns about D&O and cyber crossover claims.

Some classes of business have become more difficult to place, specifically religious organizations or churches. Churches and other religious groups tend to have community outreach programs that perform a variety of services which present a challenge to underwriters.

In market news, Berkshire Hathaway announced its entrance into the private and nonprofit D&O arena, a few months before ACE completed its acquisition of Chubb. The latter combination is of particular importance to management liability and D&O coverage, as both ACE and Chubb have been market leaders in the private and nonprofit D&O space. Additionally, as separate companies, they have had different appetites regarding certain classes of businesses, so we are curious to see how the underwriting appetite, policy language and underwriting teams evolve post-acquisition.

Since rate increases can be driven in part by loss payouts and the tails of these claims are long and defense costs are rising, we are unable to predict how much will be paid out in claims for events that occurred in 2015. However, barring any unforeseen circumstances or events, we are anticipating that 2016 will bring minimal rate increases (0% to 5%) with no changes in the entity's exposure and less stringent underwriting guidelines for lower-risk insureds.

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