

# Risks, claims, cover

## A Brief Introduction to D&O Insurance

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# Agenda

- 1** Overview of Directors and Officers risks
- 2** D&O: cover and applications
- 3** Recent developments

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“A ship in a harbor is safe...  
but that is not what ships are build for”

John A. Shedd

## Main categories of claims

Insolvency proceedings

Accounting irregularities / Financial reporting

Misrepresentation / Non disclosure/ Conspiracy

M & A activities

Dubious credits/sales/purchases

Deceptive trade practices

Misappropriation of company's assets / Personal profit

## **Main categories of claims - continued**

IPO/stock connected claims

Employment practices liability

Non payment of employers contributions / taxes

Breach of laws/standards (e.g. health/safety/pollution)

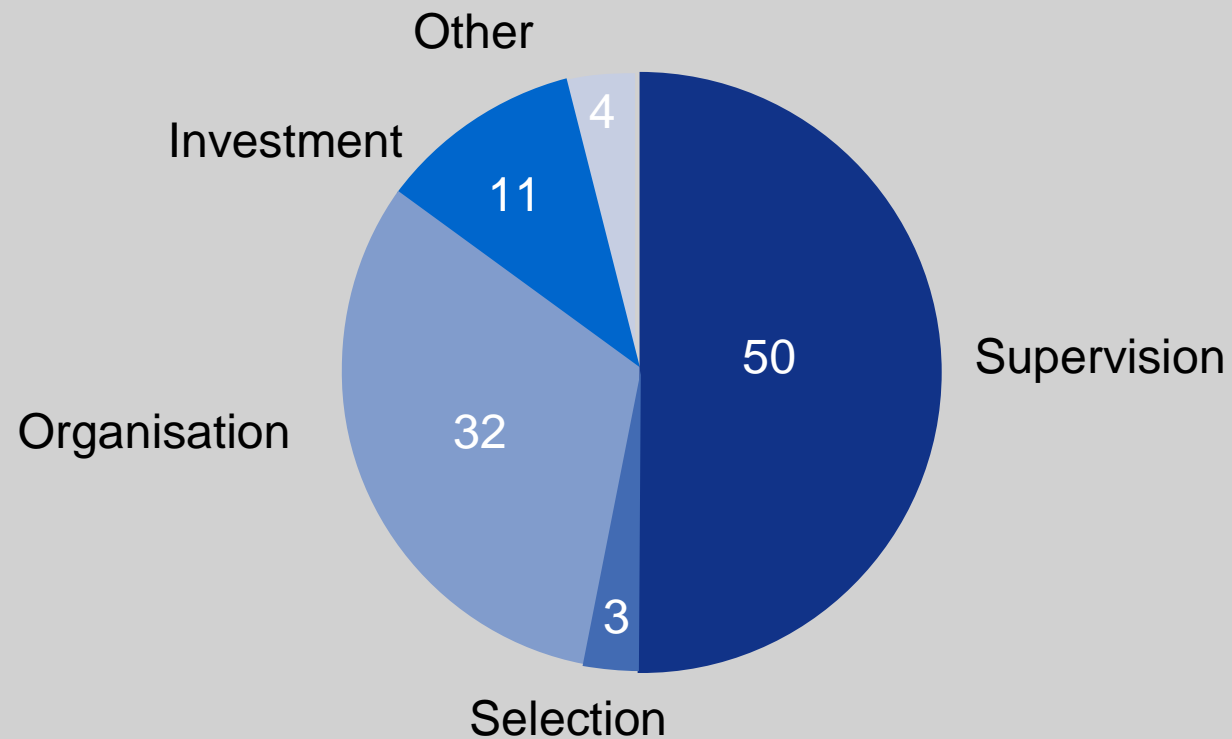
Other breaches of D & O duties

Financial Crisis

Antitrust

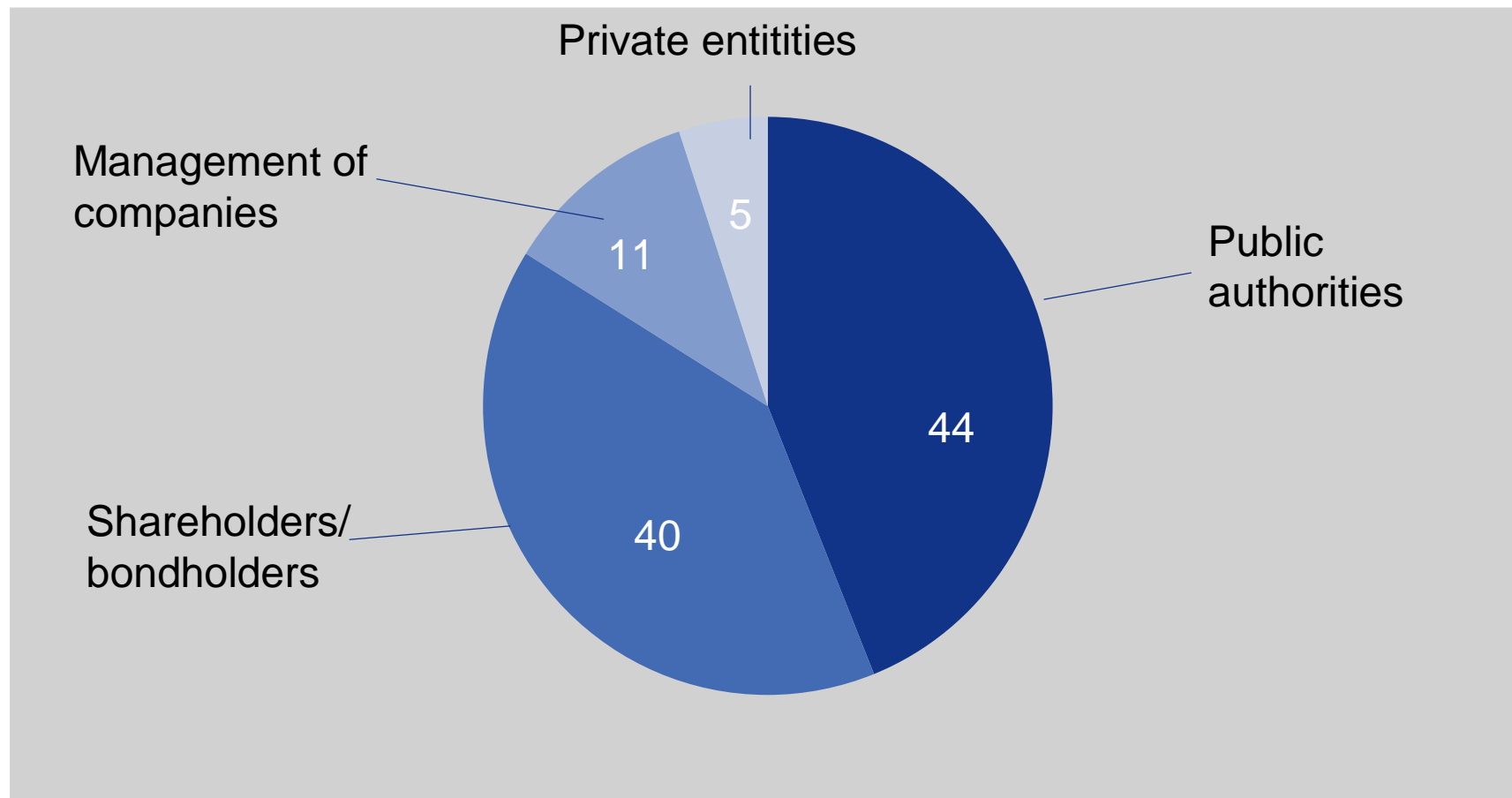
## 2 General D & O claims statistics *(Europe, not CEE specific)*

