COVID-19 and the Executive Risk Marketplace

Although COVID-19 will impact the executive risk marketplace, we do not foresee coverage applying to "direct loss" for COVID-19 claims. The concern for our clients is the "indirect loss" as a result of the impact of COVID-19.

Board and senior management decisions regarding strategy during the pandemic, reduction in force, employees working remotely and the overall volatility of the economy are a few examples that create uncertainty for our clients. When coupled with the recent trend of social inflation – rising insurance costs due to increased litigation and plaintiff-friendly juries -- an economic downturn could lead to a spike in executive risk litigation. Shareholders have already filed two SEC Securities Claims as a result of a company's actions (or inaction) during the pandemic. We expect this trend to continue for public companies once first-quarter earnings are released, and the effect of COVID-19 is disclosed.

COVERAGE EXPOSURES

While the exact exposures will vary by company, the following are potential situations a company may face due to COVID-19.

+ **Directors and Officers Liability (D&O)**
  The response to COVID-19, or lack thereof, the transparency of business continuity plans, disclosure (risk factor) statements and the overall macro-economic issues that could drive down shareholder value will all be factors in future COVID-19 D&O litigation. Investors across all industry segments are experiencing a significant loss of value and could seek recovery from all means available, including litigation (with or without merit). Also, in the event of insolvency or bankruptcy, claims by creditors or shareholders are likely.

+ **Employment Practices Liability (EPL)**
  Allegations of age, race, gender or other discrimination when executing a reduction in force (RIF) or layoff due to COVID-19 has the potential to spike. Furthermore, there is potential for hostile work environment claims if employers force employees to go back to the office. Companies not making reasonable accommodations could be vulnerable to potential lawsuits.

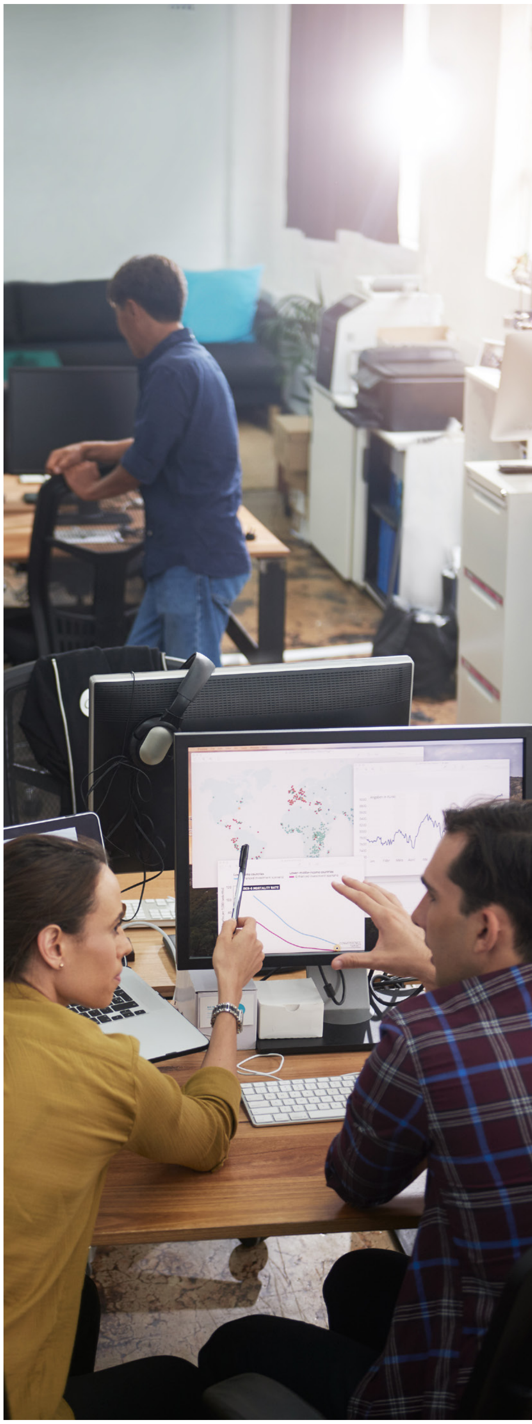
+ **Crime**
  With less company oversight and IT staff overwhelmed, there is a higher potential for crime loss due to increased remote workstations. Social engineering and phishing scams continue with even more vigor than before as criminals exploit COVID-19 fears and the distractions that accompany teleworkers. Employee theft losses will continue, as well. Bad actors could become more desperate, given the economic uncertainty.

+ **Fiduciary**
  With 401k accounts decreasing in value, plan participants may look to their company for their 401k investment loss. Companies may become a target of lawsuits related to their lack of due diligence – for example, excessive fee litigation. Also, comparable to D&O, stock price drops (if included in the plan) and financial insolvency have the potential to impact fiduciary claims. While the allegations are unlikely to change, the frequency may increase given the current economic downturn.

+ **Workplace Violence**
  As unemployment increases, there is a higher potential for the threat of violence in the workplace. Most EPL policies provide a sublimit for expenses like public relations, grief counselors and additional security in response to a violent workplace incident on the company's premises.

MARKET UPDATE

The “hard” market continues with even more resolve as a result of COVID-19 as carriers continue to quote with increased premiums, retentions, limited capacity and, in some instances, restrictions of coverage. For the first time since the 2008 credit crisis, carriers are underwriting to insolvency risk. Due to these reasons, there are emerging trends in carrier requirements and actions as they respond to the pandemic.



+ Underwriting is becoming more vigilant as companies are requiring additional details regarding COVID-19 and its implications on business going forward
+ Underwriters may withhold quotes until only a 30-day period from the renewal date
+ Extensions are becoming harder to obtain and increasingly costly
+ Appetites are decreasing for new buyers of executive risk coverage as well as for overall new business unless it is considered a top-flight risk
+ Industries such as hospitality, retail, real estate and travel are highly scrutinized in the underwriting process
+ Underwriting authority continues to centralize away from field offices
+ Some carriers are beginning to reduce COVID-19 exposure by underwriting through the policy with specific absolute COVID-19 exclusions or other amendments to the policy which limit coverage related to COVID-19

CONCLUSION

It is not surprising that the market is evolving in this unprecedented time. As new information surfaces and new due diligence and protocols are in place, we expect to see better outcomes for future claims. However, COVID-19 will have an impact on executive risk lines of coverage for the foreseeable future, as claims will continue to develop in the upcoming months.

The Hays team is continually monitoring COVID-19, its influence on your business and how you can be prepared for the implications of COVID-19. Reach out to your Hays service team with any questions.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.