

Are You Underwriting D&O without a Full View?

Can you accurately underwrite or price D&O while lacking a complete loss picture? Based on your source, the number of securities suits for 2009 differs. This is chiefly because different sources count different things as a securities suit. More importantly, if you think the number of Securities Cases declined in 2009, think again. Advisen's data clearly shows increases in certain categories of D&O Claims Events.

Advisen's Chief Knowledge Officer Dave Bradford underscores that big discrepancies lie beneath this terminology veneer. Each source tracking Securities Cases cites a different number and this is principally because they rely on inconsistent definitions. Cornerstone and NERA, for example, track only securities class action suits, whereas Advisen reports on a much wider range of securities-related lawsuits. But even considering securities class action suits alone, Cornerstone's report shows a big decrease in 2009 cases, while Advisen and NERA found little change.

If you're looking only at securities class actions, you're missing a big portion of the full picture. If these data are powering your D&O pricing model, you should double-check their completeness. For example, Dave Bradford says, "A big issue is regulatory suits – we call them 'securities fraud suits' - because not only do D&O policies typically cover their defense costs, they often trigger securities class actions and shareholder derivative suits. Securities fraud suits led the pack in terms of the number of filings in 2009."

ARE SECURITIES CASES INCREASING?

According to Advisen, 2009 "saw securities lawsuit filings grow at a robust rate of 13 percent to 910 suits, eclipsing an already-elevated 2008 at 804 suits, which was up 33 percent from 2007." This report titled "Securities Suits Abound in a Harsh 2009" is available free of charge at Advisen's Corner Store via http://corner.advisen.com/reports_topical_security_quarter4_blurb.html.

Kevin LaCroix commented on his D&O Diary blog that "Perhaps the most important contribution that the Advisen report makes to understanding what happened from a litigation standpoint is its observation that "securities litigation" -- as broadly defined in the report – actually increased in 2009 by comparison to prior years... This observation is interesting and seemingly contrasts with conclusions reported in other studies suggesting that securities litigation declined in 2009. The difference in the analysis is due to the fact that the other studies concentrated exclusively on securities class action lawsuit filings in the United States, whereas the Advisen report

is focused more broadly on corporate and securities litigation generally, and on litigation both inside and outside the United States. It appears that for several years, securities class action lawsuits as a percentage of all 'securities lawsuits' have been declining. As recently as 2004, securities class action lawsuit filings represented as much as half of all 'securities lawsuits' filed, whereas in 2009 securities class action lawsuits represent only about one quarter of all 'securities lawsuits.'

WATCHING OVERALL CLAIMS ACTIVITY?

Kevin LaCroix continues with "...even if absolute numbers of securities class action lawsuit filings are declining, that does not mean that overall claims activity is decreasing. To the contrary, claims activity is actually increasing, while at the same time the mix of cases filed is changing. So if you were to focus only on securities class action lawsuit filing levels, you might mistakenly conclude that overall claims susceptibility is decreasing. It is not. It is increasing." That is our point, exactement!

Read Kevin LaCroix comments in full at

<http://www.dandodiary.com/2010/01/articles/securities-litigation/advisen-releases-yearend-study-of-securities-lawsuits/index.html>

WHAT DOES ADVISEN TRACK?

Selling, buying or writing coverage is easier when you have 45,000 large loss examples totaling \$3.25 trillion at your fingertips. Securities cases here represent \$88 billion in loss stemming from over 9,000 cases and events. We call this Master Significant Cases and Actions database by the acronym MSCAd.

Use MSCAd fuel your D&O pricing model or showcase similar loss in your underwriting process. Identify uninsured or underinsured exposures for your company, your clients, or within your portfolio. Justify higher limits by filtering our list to find the exact set that meets your criteria. Also, use this database to see which large losses might trip your new policy language. Track trends within industries and geographical locations to gain a wider understanding of the likely exposure, from which appropriate terms, cover and price can be driven through the underwriting and broking process.

WHAT IS A SECURITIES CASE?

Here's how Kevin LaCroix assessed our terminology: "The most important thing to understand is that the Advisen report uses the term 'securities litigation' to include a very broad range of kinds of lawsuits, including not just securities class action lawsuits, but also

derivative actions, regulatory and enforcement actions, individual lawsuits, and collective actions in courts outside the United States. The Advisen report also apparently includes within the category 'securities lawsuits' claims alleging "common law torts, contract violations and breaches of fiduciary duties."

David Bradford acknowledges that some may debate whether certain categories in Advisen's database should be characterized as securities suits as opposed to some other variety of securities-related corporate litigation. However, he defends Advisen's scrupulous characterization of cases with one statement: "Advisen's aims to capture all suits that will lead to claims under D&O policies."

ADVISEN'S SECURITIES CASE TYPES

Advisen investigates and reviews a variety of case and event type in this category.

- Securities Class Action
- Derivative Action
- Derivative Shareholder Action
- Breach of Fiduciary Duties: Class Action
- Breach of Fiduciary Duties: Securities
- Securities Fraud
- Ponzi Scheme
- Ponzi Scheme: Class Action
- Collective Action
- Sales Practices Violations
- Sarbanes Oxley Act
- Sarbanes Oxley Act: Class Action
- Biased Research
- Control Persons Violations
- Proxies and Solicitation Violations
- Creditor Derivative

WHICH SOURCE IS MORE COMPLETE?

Based on the extensive case type list above, the differences between Cornerstone's data and Advisen's are clear. Cornerstone only counts Securities Class Actions, while Advisen counts Securities Class Actions plus 15 other case types. The source material for Cornerstone is Stanford Securities' data.

Key differences in counts can be attributed to the following factors:

- Advisen counts securities class action lawsuits that were filed in state courts

Advisen counts each company for which securities violations are alleged as a separate case. For example, if one law firm sues two independent companies, we count two events. However, if two law firms sue one company for the same reason, we count only one event.

For the calendar year 2009, Advisen counted filings through December 31, 2009. For some reason, other sources use a different notion of year end.

WANT MORE?

Our January 22 webinar called "Review of Securities Litigation 2009 and Expert Views for the Year Ahead" featured Travelers's Mark Lamendola, Beecher Carlson's Jeff Lattmann, Oakbridge Partner and D&O Diary author Kevin LaCroix, and Advisen's Dave Bradford.

Listen to our January 22 Securities Litigation webinar

Review the presentation slides from the webinar

Download the Securities Briefing paper

Use this link:

http://corner.advisen.com/reports_topical_securities_quarter4_blurb.html

ADVISEN'S NEXT SECURITIES LITIGATION WEBINAR

Our next Securities Webinar will be on Friday, April 16 at 11am EDT

Register via this link:

<https://www1.gotomeeting.com/register/303731505>

MORE ABOUT KEVIN LACROIX

Kevin LaCroix is an attorney and a Partner at OakBridge Insurance Services. He has been involved in Directors and Officers liability insurance issues for over 25 years. He began his career as a coverage attorney and partner at Ross, Dixon and Bell. More recently, Kevin served as President of Genesis Professional Liability Managers. Kevin is also the author of The D&O Diary weblog at

<http://www.dandodiary.com>.

All of Kevin LaCroix's comments above are posted on The D&O Diary and appear here with his permission.