



2025

TRENDS IMPACTING

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# Directors' & Officers' Liability

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# Directors' and Officers' (D&O) Liability Trends in 2025

Insurance is cyclical, and the laws of supply and demand control the insurance market. As we enter 2025, the market continues to show a strong supply of D&O liability insurance capital, which has put downward pressure on D&O insurance rates since 2022. As such, many clients have experienced welcomed premium relief over the past three years.

There are, however, certain indicators that the current soft market pricing may slow down in 2025, and we may be moving closer to a flat rate environment. The number of traditional US Securities Class Action filings has increased slightly in 2024 for the second year in a row, and D&O insurers are monitoring claims trends closely and expressing concerns about further rate deterioration. While these factors may moderately impact 2025, the pricing environment should remain favourable for insureds that maintain positive financial and operational risk profiles.



# D&O Insurance Considerations for 2025

- **Rightsizing D&O Limits** – If your organization was holding off increasing the limit of your D&O Insurance Program, now may be the opportune time to take advantage of favourable market conditions with plenty of competition and options. Current soft rates may not last.
- **Minimize Your Transactional Risk** – Transactions such as the sale of a company to a private equity fund or other third party, or private or public funds raised through an IPO, RTO, or SPAC in the USA create risk. These transactions will benefit from active D&O Insurance through the transaction and will generally require D&O “Tail Coverage” (extended claims reporting period under a current D&O Policy after expiry) to close the deal. In addition, transactional-specific products such as a Representations and Warranties Insurance (RWI) Policy can also be purchased by companies looking at buying or selling. An RWI Policy is purchased to protect the deal itself and transfer the risk of financial loss caused to the Buyer by the Seller’s breach of a representation or warranty within the M&A agreement. The purchase of an RWI Policy is becoming increasingly common for bidders to remain competitive in an auction process. Several insurers in Canada and globally offer the product, with premiums becoming more competitive in the past few years.
- **Tell the Corporation’s “Story”** – D&O Underwriters analyze financial and operational risk to determine pricing, terms, and policy conditions. Providing “current” financial statements with accompanying footnotes to the Financial Statements, Director Bios, and any updated Corporate Investor Presentations to your insurance broker will assist in creating a comprehensive submission of your risk profile to the underwriters. Vague or dated information can often result in low appetite from insurers, higher pricing, or additional restrictions in coverage.
- **Consider Ancillary Insurance Coverages** - Ensure a well-rounded and comprehensive Management Liability Insurance Program. Coverages in addition to D&O insurance include “excess” Director protection when not indemnified by the Organization (i.e., Side A Difference in Conditions Policy), coverage for employment litigation, the administration and/or funding of pension and welfare plans, cyber and privacy liability, and corporate crime coverage.
- **Board Oversight** – As part of your organization’s director education program, include a thorough annual insurance review/update for your board of directors. This can be accomplished through an in-person presentation by your insurance expert or the preparation of a Board Memo outlining the key coverage grants, any material exclusions, and reporting requirements for claims under the policies. Ensuring your board is engaged and aware of their insurance protection forms part of your overall risk management and due diligence as a board member.



# Public Company Directors' and Officers' Liability Update

The number of Securities Class Action filings is an important indicator for D&O insurers and offers insight into loss costs and the future health of D&O insurance portfolios. In 2024, the number of traditional US Federal Court securities class action lawsuit filings increased for the second year in a row by approximately 4.7%. While actual figures for Canada were not available at the time of writing, it's expected that Canadian results will track similarly to the US. While common allegations include missed earnings guidance and misled future performance, companies should also be aware that negative "event-driven" litigation is a real exposure.

Negative or catastrophic corporate events such as a significant health and safety accident, natural disaster, cyber breach, or corporate scandal could immediately impact a company's share price over a short period and result in a securities class action. To avoid misleading investors, senior management, internal legal counsel, and the board of directors should have a robust internal procedure to ensure that public disclosures, securities filings, and ESG reports are accurate, timely and reflect current risks.

Securities Class Action trends to watch for in 2025 include AI-related securities lawsuits, where companies either overstate or understate their AI capabilities, anti-ESG litigation, cyber security related securities litigation, and finally any changes to regulatory oversight with the incoming administration in the US, as well as potential political party changes and agenda in Canada.





## Bill C-59 and its Implications to Directors and Officers

Bill C-59 introduces key amendments to Section 74.01 of the Competition Act (Canada) (Act) to address "greenwashing" – false, misleading, or deceptive environmental claims made to promote a product or a business interest. These provisions introduce a new private right of action to bring an application alleging that a company has contravened the Act, and will most certainly impact how companies in Canada market and promote their efforts to reduce their environmental footprint.

