

BLOG

Boy Scouts' Bankruptcy: Wake-Up Call to Revisit Policies

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Facing hundreds of lawsuits brought by survivors of child sexual abuse that stretch back decades, the Boy Scouts of America (BSA) filed for Chapter 11 bankruptcy this week as a way to resolve its burgeoning litigation crisis.

While the #MeToo movement has contributed to growing public support for victims of abuse to come forward, the main impetus behind the flood of lawsuits against the BSA is a change in the law — led by New York and carried into many other states — to [extend the statute of limitations for sexual abuse cases](#). A long time in the making, this victim-friendly legislation has opened the floodgates for costly litigation and settlements.



From an insurance perspective, extending the amount of time a victim has to file a case will potentially trigger claims across several types of insurance policies, including directors and officers (D&O), general liability and employment practices insurance.

While the BSA's decision to file for bankruptcy protection is a controversial move, it should serve as a wake-up call to organizations that could face mounting claims of decades-old sexual abuse. Now is the time insurance brokers should be reaching out to clients to revisit existing policies, renegotiate terms and conditions, and ensure the language is aligned for the particular risks of their industry.

D&O and employment practices liability policies will be particularly affected by sexual abuse claims. Are your policies adequate? For example, how are the terms of counsel reimbursement written? In cases like the BSA, claims will almost certainly be brought against directors and officers for lack of oversight. If the D&O policy allots for a counsel rate of, say, \$250 per hour with certain law firms pre-approved by the carrier, that won't come close to covering legal fees for the insured. In today's market, \$250 barely pays for a paralegal. Competent counsel will likely run closer to \$800 - \$1,000 per hour. Brokers must ensure they're pre-negotiating outside counsel rates that are in line with today's market so that they receive the absolute best representation. Otherwise, you may be forced to pay two or three times more than your deductible amount. Additionally, brokers should make sure there's not bankruptcy exclusion in the D&O policy.

The prudent approach for CFOs, boards of directors and risk managers right now is to look at all relevant

policies to ensure coverage is appropriate from back-to-front.

And that is becoming increasingly difficult in the reality of today's hardening commercial insurance marketplace. Since the end of 2003, insurance rates have steadily decreased, so placing policies was relatively easy. However, in last 18 months, rates have headed due north. As rates have jumped up, negotiating terms on the front end has become even more challenging.

Insurance brokers need to act as a strategic partner who is prepared to negotiate the best possible terms and, at the time, be savvy in how they navigate a hardening market.

Want to learn more?

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