### The most common causes of claims against Managers:



## 2 General D & O claims statistics *(Europe, not CEE specific)*

### Claimant distribution



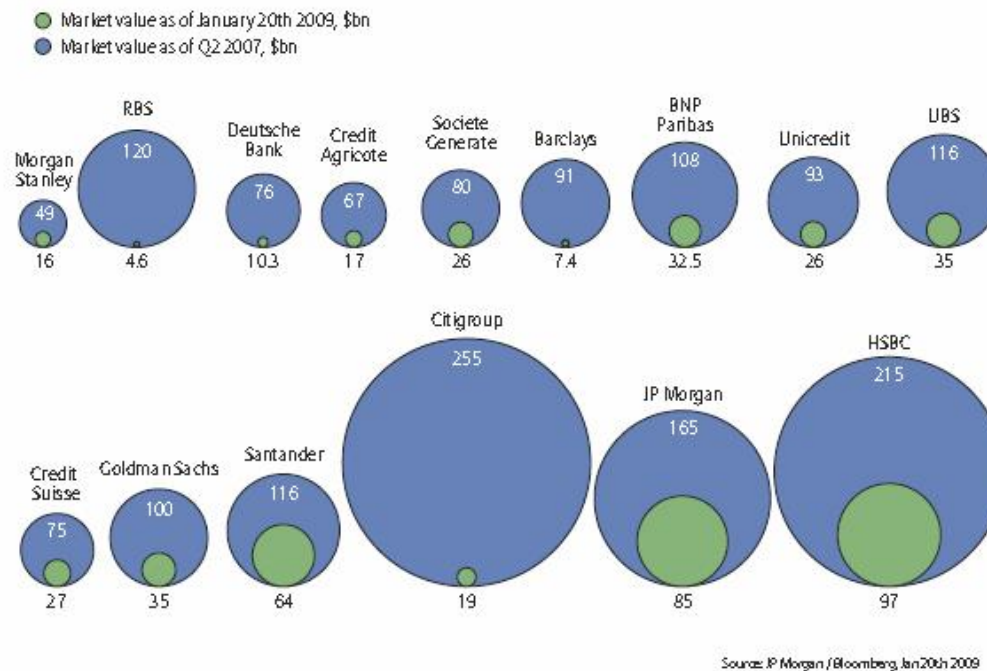


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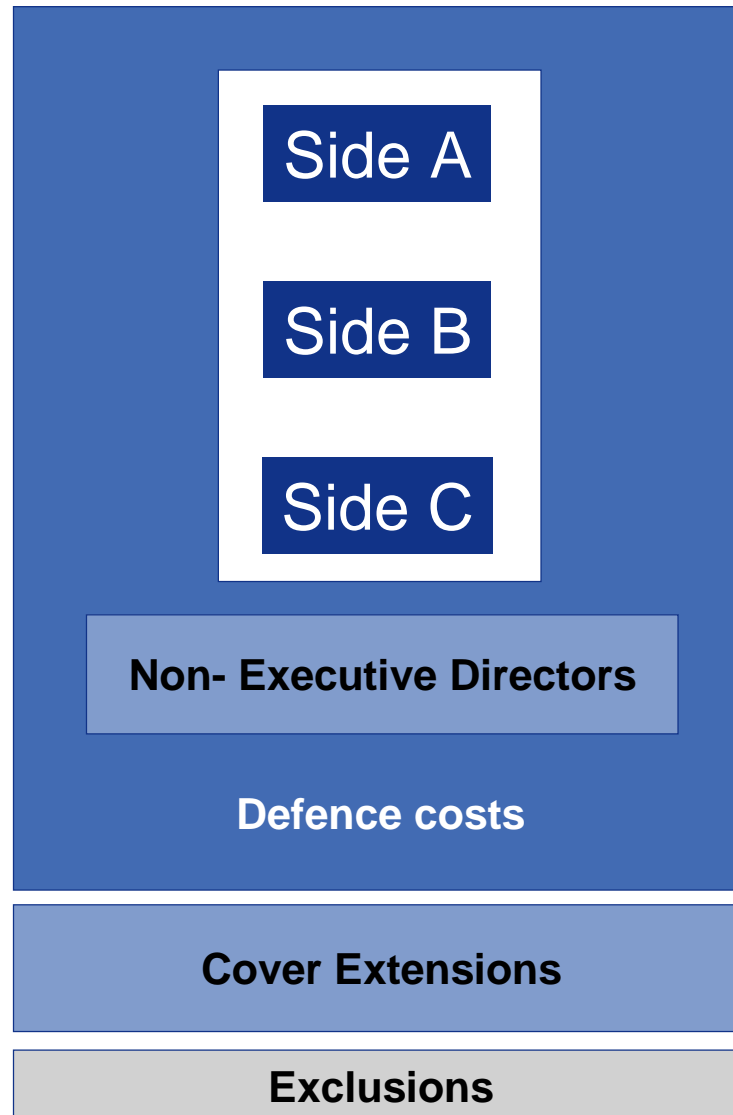
## What is D&O Insurance?