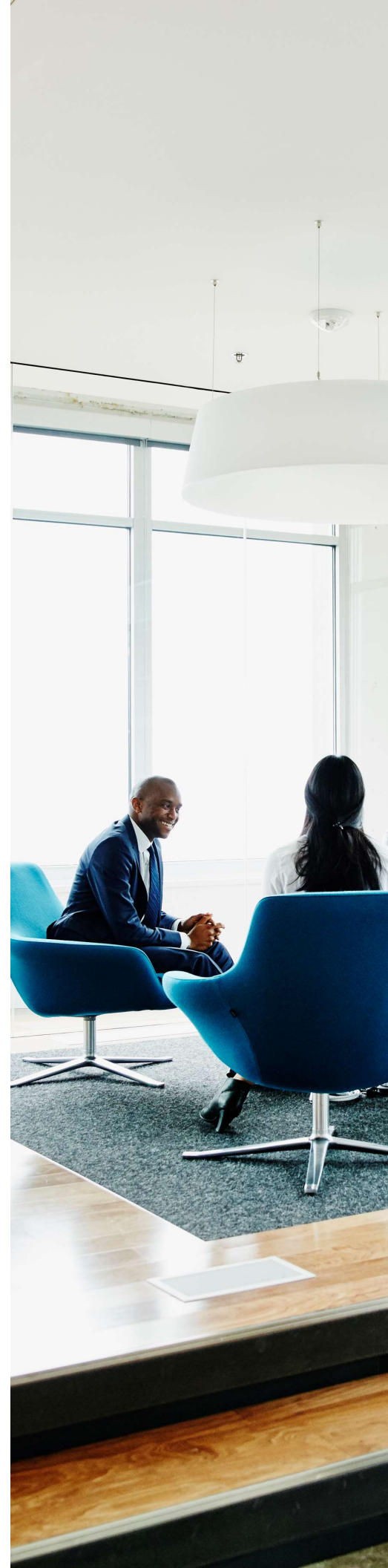
In December 2024, the Competition Bureau Canada released its proposed guidelines concerning claims relating to environmental performance, and the Law comes into effect June 20, 2024. Guidelines state the Bureau needs to prove that a representation was made to the public by the business, and businesses need to be able to back their claims up. Facts in the environmental performance claim must be appropriately tested and satisfy "internationally recognized methodology," and the Bureau has provided guidance they will likely

consider a methodology to be internationally recognized if it is recognized in two or more countries. The Act allows a Due Diligence Defense for those who can show they exercised due diligence to prevent deceptive marketing practices from occurring. While the Bureau has introduced six high-level principles to help businesses stay onside, it remains untested. The Act focuses on addressing deceptive representations made to the public in marketing materials, not representations made for other purposes (i.e., to investors and shareholders in the context of securities filings). While the Act is still early in its roll-out, publicly traded companies and their Directors and Officers should be engaged in reviewing the bureau's guidance and determining its implications to their organization, including any potential conflicts as it pertains to public disclosures under securities laws.

## Conclusion

As we enter 2025, the Directors' and Officers' liability insurance landscape presents a mix of opportunities and challenges. Organizations should take advantage of current market conditions to optimize their insurance programs, including adjusting D&O limits, exploring transaction-specific coverages and enhancing ancillary protections. Additionally, proactive measures such as presenting a strong risk profile, maintaining accurate public disclosures, and educating boards on insurance coverage are critical components of effective risk management.

Looking ahead, a well-prepared approach to navigating these dynamics will empower companies and their leaders to mitigate risks, maintain compliance, and foster confidence among stakeholders. The evolving regulatory and litigation environment underscores the importance of staying informed and agile to protect directors and officers in an increasingly complex corporate landscape.







## ABOUT DANIELLE GORST

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Danielle brings more than 25 years of financial lines insurance experience with over 13 years in Executive Protection Underwriting with a leading global insurer, in addition to 12 years as a specialty broker in the placement of Directors and Officers Liability and ancillary lines of coverage. Danielle works directly with Account teams and provides consultative advice to Navacord clients on strategy and placement of coverage, claims advocacy, in addition to thought leadership and white papers on current trends impacting Directors and Officers Liability. Danielle is often a presenter at Board Governance and Audit Committee Meetings, and a speaker at industry events discussing topics specific to Directors and Officers Liability. Danielle has a Bachelor of Commerce Degree completed with a concentration in Insurance and Risk Management from the University of Calgary and has completed the Canadian Securities Course.

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*Contact a member of your Service Team with any questions you have regarding your D&O coverage.*

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