

FINPRO PRACTICE

Financial and Professional Insurance Solutions for Distressed Companies

The COVID-19 pandemic has caused significant harm to businesses in the US and globally. Some businesses have already reported an actual or potential loss of revenue for 2020, and many organizations are bracing for more hardship in the coming months. Some businesses will fare worse than others and may be pushed into bankruptcy or restructuring.

As these organizations plan for what's next, they will face many questions and challenges, including how to manage their insurance programs. Businesses going through bankruptcy or restructuring have unique needs, and securing robust coverage — at competitive pricing, with appropriate limits, and with the right policy terms and conditions — may be difficult without the help of experienced advisors.

Throughout the bankruptcy or restructuring process, Marsh can serve as your trusted advisor every step of the way. With experience helping hundreds of companies in distress, we bring a knowledge of your financial and professional insurance needs that other brokers can't match. We can help to guide you through the process, anticipating critical questions and

delivering proven solutions to help protect your corporate and personal assets and achieve peace of mind through a difficult process.

Diagnosing Your Insurance Needs

Marsh's team — made up of our most senior D&O brokers, with an average of 25 years of experience placing D&O insurance for companies going through bankruptcy and restructuring — can help distressed companies in a number of ways, starting with a bankruptcy diagnostic that can be completed as soon as your company exhibits signs of distress. As part of this diagnostic, we can review key metrics that can affect how insurers underwrite and price coverage for you, including your financial statements, future earnings, cash flow, debt, lender financial covenants, and ability to make future debt/interest payments. This will enable us to secure robust coverage that specifically addresses your risks during a restructuring or bankruptcy.

Personal Asset Protection Through D&O Insurance

We can continue to deliver added value — that other brokers can't — as the bankruptcy and restructuring process continues.

Of particular importance is your directors and officers liability (D&O) program, which can protect the personal assets of

your directors and officers. A D&O policy becomes especially meaningful during insolvency, when a company may be unable to indemnify its senior leaders. However, this is also a time of increased risk for D&O insurers. Restructuring companies or those facing bankruptcy may find it extremely difficult to obtain D&O insurance without expert representation by insurance brokers that can favorably present your company to underwriters.

We can help you:

- **Review your policy forms for inadequate coverage**, with a special focus on restrictive endorsements, such as creditors' exclusions or reduced coverage in the event of credit downgrades. We can also ensure that your policy contains important protections, such as policy non-rescission, exclusion severability, and insured versus insured exclusion carve-backs for suits brought against directors and officers by trustees. We can also help you remove certain language, such as change of control wording that may inadvertently trigger runoff coverage.
- **Peer benchmark your limits** against our vast client database and place additional limits if necessary, including for Side A non-indemnifiable coverage. Limit amounts should be determined

not only for shareholder suits but also for creditor suits, including those filed by bondholders and other lenders that will not be made whole post restructuring.

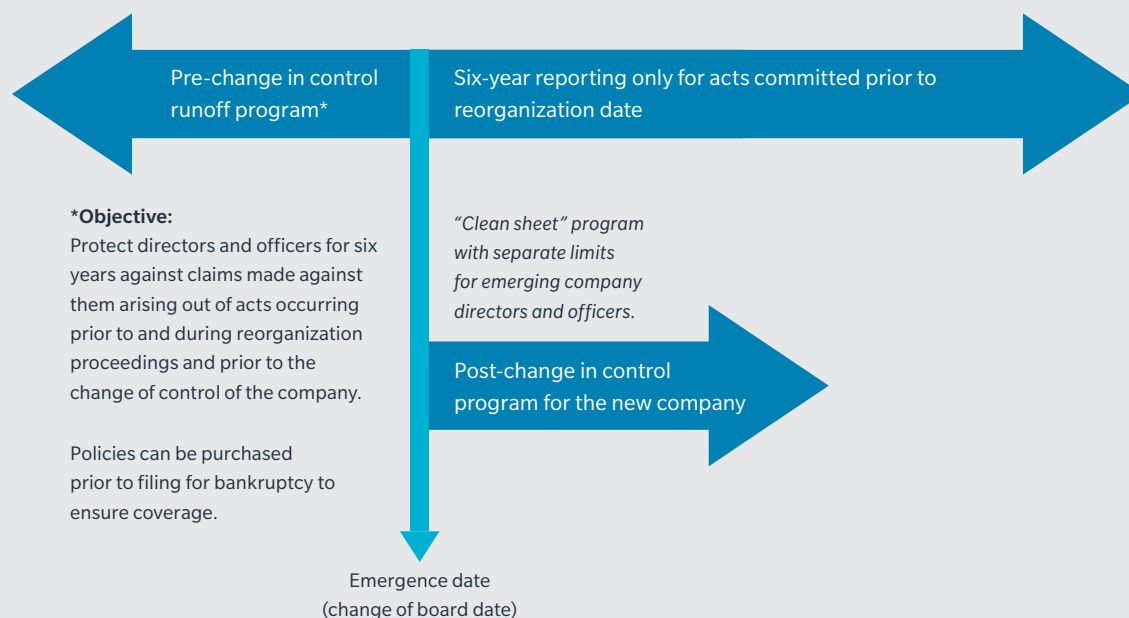
- **Protect directors and officers** during the bankruptcy or restructuring process and after they leave the company. We can help you pre-purchase a six-year runoff policy to ensure that your directors and officers maintain coverage should they leave the company following a change of control or emergence.
- **Consider coverage for newly appointed restructuring officers**, which is often purchased during bankruptcy and restructuring proceedings.

