

# Directors and Officers Liability Insurance

## Product Highlights

## Standard Coverage

- A combination of directors and officers liability and corporate securities liability in one policy form for publicly traded companies
- Broad definition of insureds includes:
  - Past, present and future directors and officers of the corporation, including foreign equivalent positions or managers of a LLC
  - Spouses and domestic partners
  - Company employed lawyer and employee coverage for securities claims
- Expanded definition of claim includes:
  - Written demand for monetary or non-monetary relief
  - Formal administrative and regulatory investigation coverage for securities claims
- Definition for costs of defense contains shareholder derivative investigations and extradition coverage
- Costs of defense for personal conduct exclusions which are not triggered until final adjudication
- Costs of defense for informal investigations initiated by the Securities and Exchange Commission that result in a claim with prior written notice to insurer
- Advancement of defense costs, upon written request<sup>2</sup>
- Retention is waived in any securities claim in which all insureds prevail<sup>3</sup>
- Multiple carve-backs for insured versus insured exclusion for financial insolvency include:
  - Past directors and officers (limited to three years)
  - Creditors' committees
  - Whistleblower claims
  - Jurisdiction without common law legal system
  - Debtor in possession wording that relates to examiner or trustee
- Employment practices liability coverage<sup>4</sup>
- Administrative and regulatory proceedings coverage for securities claims
- Loss includes punitive or exemplary damages awarded against the company in any securities claim (subject to insurability and not otherwise excluded)
- Automatic coverage for subsidiaries created or acquired during the policy period whose assets are less than 25% of the insured entity<sup>5</sup>
- Automatic outside directorship coverage for directors and officers serving as directors, officers and trustees of nonprofit organizations
- Multi-year run-off coverage is available if there is a change in the control of the company
- Policy nonrescindable
- Proposal process does not include certification under Section 302 of the Sarbanes-Oxley Act of 2002
- Priority of payments for directors and officers
- Full prior acts coverage<sup>3</sup>
- No mandatory arbitration
- Choice of defense counsel
- 12 month extended reporting period is available if the parent organization cancels or if the parent organization or insurer refuses to renew the policy
- Coverage for alleged violations of Sections 11 and 12 of the Securities Act of 1933
- Worldwide coverage

### Limits

- Limits of liability up to \$10 million

### Coverage Enhancements<sup>6</sup>

- For-profit outside directorship liability coverage<sup>7</sup>
- Additional benefit for using panel counsel members
  - Securities and Exchange Commission (SEC) claim panel counsel discount: 25% savings on SEC retention costs with a maximum benefit of \$250,000
  - A listing of SEC panel counsel members can be found on Monitor's Web site

<sup>1</sup>Please note that this is not a part of an insurance contract and does not supersede the policy. Please read the policy form [DO(2)(3)31300 (12-08)] for complete terms, conditions and exclusions.

<sup>2</sup>Defense costs serve to reduce the limit of liability.

<sup>3</sup>Available to qualified companies.

<sup>4</sup>Subject to underwriting review and acceptance of a supplemental questionnaire for Employment Practices Liability.

<sup>5</sup>Full details must be disclosed to the insurer prior to the expiration of the policy.

# Additional Information

## Target Market

Publicly traded companies with up to \$5 billion in market capitalization

- Focus for primary placements are companies with up to \$500 million in market capitalization
- Companies completing an initial public offering (IPO)
- Biotechnology companies
  - Monitor is the preferred BIO Business Solutions<sup>SM</sup> provider of D&O coverage to the Biotechnology Industry Organization (BIO) and over 38 BIO state affiliate organizations
  - Special BIO program coverage enhancements available to BIO and state affiliate members only
- High technology companies
- Financially distressed companies
- Small-capitalized companies inclusive of NASDAQ, OTC Bulletin Board (OTCBB) and Pink Sheet traded companies

Coverage is available for all risk categories, except for the following<sup>8</sup>:

- Financial institutions
- Insurance companies
- Securities brokers/dealers

## Excess Target Market

Publicly traded companies with up to \$5 billion in market capitalization

## Policy Forms Available

- Standard Excess policy
- Side A
- Side A with Difference in Conditions (DIC)
- Independent Director Liability policy

## Insurers Available<sup>9</sup>

- Admiral Insurance Company  
*(A nonadmitted carrier rated "A+" (Superior) FSC: XII by A.M. Best Company)*
- Berkley Insurance Company  
*(An admitted carrier rated "A+" (Superior) FSC: XV by A.M. Best Company)*
- Carolina Casualty Insurance Company  
*(An admitted carrier rated "A+" (Superior) FSC: XII by A.M. Best Company)*

## Risk Management Services

- Unlimited access to a toll-free Employment Practices Liability Loss Prevention Helpline that provides expert advice
- An interactive CD, "Guidelines for Reducing Exposure to Employment Lawsuits," provided to each policyholder

<sup>6</sup>Available to selected risks at the discretion of the underwriter. Additional information may be required and additional premium charges may apply.

<sup>7</sup>Subject to underwriting review and acceptance of outside directorship.

<sup>8</sup>While these types of accounts are not currently eligible, they may be considered in the future.

<sup>9</sup>The following insurers are member companies of the W. R. Berkley Corporation.

### Strength and Stability

Monitor Liability Managers, LLC underwrites executive and professional liability insurance on behalf of W. R. Berkley Corporation member companies. A Fortune 500 company, Berkley has annualized revenues of \$4.7 billion, total assets of \$16.1 billion and stockholders' equity of \$3 billion.

### Expert Claims Handling

With over 100 years of combined experience, Monitor's claims professionals are prepared to respond and manage claims effectively. Our experts know how to handle the wide range of claims that can occur with the most sophisticated risks in the market.

### Additional Products

- ▶ Accountants Professional Liability Insurance
- ▶ Employment Practices Liability Insurance
- ▶ Independent Director Liability Insurance
- ▶ Lawyers Professional Liability Insurance
- ▶ Management Liability Insurance (for privately held companies, combines Directors, Officers and Corporate Liability Insurance and Employment Practices Liability Insurance with optional Fiduciary Liability coverage)
- ▶ Nonprofit Management Liability Insurance

## Send Us Your Submission

### E-mail

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### Mail

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### For Additional Information

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We invite you to let us know other ways that we can serve you.

Directors and Officers Liability Insurance coverage is offered through Monitor Liability Managers, LLC. Monitor is a member company of W. R. Berkley Corporation (NYSE:WRB) operating nationally as an underwriting management company specializing in executive and professional liability insurance. Monitor issues policies through W. R. Berkley Corporation member companies, including Admiral Insurance Company, Berkley Insurance Company and Carolina Casualty Insurance Company. All are rated "A+" (Superior) by A.M. Best Company.

