AIG 100

MAKING CONNECTIONS

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Building robust D&O programs for private equity, portfolio companies

> Globally, AIG has long been a market leader in the private equity and venture capital sector by providing a comprehensive offering

By: Scott Taylor, Senior Underwriter & Michelle Alexander, Underwriting Specialist

Private equity and venture capital firms are known for generating strong returns for their investors and providing an important source of capital across all industries. Developing and maintaining a robust Directors and Officers (D&O) program for these types of firms and their portfolio companies is vitally important to their long-term health, security and overall success. It is of the utmost importance to secure an adequate amount of coverage tailored to each firm's particular needs and to ensure that the firm's coverage operates in sync with that of its portfolio companies.

Globally, AIG has long been a market leader in the private equity and venture capital sector by providing a comprehensive offering that covers portfolio company D&O as well as the transaction liability exposure faced by these firms via Reps & Warranty coverage. Our private equity and venture capital policy provides a natural cross-selling opportunity to these lines by covering the corporate D&O and Errors and Omissions (E&O) exposures faced by the parent company. It is often the case that one broker handles the insurance placements for both the portfolio companies and the private equity/venture capital firms and AIG Canada's Financial Lines team is able to provide brokers with a one-stop, seamless solution.

AIG's focus in this area covers Canadian middle market private equity and venture capital firms which are characterized by experienced management teams with long-term track records; institutional investors with long-term investment horizons; Canadian only portfolio companies; and companies with strong corporate balance sheets.

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AIG Canada has the ability to provide our Private Equity Professional Edge policy with limits up to $10 million with competitive deductible and premium options. The policy itself is unique in its design in that it considers the complex and broad structure of the private equity and venture entities, including coverage for: general partners; parallel funds; co-investment funds; acquisition vehicles; investment managers and advisors; and blocker, feeder and other similar entities. In addition, the policy covers outside directors' liability coverage for firm managers and employees and other insured professionals serving on the boards of both public and private portfolio companies. As well, it offers employment practices liability coverage for the firm and its managers for lawsuits alleging wrongful termination, discrimination, harassment, retaliation and other employment practices violations.

Because private equity firms often place representatives on the boards of their portfolio companies, their insurance needs to be coordinated and proactively managed to ensure that both parties are adequately covered and understand how coverage will respond in various scenarios. For example, a claim brought against a portfolio company will often name the firm as an additional defendant. Is the firm covered under the portfolio company policy for their vicarious liability? Would it be more preferable to name them as a co-defendant? Another provision to consider is the "Other Insurance" clause of the portfolio company's policy. Does it clearly state that the portfolio company policy is primary to the firm's own insurance and indemnification? These are just a few of the specific coverage considerations that are unique to the private equity firm and portfolio company relationship.

AIG's long-standing expertise in this space ensures that coverage between the firm and its portfolio companies flows together seamlessly. Our solution-driven approach and robust policy wording coupled with an experienced claims handling team in Canada, gives brokers and clients a comprehensive private equity and venture capital solution to meet their risk management needs.

Protect your company's benefit plans and the people who oversee them

By: Katarina Borg, Underwriter

Fiduciary liability claims continue to increase in frequency and severity as regulators, plan participants and their beneficiaries focus on plan-based fiduciary practices. Fiduciary Liability Insurance provides broad coverage for the many types of claims that plan fiduciaries can encounter, from failure to pay benefits, to participants' investment choices, to past conversion from cash balance plans and more.

The latest trends involve lawsuits associated with an increase in investment management and plan administrative fees. Common complaints allege: failure to monitor service provider; failure to monitor fees in the plans; high record keeping fees; and failure to defray the expense of administering the plan.

To determine who has exposure to these actions, it is important to identify the plan fiduciaries. A fiduciary is any person (or entity) who exercises discretionary authority with respect to the management and or administration of the plan. It is generally accepted that fiduciaries are designated. However, in some instances an individual can inadvertently become a plan fiduciary. In general, fiduciary duties should be instinctual - act prudently, act loyally, follow the plan's terms unless they violate the statute, and diversify investments to avoid large losses.

