



# CUG.COMments

A Newsletter from Chicago Underwriting Group, Inc.  
Underwriters of D & O and Professional Liability Insurance

Issue 66

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*This issue contains two announcements: a new policy form and a new location.*

## NEW SIDE A FORM

We are pleased to announce “**A-Side First**,” our upgraded Side-A only / DIC policy that will replace ExcessFirst, our current Side-A product. Here are some of the key features of the new form, which will be **ORUG-88**. A PDF [specimen](#) of the new form can be found on our website.

**Note: A-Side First may not be available in every state; coverage may be amended by state-mandated endorsements or by underwriting considerations.**

### Insuring agreement

- Covers non-indemnified loss as a result of a “DIC Event” or the exhaustion of the underlying insurance by covered losses.
- Includes a liberalization clause: Policy will not be more restrictive than the underlying insurance.

### Broad definition of DIC event:

- The refusal, failure or financial inability of underlying insurer to indemnify as required.
- Rescission or attempted rescission of the underlying insurance.
- Underlying insurance not liable for non-indemnified loss.
- Underlying insurance fails or refuses to indemnify due to a liquidation or reorganization proceeding involving the company.

### Broad definition of non-indemnified loss

- Loss which the company and any “outside entity”:
  - 1) are not permitted to indemnify,
  - 2) refuse to indemnify or fail to indemnify, or
  - 3) are financially unable to advance.

### Broad definition of claim includes:

- A written demand for monetary or other relief.
- A civil proceeding commenced by the service of a complaint or similar proceeding.
- An arbitration proceeding or demand for mediation.
- A criminal proceeding commenced by the return of an indictment, information or similar document.
- A formal administrative or regulatory proceeding, as defined.
- An official request for extradition, including execution of a warrant for arrest.
- A written request to toll or waive the applicable statute of limitations.
- A request or subpoena by a regulatory authority to depose an insured person.

### Other definitions:

- Addition of domestic partner to insured persons.
- Outside entity includes “for profit” organizations which have not issued or sold securities.

### Broad definition of loss includes:

- Damages, judgments, settlements.

- Pre-judgment and post-judgment interest.
- Civil penalties pursuant to Foreign Corrupt Practices Act as applicable.
- Taxes imposed by law by reason of the insolvency, bankruptcy or similar status of the company.
- ‘Most favorable venue’ for punitive, exemplary or multiple damages if insurable.
- Loss incurred under Section 11 or 12 of the Securities Act of 1933 not asserted to be uninsurable.

### **Exclusions**

- ERISA exclusion deleted.
- Conduct exclusion triggered by a final and non-appealable adjudication in any proceeding not brought by the insurer.
- BI/PD exclusion does not apply to: 1) securities class action lawsuits or shareholder derivative lawsuits; 2) any claim that alleges mental anguish or emotional distress; or 3) independent directors.

### **Broadened severability**

- No conduct, intent or knowledge by any insured persons will be imputed to any other insured person.

### **Amended notice provision**

- Allows for notice of claim as soon as practicable after the in-house general counsel or risk manager learns of such claim; also provides a window of 60 days after policy expiration.

### **Fully non-rescindable policy**

(Other than for non-payment of original premium.)

### **Non-cancelable by insurer**

(Other than for non-payment of premium.)

### **Available extensions include:**

- Coverage for independent directors only.
- Use as primary A-side only policy.

### **Target sectors**

We will accept submissions on all classes of public companies other than Hedge Funds, Private Equity Investment Groups and Special-Purpose Acquisition Companies.

### **Availability**

A-Side First has so far been approved in 29 states, including California (with effect from February 15), Colorado, Michigan, New Jersey, Pennsylvania and Washington. A full list of [current state approvals](#) is available as a PDF on our web site. This table will be updated as new approvals are received, so please check back to the site, or ask one of our underwriters.

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## **CHICAGO UNDERWRITING GROUP OPENS IN DENVER**

We are pleased to announce the opening of our Denver office, our first location outside Chicago. The office will be run by Tim Kerber, Vice-President, who joins us from Monitor Liability Managers where he underwrote Directors and Officers Liability coverage for companies of all sizes, from “start-ups” to the Fortune 500. Tim’s 15 years in the insurance industry also include experience in placing D&O programs for a major global broker.

Tim’s primary role will be delivery of CUG’s products and services to the mountain/western region, but Tim will welcome submissions from producers in all states. Likewise, producers in the mountain region who wish to still send business to Chicago may do so: The Denver operation is intended to complement rather than replace our existing producer relationships. Existing business is intended to remain with the current underwriter at renewal.

While Tim finalizes his office space, he can be reached by e-mail or phone:

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