- Directors and Officers liability insurance is designed to protect the personal assets of the D&O from claims against their mismanagement
- Limited cover for the company is also granted
- Created in the 70s, “popularized” by the crisis:

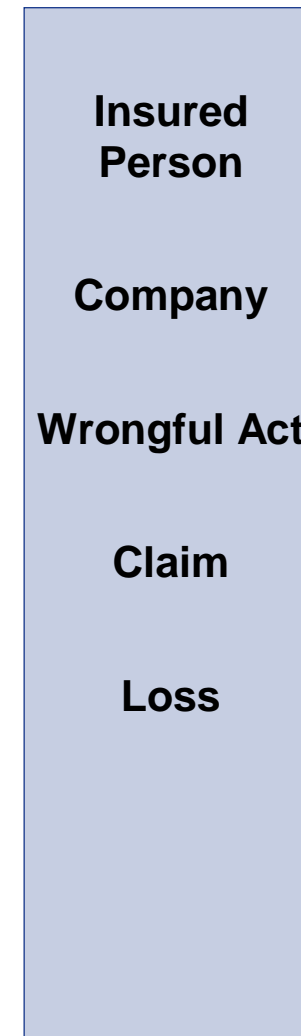


- One of the fastest developing products in insurance world

## Policy structure



## Definitions



## Definition: Who is insured?

### INSURED PERSON

Any natural person who was, is or who during the POLICY PERIOD becomes:

- Director, Officer, proxy or NON-EXECUTIVE DIRECTOR or “de facto” director of the COMPANY, or the equivalent in any other jurisdiction in the given country;
- Shadow Director of the COMPANY as defined in section 251 of the UK Companies Act 2006 or any re-enactment thereof, or the equivalent legislation in any other jurisdiction;
- an employee, director, officer, trustee, governor or equivalent of the COMPANY who, at the specific request of that COMPANY holds the position of a director, officer, trustee, governor or equivalent of an OUTSIDE ENTITY

- compliance committee member appointed by the COMPANY;
- Employee of the COMPANY who carries out a managerial or supervisory function for the COMPANY;
- Employee of the COMPANY who is joined as a party to any action against any person defined in here above.

INSURED PERSON shall also include

- lawful spouse or domestic partner of any INSURED PERSON as specified above where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner. There is no cover for any CLAIM that alleges a WRONGFUL ACT by the spouse or domestic partner;
- legal representatives, heirs, assigns or estates of an INSURED PERSON as specified above in the event of their death, incapacity, insolvency or bankruptcy for the WRONGFUL ACTS of such INSURED PERSON.

INSURED PERSON shall not include insolvency practitioners or external auditors.

## Basic Coverage

- Side A – Insurer reimburses losses of an Insured Person
- Side B – Insurer reimburses losses of the Company for Claims against Insured Persons
- Side C – Insurer reimburses losses of the Company in case of Securities Claim
- Non-executive directors – special ADDITIONAL limit for Non-executive directors that could be used in case of exhaustion of the others available protections

**Side A claim: mismanagement**

**Origin: Poland**

**Status: open**

*Real CEE case*

A director of a UK branch office of a production company has been tasked with finding a new office building for the company. However he exceeded his competencies and rented the new location without approval from the mother company. The company claims his choice was not prudent enough and claims the difference between his negotiated rent and a lower rent from alternative location. The director claims he had an oral agreement to pursue this deal.

**Side A claim: misrepresentation**

**Origin: Hungary**

**Status: settlement of 2.25mIn EUR**

*Real CEE case*

A German company involved in steel and construction business claimed against the general manager of its subsidiary in Hungary who was accused of having caused a financial loss of 7 MIO EUR to the Hungarian subsidiary. The loss was allegedly a result of lack of reporting to the parent company, deviation in production from the figures of the production planning for the particular year and due to a peak in steel price that the general manager allegedly ignored. Settlement 2.25 MIO EUR.

**Side A/B claim: reversed insolvency**

**Origin: Poland**

**Status: open**

*Real CEE case*

D&Os of a Czech subsidiary of a CEE Oil&Gas company have twice filed for insolvency of a business contractor, which failed to fulfil its financial obligations. The insolvency proceedings were not opened by the court upon this request but the filing for insolvency affected the business activities of the contractor, causing it to lose a number of contracts, finally actually resulting in insolvency of the ex-business contractor. The Contractor is claiming the D&Os for “harassment with insolvency proceedings” and is asking for damages and reimbursement of lost income.



