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PRESS RELEASE

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TILLINGHAST: SOFT D&O MARKET ISN'T EXPECTED TO LAST

Average premiums for U.S. directors and officers liability coverage dropped this year for the first time since 1999, but observers predicted that continued upward pressure in both frequency and severity of losses would spur an end to the current soft market sometime in 2005 and a return to a hard market by 2006, according to a new survey from Tillinghast Towers-Perrin.

According to Tillinghast's 2004 Directors and Officers Liability Survey, the 27th such study from the insurance and reinsurance consultant and intermediary, average D&O coverage costs dropped roughly 10% between 2003 and 2004, with the survey's index of median premium reaching its lowest point since 2001. Although 53% of U.S. respondents said they saw an increase in premiums from their prior policy, the size of decreases for the 32% of respondents that reported them -- particularly in the petroleum, mining and agriculture, and transportation and communication classes -- more than overcame that disparity.

The softening, which was accompanied by an 11% increase in the market's capacity to \$1.5 billion from \$1.35 billion in full limits for 2003, was most notable in excess layers for large public companies, where rates dropped as much as 15%, Tillinghast reported.

However, portending what may be a relatively short soft market, frequency of claims increased, with 0.78% of the 1,347 U.S. organizations that responded to both the 2003 and 2004 surveys reporting that they filed a claim, up from 0.70% a year earlier. The severity of claims increased in four out of five classes monitored by Tillinghast, with the average claim payment up 12% in shareholder/investor claims and up 138% for employees, unions, and physicians claims.

"The survey tells us that coverage is being offered broadly in the market, with decreased premiums, increased limits and enhancements, and fewer exclusions...What's disturbing is that this is occurring at the same time frequency and settlement costs are still rising," said consultant Elissa Sirovatka, who leads Tillinghast's D&O Liability Survey program. "The continued increase in the average cost to settle D&O claims combined with the significant number of open megaclaims makes a tough case for a sustained soft market. The claim conditions we're seeing justify premium increases rather than decreases."

Sirovatka added that the increase in open claims -- with 56% of respondents reporting open claims, up from 37% a year earlier-- along with the increasing settlement costs will make it difficult for insurers to set adequate reserves for their D&O liabilities. General breach of fiduciary duty and inadequate/inaccurate disclosures, including financial reporting and stock or other public offerings, were the most common allegations from shareholder claimants, while discrimination and wrongful dismissal or termination of employees were again the top complaints of employee claimants, Tillinghast found.

A full 99% of the 2,409 U.S. participants reported purchasing D&O insurance, while among the 1% that didn't, those that cited "no need" as their main reason for not purchasing the coverage came from the governmental and other nonprofit; nondurable goods; personal and business services; and technology business classes.

The percentage of U.S. participants reporting increases in their deductibles or retentions fell to 28% from 44% in last year's survey, while 65% of the U.S. respondents saw no change at all in the amount of risk they retained. Increases in coverage limits were most common among those with less than \$400 million in assets and those with more than \$2 billion in assets, while decreases were most common among those with between \$1 billion and \$2 billion, particularly among the utilities and personal and business services classes of business.

"This soft market for D&O insurance will be shorter and less pronounced due to lower investment returns than in the 1980s when cash flow underwriting was prevalent," said Jim Swanke, managing principal for Tillinghast's strategic risk financing practice. "Carriers will likely need to begin increasing rates in the short to medium term in order to maintain their return on equity."

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