



Retired Directors Assurance

Steven E. Wilson
President
14643 Dallas Parkway, Suite 890
Dallas, TX 75254

866-212-3030 Toll Free
972-354-1510 Local Phone
972-354-1505 Fax

swilson@retiredirectors.com
www.retiredirectors.com



Financial Protection for Retired Directors

INTRODUCTION

The personal liability for directors of public companies has never been greater. Directors face increased responsibility, heightened time commitments and lower investor tolerance for performance and governance failures, all of which lead to an increased risk of litigation.

A number of well publicized corporate scandals such as *Enron*, *WorldCom* and most recently *Just for Feet*, highlight the personal exposure of outside directors of public companies. In *Enron* and *WorldCom* alone, outside directors paid \$31 million out of their own pockets to settle their part of the shareholder litigation. In April of 2007, the outside directors of *Just for Feet* paid \$41.5 million out of pocket to settle their litigation. So how is the exposure different for retired directors and where do traditional D&O policies and corporate indemnification fall short?

HISTORY

While examining this changing climate, we discovered that a gap in coverage exists for corporate directors when they retire or resign from a board. The statute of limitations for directors under the Sarbanes-Oxley Act of 2002 is five years. When you add in the time it takes to settle such complex litigation (seven years in some cases), the liability can extend out many years and much can change over such an extended period of time. Management can change. The company's financial condition can change. The laws governing companies and their ability to indemnify can change. The availability of D&O insurance and the terms and conditions of coverage can change. In short, there are no long-term guarantees.

Retired Directors Assurance (RDA) is a new insurance product designed to fill the gap. RDA is available to directors of public, private and not-for-profit companies and provides protection that covers the statute of limitation. RDA offers a long-term solution for a long-term exposure that traditional D&O policies and corporate indemnification do not provide.

Retired Directors Assurance is written through ACE Westchester¹, the excess and surplus property and casualty operations of the ACE Group of Companies.

¹ ACE Westchester is part of ACE Limited (NYSE: ACE), the Bermuda based holding company for the ACE Group of Companies and one of the leading insurance and reinsurance organizations in the world. ACE Limited and the ACE Group of Companies are rated A+ by A.M. Best.

RETIRED DIRECTORS ASSURANCE

Other than their own personal assets, retired directors have two sources of protection for the decisions they made as directors. Unfortunately, the protection afforded them through corporate indemnity and traditional D&O insurance does not match up with their exposure. Consider the following facts:

- The statute of limitations for a director under the Sarbanes-Oxley Act of 2002 is five years.
- Typically, the purchase of D&O insurance is for one year and cannot be guaranteed beyond one year.
- There is no guarantee the corporation will be legally or financially able to meet its indemnification obligation.
- The limit of liability in traditional D&O insurance is shared by a multitude of people as well as the corporation itself.
- Traditional D&O policies contain numerous exclusions such as ERISA, Pollution, Bodily Injury, Property Damage and Insured vs. Insured exclusions.
- Traditional D&O policies are rescindable and contain severability language that could void coverage altogether.
- The average D&O claim takes 4 years to settle.
- Once a director leaves a company, he or she no longer has a voice in the corporation's decision to purchase D&O insurance, assuming its availability.
- Once a director leaves a company, his or her interests may no longer be aligned with those of on-going management or the board of directors.
- Laws governing corporate indemnification provisions can change.

Retired Directors Assurance is an innovative product designed to protect the personal assets of retired board members. Here are some of the coverage highlights:

- Up to \$10,000,000 of individual protection.
- No deductible or self insured retention.
- Six year policy to cover the statute of limitations under Sarbanes-Oxley.
- No panel counsel – you select your legal representative (subject to consent).
- Defense costs, judgments and settlements are funded by an insurance carrier who has a vested interest in mitigating the loss.
- No requirement to maintain any underlying D&O coverage.
- No exclusion for ERISA, Pollution, Bodily Injury or Property Damage or Insured vs. Insured.
- Non rescindable and non cancelable policy.
- No severability issues with an individual insured.
- Value added services provided by Retired Directors Assurance Association.
- Coverage is underwritten through ACE Westchester.

Note: This document is designed to be a general overview of the policy and is not intended nor should it be construed as a complete explanation of the coverage that may be available. Different and/or additional terms and conditions may apply with respect to the specific coverage sought. Please read your policy carefully and contact your agent or broker or Retired Directors Assurance Underwriting Services if you have any questions.

VALUE ADDED SERVICES

During the policy term, each RDA policy holder will receive the following::

- A financial overview of the company he or she served and its ability to meet its future indemnification obligation;
- Quarterly letter reminding you of claim reporting provisions of the policy;
- Newsletters and articles on current issues facing Directors and Boards;
- Information about D&O claims and their trends;
- An overview of the on-going D&O program purchased by the company the director served (if information regarding the program is supplied).

All Retired Directors Assurance policy holders will be granted immediate membership to the Retired Directors Assurance Association. A non profit organization that has been established to channel value added services.

CONCLUSION

When the settlement was announced in the Worldcom case, Alan Hevesi, a trustee for the lead plaintiff, the New York Common Retirement Fund, stated:

“The fact that we have achieved a settlement in which these former outside directors have agreed to pay 20% of their cumulative personal net worth sends a strong message to the directors of every publicly traded company that they must be vigilant guardians of the shareholders they represent. We will hold them personally liable if they allow management of the companies on whose boards they sit to commit fraud.”

Clearly the legal landscape has changed. Our mission is to provide retired or former directors with long-term financial protection for the liabilities they incur as a result of their service as corporate directors.

Unfortunately, the protection afforded retired directors through corporate indemnity and traditional D&O insurance is unable to provide the long-term protection a retired director needs. Retired Directors Assurance is the solution.

All products will be distributed by a licensed agent or broker or by an affiliate of Retired Directors Assurance Underwriting Services.