

How you can limit risk to directors, officers, and assets with AIG Executive Armour

By: Ken Nutt, Underwriting Officer

Browsing through your daily news feed, or from a quick look at the current events section of this newsletter, you can see that the risks facing organizations today are constantly evolving, and that management liability claims can arise from many angles. Securities class actions; regulatory investigations; privacy breaches; antitrust litigation; #metoo...the list could go on and on. The cost of settling or merely defending these claims can quickly erode your D&O policy limits, leaving the directors and officers and their personal assets at risk. Side-A DIC policies can offer a last line of defence for directors and officers when they need it most. [View our Side-A Claims Scenarios](#) to learn more.

Typically, a Side-A DIC policy will sit excess of a standard D&O policy to provide dedicated coverage for the individual executives. The policy would come into play when their organization, either legally or financially, is unable, or possibly unwilling to indemnify them. Side-A DIC policy limits are reserved for the directors and officers and cannot be eroded by defence costs, judgements or settlements of the insured organization. Coverage for the individuals insured can be triggered upon exhaustion of the underlying insurance, if a DIC (difference in conditions) event occurs, where the policy will drop down and fill in gaps of coverage, or when an underlying insurer fails, refuses or is financially unable to provide the coverage that was promised. One of the key benefits of buying a Side-A DIC policy is that these forms usually contain fewer exclusions and offer directors and officers broader protection than what is provided in a primary form.

Continued on next page



One of the key benefits of buying a Side-A DIC policy is that these forms usually contain fewer exclusions and offer directors and officers broader protection than what is provided in a primary form.

Continued from previous page

Narrower conduct exclusions, enhanced fines and penalties coverage, and limit reinstatements are just a few of the bells and whistles that are available in a Side-A DIC policy.

AIG Canada's [Executive Armour](#) provides protection for the executives of an insured organization, and is available for various types of Canadian companies including publicly traded entities, private companies, not-for-profits and financial institutions.

AIG has also come up with a unique way to get the broad coverage found in the Executive Armour on a primary basis with the introduction of [Side-A Match Edge \(SAME\)](#). The structure is available to clients with both AIG Primary D&O

policies and AIG Side-A DIC capacity. The SAME endorsement broadens the Side-A cover within primary D&O policy to match the terms of Executive Armour, with coverage extending all the way up the ABC follow form tower.

Overall, a Side-A DIC policy can provide some peace of mind for executives that are making decisions and risking their personal assets every day on behalf of an organization.



RECENT & UPCOMING EVENTS

05.23-24.19

InsurTech North Conference:

AIG Canada's Marc Lipman participated as a judge on the Wolf Pack Startup Pitch Competition. Multiple members of the Financial Lines team were in attendance at the conference.

05.27-29.19

Vancouver Claims Meetings:

Joe Fidilio travelled to Vancouver to attend specific client and broker meetings with Alex Asai.

06.03-06.19

Vancouver FI Meetings & CVCA Conference:

Candace Colquhoun and Scott Taylor travelled to Vancouver to attend specific client and broker meetings with Alex Asai. Scott Taylor also attended CVCA's annual INVEST CANADA conference during this week.

06.24-28.19

Calgary D&O Meetings:

Alex Asai will be travelling to Calgary for specific client and broker meetings.

07.08-12.19

Edmonton D&O Meetings:

Alex Asai will be travelling to Edmonton for specific client and broker meetings.

07.10-12.19

Calgary D&O Meetings:

Chris Ventresca and Cynthia Davison will be travelling to Calgary for specific client and broker meetings.

09.08-11.19

RIMS Canada:

AIG Canada's Lynn Oldfield will be participating on two panel discussions during the conference. Multiple members of the Canada Financial Lines team will be in attendance at the conference.

How private organizations can benefit from a comprehensive D&O policy

By: Juliana Pelaez, Senior Underwriter



Most public company executives generally understand that D&O insurance is an indispensable prerequisite for a company with publicly traded securities. On the other hand, executives in the private sector don't see the need to be protected. In their view, they are less exposed due to the size of their business, have fewer shareholders and less comprehensive ownership structures and therefore conclude that their organization would not be at risk for a D&O claim. This view overlooks the fact that plaintiffs in a D&O claim can include a broad array of claimants such as shareholders, employees, competitors, customers, vendors, regulators, and others.

Individuals serving as directors and officers face significant litigation exposure for allegations of breach of fiduciary duty or duty of care. These lawsuits are expensive to defend and individuals holding these positions can be exposed and their personal assets at risk. In order to protect executives from such legal expenses and liability, organizations should obtain coverage under a D&O policy. For more information, view [examples of private company claims handled by AIG Canada](#).

AIG developed a modular D&O insurance management liability policy, [PortfolioSelect®](#) which can protect various organization types from local SMEs, charities, voluntary associations and other membership-based organizations

to major multinational corporations. This modular form allows various management liability coverages to be combined in a single policy consisting of a DEC page (specifying limits, retention, policy period, among other relevant information), a general terms and conditions section applicable to all of the various coverages, and separate coverage parts for each of the various management liability coverages (such as D&O, EPL, Fiduciary, Crime, etc).