Fiduciary Liability coverage protects the directors, officers, employees and employers who are alleged to have breached their fiduciary duty or made mistakes in the management or administration of employee retirement and benefit plans.

Due to the considerable outcomes from potential claims that can occur from breaches of fiduciary duties, it is imperative to consider some vital coverage benefits when considering coverage such as:

- **Generous penalty coverage and protection.** AIG Canada's fiduciary liability policy provides sub-limited coverage for a number of penalties related to violations of provincial employment standards legislation the Pension Benefits Standards Act, 1985 (Canada), or the provisions of the Income Tax Act (Canada) applicable to pension, retirement or savings benefits.
- **Voluntary Compliance Loss Coverage.** This coverage allows retirement and benefit plans to pursue reimbursements for expenses related to correcting plans. This may cover fines, penalties, sanctions, fees, and expenses related to corrections of a plan voluntarily made to comply with a governmental voluntary compliance program, including costs related to the assessment or correction of a plan's non-compliance.
- **Settlor Capacity Coverage.** This extension broadens the definition of 'wrongful act' to not only include breaches of fiduciary duty but also actual or alleged 'acts, errors or omissions' in any plan specific related activities.

Legislation, litigation, and economics are shifting the landscape for companies that provide pension, 401 (k), or welfare plans for employees. AIG's fiduciary liability insurance (Fiduciary Liability Insurance Edge Policy) helps protect your company in the event of misconduct or error. Without proper insurance in place, directors, officers and others who have fiduciary duties and responsibilities to a plan can find their personal assets at risk.

2019 third quarter current events

By: Graeme Markell, Underwriter

Federal Court Securities Suit Filings Continue Near Record Pace in 2019

United States federal class action securities fraud lawsuits continued their torrid pace and were reported at near-record levels in the first half of 2019, according to the Securities Class Action Filings – 2019 Mid-Year Assessment released by Cornerstone Research. In the first half of 2019, there were 198 federal class action securities fraud lawsuits[1]. These class action lawsuits were led by merger objection lawsuits, which represented about 37% of the lawsuits filed in the first half of 2019. Annualized, non-M&A lawsuits are expected to account for 242 security class action lawsuits filed, which would be higher than the annual total number of securities suit filings in the United States in any year between 2003-2015[2]. Public companies continued to see an increase in overall litigation in the U.S. in 2019 due to the increased number of lawsuits while the number of listed companies has declined. Life sciences, communications and industrial organizations led the industries to report the most filings in the first half[ibid-1].

Data Breaches Continue to Make Headlines

Businesses and customers alike continued to be impacted by data breaches and cyber incidents through the first half of 2019. Per a report released by Risk Based Security, there were 3,813 breaches reported in the U.S. that exposed over 4.1 billion records including Social Security numbers, bank account information, full names and addresses reported in the first half of 2019[3]. Ponemon Institute estimated that the average global cost of a data breach was about $141 per record, with costs in the U.S. being nearly twice that[4]. The business sector, with Capital One being the latest high profile case, continued to report the largest number of breaches, accounting for 67% of reported breaches and being responsible for 84.6% of records exposed[5].

Holding Your Business Hostage

Since the first instance of ransomware in 1989, ransomware attacks have become much more prevalent, sophisticated, and disruptive for businesses. The cost to a business can be devastating as Canada has the highest

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average cost of ransom as well as the highest cost of downtime globally, according to Datto's Canadian State of the Channel Ransomware Report released in March of this year[6]. Not only do organizations face potential ransom payments, the business interruption and reputational harm can be just as significant. For instance, the government in Atlanta, Georgia will spend up to $17million to repair the damage resulting from the "SamSam" ransomware attack in March, 2018. This was significantly higher than the approximate $51,000 demand that was made[7]. It is important for businesses to perform regular offline backups and educate employees on how to spot potential ransomware scams as 92% of malware is delivered by email[8].

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