

Corporate Restructuring

Directors & officers liability
(D&O) insurance for bankruptcy,
insolvency, & restructuring

Navigating financial uncertainty

HELPING YOU IDENTIFY
THE KEY RISKS DURING
BANKRUPTCY, INSOLVENCY,
AND RESTRUCTURING.

Bankruptcies, insolvencies, and restructurings expose directors and officers to significant risks. That's why it's essential to ensure your D&O insurance program is bankruptcy-ready. With the right coverage in place, you can better protect your board by insuring their own legal defense costs, settlements, and judgments.

Directors and officers may face claims from multiple parties, including, but not limited to, bankruptcy trustees or court-appointed receivers, for breach of fiduciary duties, mismanagement, or fraudulent transfers that harmed creditors. Debtors-in-possession may bring claims on behalf of the company, while creditors and shareholders, in certain circumstances, may file claims for breaches of duty.

Regulators — including, but not limited to, the SEC and DOJ — may initiate investigations or lawsuits related to securities fraud, regulatory noncompliance, or misrepresentations. Employees may also pursue claims for unpaid wages, WARN Act violations, and mismanagement of employee benefits plans.



Key D&O considerations before filing

WHEN A COMPANY IS CONTEMPLATING BANKRUPTCY OR A RESTRUCTURING, PROACTIVE RISK MANAGEMENT IS CRITICAL.

SEVERAL KEY FACTORS TO CONSIDER ARE:

01 Side A DIC D&O coverage

Confirming that robust Side A difference in conditions (DIC) coverage is in place gives executives direct access to insurance protection without reliance on company indemnification.

02 Insured vs. insured exclusions

The insured vs. insured (or entity vs. insured) exclusion should be properly worded to carve out claims brought by bankruptcy trustees or debtors-in-possession, to help ensure that coverage is not excluded for these types of claims.

03 Waiver of automatic stay

Policies should contain provisions that waive the bankruptcy automatic stay, allowing individuals timely access to insurance proceeds for defense costs and settlements.

04 Adequacy of policy limits

Companies should assess whether existing D&O limits are sufficient given their risk profiles and potential exposures. If current limits have already been eroded — or have the potential to be eroded — by prior claims, securing additional limits may be critical to ensuring ongoing protection.

05 Policy to be noncancelable

Amend policy to be cancelable only for nonpayment of premium. D&O policies are generally noncancelable by the insurer, except in cases of nonpayment of premium, but the company can still choose to cancel the policy.

06 Priority of payments

D&O policies should have a clear priority of payments provision, ensuring that Side A losses are paid first to protect individual directors and officers before corporate entity coverage is triggered.

07 Program design

Properly structuring the D&O insurance program is essential to address and coordinate coverage for pre- and post-petition acts. Companies often seek to ring-fence pre-petition liabilities, requiring careful coordination between the run-off or tail policy, debtor-in-possession policy, and go-forward policy upon emergence.

08 Presumptive indemnification

This involves structuring or amending a D&O insurance program to explicitly include a provision that ensures coverage remains in effect even if the insured entity or individual is financially insolvent and unable to pay. To achieve this, the policy should include clear language with a clause stating that indemnification applies to any claims or losses arising during periods of financial insolvency or inability to pay.





Post-bankruptcy coverage: Run-off & go-forward

When a company files for bankruptcy and later emerges, decides to sell, or liquidates, it is critical to have proper run-off coverage, wind-down coverage, and/or go-forward D&O coverage in place to protect directors and officers from ongoing liabilities.

