



Arlington/Roe®
Managing General Agents
Wholesale Insurance Brokers

D&O

EXCESS SIDE A

Why should it matter to my insured?

EXCESS SIDE A:

Excess Side A with DIC is an important policy to have, especially since there has been an increase in bankruptcies and insolvencies. This year, bankruptcies and insolvencies are expected to continue increasing, leaving your insured even more exposed than before.

If your insured only carries a D&O policy (even if it has Additional Side A coverage), that policy can be frozen by the bankruptcy court as an asset. If that happens, directors & officers will be left without reimbursement options for non-indemnified losses; meaning the company does not or is not able to indemnify the directors or officers during the litigation process. It can also cause delays in their reimbursement if that policy is finally able to make a payout.

This is only one of several things that could leave your insured exposed. This policy is available to private, publicly traded and nonprofit organizations and is written in the name of the company.

CLAIM SCENARIO (COURTESY OF AIG)

Financial Insolvency Leads to Non-Indemnifiable Loss

A bankruptcy trustee filed an action against the board of directors and insured executives of an energy company, alleging improper transfer of nearly \$100 million prior to the company's insolvency.

The trustee alleged fraud against several of the defendants arising out of their participation in the transfer of the funds and alleged negligence and breach of fiduciary duty against the remaining defendants arising out of their failure to prevent the transfer.

Coverage under the Side-A policy was triggered because the company's underlying ABC policy limits were exhausted by numerous legal actions and the company was unable to provide indemnification due to its insolvency. Ultimately the entire Side-A policy limit was exhausted by defense costs and settlement payments.

Now is the time to make sure you have a discussion with your insured about their Excess Side A exposures. Reach out to one of our brokers for information on how to provide this important policy to your insureds!

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