There are certain advantages to placing various lines of coverage under the same policy. For instance, modular policies simplify the management liability insurance acquisition process by having one application and one policy for multiple coverage lines with flexible limits which provide the option of separate or shared limits across multiple coverage lines.

Private D&O insureds receive the benefits of investigative cost coverage for derivative demands, extended coverage for investigations of individual insureds, roadshow coverage and more. Other lines of business typically included with D&O coverage are Employment Practices Liability (EPL), Fiduciary Liability and Crime (Fidelity).

EPL coverage addresses discrimination (such as LGBTQ, harassment cases, gender and age claims), wrongful termination, retaliation, and other risks faced by employers. AIG's policy provides extension for third-party coverage for discrimination and harassment built into the policy form. Typically, these claims are high in frequency and low in severity.

Fiduciary Liability provides protection if company-sponsored retirement plans suffer losses or benefits are reduced. The individuals managing these plans can face personal liability.

Fidelity insurance often referred to as "crime" insurance, can mitigate losses due to employee theft or dishonesty, impersonation fraud, fraudulent funds transfer instructions, and more.

Regardless of the status of the company, public, private, not-for-profit, D&O insurance will give the directors and officers peace of mind to concentrate on important business decisions.

2019 second quarter current events

By: Daniella Laferriere, Underwriter

Cornerstone Research releases “SEC Enforcement Activity: Public Companies and Subsidiaries Midyear FY 2019 Update”: The 2019 mid-year report released by U.S.-based Cornerstone Research noted that enforcement activity remained at near-record levels in the first half of 2019. The U.S. Securities and Exchange Commission initiated 52 actions in the first half of 2019, a 225% increase from the first half of 2018. 67% of these actions targeted the finance, insurance, and real estate industries. Monetary settlements in public company and subsidiary actions totaled \$742 million. Of the 52 total actions, 25 were in relation to the Share Class Initiative¹. This initiative relates to investment advisors “failing to make required disclosures relating to [their] selection of mutual fund share classes that paid the advisor...or its related entities or individuals a fee pursuant to Rule 12b-1”.²



Trident Exploration Corp ceases operations and leaves 4,700 wells to the Alberta Energy Organization, in the first major case after the Supreme Court’s “Redwater Decision”.

Trident Exploration is the first major case after the Supreme Court of Canada’s “Redwater” decision earlier this year, determining that energy companies cannot walk away from their obligation to clean up oil and gas wells in bankruptcy cases. Trident Exploration Corp ceased operations effective April 30, 2019, pushing 4,700 wells and a \$329 million cleanup cost to the Alberta Energy Regulator. In their April 30 news release, they cited extremely low natural gas prices, unaddressed capacity constraints, and the Redwater decision as intensifying their financial distress.³ The Alberta Energy Regulator responded to the ceased operations in a new release, “addressing end-of-life obligations is essential to responsible energy development. We have a responsibility to uphold the Supreme Court of Canada’s Redwater decision that financial matters do not have priority over environmental responsibilities.”⁴

Statistics Canada releases the first comprehensive estimate of board’s gender composition

In May, 2019, Statistics Canada released the first comprehensive estimate of board gender composition including boards for private corporations, government enterprises, and public corporations. Across the various boards examined, women accounted for 19.4% of directors.

It was estimated that 56.8% of boards were composed completely of men. The percentage of women holding board positions changes by board type: government enterprises had the highest percentage of women (28.8%) followed by public corporations (20.5%). Private corporations had the lowest representation of women holding board positions at 17.4%.⁵

The study follows recent regulatory and shareholder attention to gender diversity at the board level. In 2015, the Ontario Securities Commission initiated a “comply or explain” disclosure policy. Under the policy, most companies listed on the S&P/TSX are required to state whether they have a policy or a target for the representation of women on their board. Additionally, it asks these organizations to disclose how many women are on their board and hold executive officer positions. Choosing to do neither requires an explanation. In 2019, several notable Canadian corporations adopted or continued shareholder initiatives aligned with the “comply or explain” gender disclosure policy, including Glass Lewis, Canadian Pension Plan Investment Board, and Institutional Shareholder Services⁶.

The Canadian Securities Administrator launches a project to explore the extent of abusive short-selling in the Canadian capital markets.

