

**BLAIS EXCESS & SURPLUS**  
**AGENCY OF TEXAS, LTD.**



**PRESS RELEASE**

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**D&O COVERAGE - CHOICE OF LIMITS**  
**(BEWARE OF SHRINKING LIMITS DEFENSE COST PROVISIONS)**

Unlike commercial general liability (CGL) policies, under which defense costs are paid in addition to policy limits, directors and officers (D&O) policies are written with so-called shrinking limits defense provisions. This means that the expenditure of defense costs reduces available policy limits.

The fact that defense costs comprise a significant proportion of the overall D&O exposure (relative to indemnity payments) makes these provisions that much more important. According to the Tillinghast 2003 Directors and Officers Liability Survey, the average reported defense cost for claims from U.S. participants in the survey was approximately \$544,000. In reality, this number understates a corporation's true exposure to defense costs because the \$544,000 figure applies to all types of claims, a significant proportion of which involved employment-related allegations that would also be covered by a stand-alone employment practices liability insurance policy. A more accurate reflection of the true exposure posed by defense costs was the \$2,194,360 figure representing average defense costs involving claims made by shareholders.

For insureds, the fact that D&O policies are written with shrinking limits has two important implications. First, policy limits should be selected with the recognition that significant funds must be needed not only for indemnity payments (i.e., settlements and judgments) but for defense costs, as well. Second, insureds must at all times have an accurate picture of the monies that have been expended in defending all claims pending within a given policy period. Likewise, insurers should make such information readily available to their insureds, therefore precluding allegations that the insurer committed bad faith in not always providing the insured with this information.

*As a wholesale broker specializing in financial service products, Blais Excess & Surplus Agency of Texas, Inc.'s knowledgeable and experienced staff assists agents/brokers with the acquisition, placement and service of Directors & Officers Liability (D&O), General Partners Liability (GPL), Employment Practices Liability (EPLI), Crime (Fidelity), Kidnap & Ransom (K&R), Errors & Omissions (E&O), Media Liability and Loss Mitigation products for a variety of industries. Clients assisted include but are not limited to energy, biotech, high tech, financial institutions, profit and non-profit entities, partnerships, healthcare, companies making Initial Public Offerings and companies in the process of merger or acquisition.*

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