**Side C claim: IPO prospectus**

**Origin: Turkey**

**Status: settlement of USD 19,2mln**

*Real CEE case*

A class action lawsuit was filed against a provider of mobile communication in Turkey alleging that the prospectus issued in connection with its Initial Public Offering (IPO) contained false and misleading statements regarding the „churn rate“ (indicates a percentage of customers disconnection from the network in a certain period). The lawsuit was settled, shareholders received a cash payment of USD 19,2 MIO.

**Side A claim: breach of law / Inquiry**

**Origin: Czech Republic**

**Status: dormant**

*Real CEE case*

A wine producer bought 2,6 MIO litres wine from a supplier. The wine was declared to have all necessary certificates. However, the food inspection authority forbade the sale of wine for drinking purposes (had to be sold for industrial ones) due to falsified certificates. The supplier filed for bankruptcy shortly thereafter. It seems there was a whole chain of companies involved in the sale of such wine with false certificates. The CEO is now being investigated as he allegedly should have been able to detect the problem, neglected operational controls of the production and bought unnecessary amount of wine from one supplier. The amount claimed by the controlling shareholder is about 0,5 MIO EUR.

**Side A claim: negligence**

**Origin: Kazakhstan**

**Status: open**

*Real CEE case*

Two former directors of a large local company have been accused of insufficient care and dilligence after they acquired another local company, which turned out to be a muticulous fraud, designed to deceive the Isureds and pump money out of the Policyholder. After the takeover the new subsidiary turned out to carry nothing but an unsecured loan.

The claim was brought by a US minority shareholder under Rule 144a, the reserve for defence costs alone is currently 1,5mln EUR.

## Policy Extensions

### Selected extensions: prior and post Claim cover

- Loss mitigation – to reduce the potential loss from a Claim the policy will pay for loss mitigation advisor services.
- Emergency costs – for the convenience of an Insured reasonable Defence costs could be incurred before written consent of the Insurer if this consent cannot be reasonably obtain.
- Image Repair cost – Post Claim PR expenses to protect the image of Insured person
- Counseling service extension – the coverage include fees and expenses for psychiatrist, psychologist or counselor to treat stress, anxiety of such similar medical conditions resulting from a Claim.

**Extension: Loss mitigation**

**Origin: Baltics**

**Status: payout of 25.000 EUR**

*Real CEE case*

In April 2011, the Prosecutor's General Office launched 4 criminal proceedings on negligence in relation to electrical power disruptions in December 2010 and January 2011 which had caused emergency situation in several municipalities.

Reason for power disruption was heavy snowfalls and trees too close to the power supply lines destroying lines. Allegation was that the D&Os negligently did not chop down trees close to the power supply lines. We paid for costs of mitigation loss adjuster, investigations have been closed.

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## Rapid development of the D&O cover following the financial crisis.

### D&O exclusions in 2010:

- Bodily Injury Property Damage (absolute)
- Professional Indemnity
- Product Liability
- Failure to maintain Insurance
- Pollution
- Asbestos
- Product Liability
- Intentional acts or Personal profit
- Insider dealing
- Major Shareholder
- Insured vs Insured
- Prior and Pending Litigation
- Employment Practice Liability
- Prospectus liability
- Insolvency
- Fines
- Pension Trusts
- Territorial Restrictions
- US Exclusions

### D&O exclusions in 2012:

- Bodily Injury Property Damage („for”)
- Pollution (IN US)
- Intentional acts or Personal profit
- Insured vs Insured (IN US)
- Prior and Pending Litigation
- Fines (Criminal fines)
- Pension Trusts

## Newest claims scenarios arising from cover broadening

- Certain CEE transportation company sued over wrongful act dating 70 years back (unlimited retroactive cover & „for” BIPD exclusion)
- Group of employees accused of harassment (broadening Insured Person definition)
- Joint Venture dragged into shareholders’ dispute (extending cover to non-majority interests)
- Former manager of a foreign subsidiary fired and sued by the Policyholder, tapped into the policy on his own

*Real CEE case*

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*Real CEE case*

Does „broadest”  
equal „best” ?



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