Meeting Your Post-Restructuring Insurance Needs

Our team can also provide a comprehensive analysis of all of your insurance programs to identify appropriate coverage and limits as the company emerges post-bankruptcy. Typically, a company's D&O insurance coverage and limit needs will change depending on its post-emergence capital structure.

BUILDING AN EFFECTIVE RUNOFF INSURANCE PROGRAM

A D&O runoff policy covers directors and officers for any claims arising out of their acts occurring prior to the company's change in control. Runoff insurance for Chapter 7 filings is essentially the same but normally has an added wind-down provision to cover activities by liquidators, including managing remaining operations and selling off company assets.



Other Insurance Solutions

Beyond D&O coverage, our team can help you manage a variety of other insurance designed to address risks for restructuring companies. We can deliver:

- Transactional risk insurance solutions to de-risk mergers and acquisitions (M&A) transactions as your company looks to restructure by selling assets.
- Policies to address third-party concerns around representations and warranties, litigation liabilities, tax issues, environmental issues, successor liability, or fraudulent conveyance risk.
- Coverage to backstop tax opinions or known loss scenarios.
- Employment practices liability insurance to protect your company from claims made by employees who are terminated as a result of bankruptcy or restructuring.

- Fiduciary liability insurance to protect against risks arising out of underfunded pension plans.
- Insurance to quantify known exposures and eliminate the need for contingency trusts. We can help you pursue strategies to unlock excess cash collateral posted to insurers and provide immediate access to funds.

Resolving Complex Claims

D&O claims can be highly complex, and even more so if related to litigation filed as a result of a corporate bankruptcy. Plaintiffs in such litigation typically include shareholders, creditors, lenders, bondholders, and employees. Our team of experienced claims advocates will help you avoid protracted disputes and drive positive claim results for the duration of your six-year runoff policy.

The Claims Advocacy Continuum for Distressed Companies

THROUGHOUT THE CLAIMS PROCESS, EXECUTIVES WHO MAY BE PREOCCUPIED WITH BANKRUPTCY PROCEEDINGS CAN BENEFIT FROM THE KNOWLEDGE AND EXPERIENCE OF OUR D&O CLAIMS ADVOCATES, WHO CAN MAXIMIZE THE PERSONAL PROTECTION AFFORDED BY THEIR D&O INSURANCE POLICIES





Delivering Value to Companies in Distress

The road ahead for companies going through bankruptcy or restructuring can be difficult, which is why it's important to work with an advisor that knows the terrain. Marsh's team of FINPRO specialists has helped hundreds of companies navigate the process, and can help you manage critical risks, answer your key questions, and anticipate questions from underwriters. And with the backing of our 300+ FINPRO colleagues across the US — with deep knowledge of financial and professional policy forms, relationships with all leading insurers, and experience placing coverage for thousands of companies — we can help you build effective insurance policies at competitive pricing.

For more information, visit marsh.com, contact your Marsh representative, or contact:

MARK CUOCO
+1 212 345 6503
mark.a.cuoco@marsh.com

JACK FLUG
+1 212 345 6493
jack.flug@marsh.com

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