The Canadian Securities Administrators, an umbrella organization that coordinates the activities of Canada’s 13 provincial and territorial markets, has announced they are in the preliminary stages of a project that involves reviewing the nature and extent of abusive short-selling in Canadian capital markets.⁷

Continued on next page

Continued from previous page

A number of high profile activist campaigns including Shopify Inc., Manulife Financial Corporation, and Aphria Inc. provide a glimpse into the upward trend in Canadian short-seller activities.⁸ The most recent report from Activist Insight show that while the global number of activist short campaigns declined from 189 to 155 in 2018, activist short selling campaigns increased 44% in Canada, from 9 to 22.⁹

PG&E faces SEC investigation into public disclosures of wildfire losses, including Camp Fire that killed 85 people and destroyed 19,000 homes. The Pacific Gas and Electric Company (PG&E), a U.S.-based utility with publicly traded stock, filed for bankruptcy protection earlier this year because of the \$30 billion in estimated liabilities it faced as a result of the wildfire losses. The chief executive officer stepped down, and the company replaced its board of directors. PG&E is now facing an investigation by the U.S. Securities and Exchange Commission into “public disclosures and accounting for losses”.¹⁰

¹ “SEC Enforcement Activity: Public Companies and Subsidiaries.” Cornerstone Research, *Cornerstone Research* and NYU Pollack Centre for Law & Business, www.cornerstone.com/Publications/Reports/SEC-Enforcement-Activity-Midyear-FY-2019.

² “Share Class Selection Disclosure Initiative.” *SEC.gov*, U.S. Securities and Exchange Commission, www.sec.gov/enforce/announcement/scsd-initiative.

³ “Trident Exploration Corp Ceases Operations.” *Trident Exploration*, 1. <http://www.tridentexploration.ca/press-releases/trident-exploration-corp-ceases-operations>.

⁴ “Alberta Energy Regulator Responding to Ceased Operations at Trident Exploration.” *Alberta Energy Regulator*, www.aer.ca/providing-information/news-and-resources/news-and-announcements/news-releases/news-release-2019-05-01.

⁵ “Study: Representation of Women on Boards of Directors, 2016.” *Statistics Canada*, 7 May 2019, www150.statcan.gc.ca/n1/daily-quotidien/190507/dq190507a-eng.htm.

⁶ Caranci, Beata, and Leslie Preston. “Corporate Canada Is Getting On Board An Update Since Comply or Explain Gender Disclosure Policy Came Into Effect.” *TD Bank*, Mar. 2019, economics.td.com/corporate-canada-getting-on-board.

⁷ “Canadian Regulators Put Short Sellers on Notice over Abusive Practices.” *Financial Post*, 2019, business.financialpost.com/news/fp-street/canadian-regulators-put-companies-on-notice-over-problematic-promotions-in-sectors-such-as-cannabis-cryptocurrency.

⁸ Pellegrini, Christina. “SEC, OSC Examine Short-Sellers’ Tactics.” *The Globe and Mail*, 2019, www.theglobeandmail.com/business/article-sec-osc-narrowing-in-on-abusive-short-selling-practices-against/.

⁹ “The Activist Insight Annual Review 2019.” *Activist Insight*, 2019, corpgov.law.harvard.edu/wp-content/uploads/2019/02/AIAnnual_Review2019.pdf.

¹⁰ “PG&E Says S.E.C. Is Investigating Its Wildfire Disclosures.” *The New York Times*, 2019, www.nytimes.com/2019/05/02/business/energy-environment/pg-e-sec-investigation.html.

American International Group, Inc. (AIG) is a leading global insurance organization. Building on 100 years of experience, today AIG member companies provide a wide range of property casualty insurance, life insurance, retirement products, and other financial services to customers in more than 80 countries and jurisdictions. These diverse offerings include products and services that help businesses and individuals protect their assets, manage risks and provide for retirement security. AIG common stock is listed on the New York Stock Exchange.

Additional information about AIG can be found at www.aig.com | YouTube: www.youtube.com/aig | Twitter: @AIGinsurance www.twitter.com/AIGinsurance | LinkedIn: www.linkedin.com/company/aig.

AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. AIG Insurance Company of Canada is the licensed underwriter of AIG commercial and personal insurance products in Canada. Coverage may not be available in all provinces and territories and is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. The AIG logo and AIG are trademarks of American International Group, Inc., used under license by AIG Insurance Company of Canada. Additional information about AIG Canada can be found at www.aig.ca.

© 2019 American International Group, Inc. All rights reserved.

TEAM CONTACT INFORMATION

Do you have something you’d like to discuss with us? We would like to hear from you! To best direct your inquiry, below you will find the contact information for our Financial Lines Management team.

Chris Ventresca, Management Liability
(416) 596-4101 chris.ventresca@aig.com

Zachary McWhirter, Public Accounts
(416) 646-3761 zachary.mcwhirter@aig.com

Rose Cugliari, Private & Non-Profit Accounts
(416) 596-4076 rose.cugliari@aig.com

Candace Colquhoun, Financial Institutions
(416) 596-2769 candace.colquhoun@aig.com

Ruby Rai, Cyber & Professional Liability
(416) 596-3920 ruby.rai@aig.com

Alex Asai, Financial Lines Manager,
Western Canada
(604) 691-2914 alex.asai@aig.com

Isabelle Legault, Financial Lines Manager,
Eastern Canada
(514) 987-5303 isabelle.legault@aig.com

Ken Nutt, Underwriting Officer
(416) 596-2739 ken.nutt@aig.com

Dan Beaudry, Liability and
Financial Lines Executive
(416) 596-3002 dan.beaudry@aig.com

Joe Fidilio, Head of Claims, Canada
(416) 596-4010 joe.fidilio@aig.com