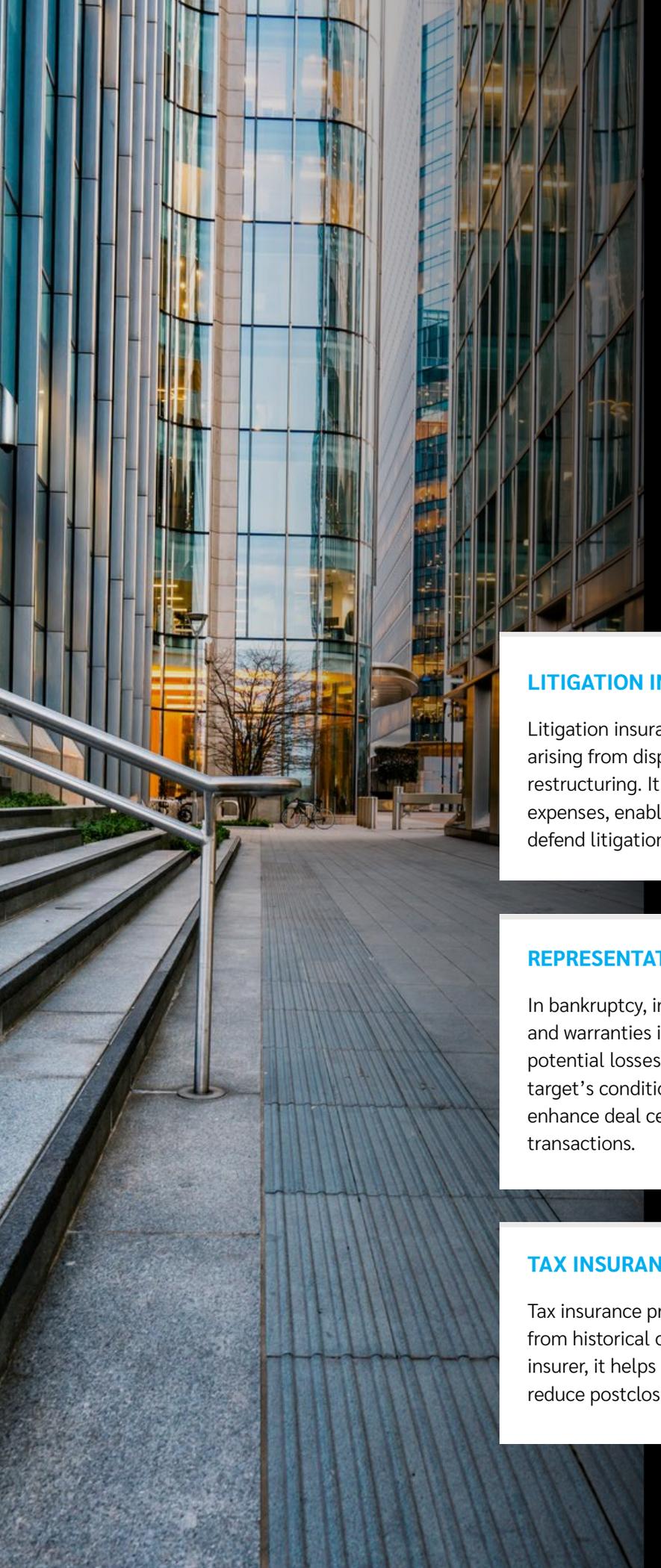
Run-off D&O coverage

Provides protection for claims related to pre-bankruptcy emergence wrongful acts. In the event of a liquidation, this may also include wind-down coverage to address potential post-bankruptcy claims as the company ceases operations.

Go-forward D&O coverage

Ensures that executives responsible for navigating the company's post-bankruptcy future — whether through reorganization, sale, or a new business strategy — continue to have liability protection.

Without these protections, directors and officers may face ongoing liabilities that extend beyond the bankruptcy process.



By proactively addressing D&O insurance needs before and after bankruptcy, companies can better protect their leadership from financial exposure, allowing them to focus on guiding the organization through a complex and uncertain time.

In addition to addressing your D&O insurance needs, we further help clients obtain financial certainty and stability through additional insurance solutions, which include:

LITIGATION INSURANCE

Litigation insurance provides coverage for legal costs and liabilities arising from disputes during bankruptcy, insolvency, or corporate restructuring. It safeguards stakeholders against unexpected litigation expenses, enabling creditors, trustees, and companies to pursue/ defend litigation or actions without exposing their remaining assets.

REPRESENTATIONS & WARRANTIES INSURANCE

In bankruptcy, insolvency, or corporate restructurings, representations and warranties insurance transfers risk from the buyer by covering potential losses arising from breaches of seller’s statements about the target’s condition, balance sheet, liabilities, and operations. This helps enhance deal certainty, protect stakeholders, and facilitate smoother transactions.

TAX INSURANCE

Tax insurance protects parties against unexpected tax liabilities arising from historical operations or transactions. By transferring risk to an insurer, it helps ensure transaction certainty, safeguard deal value, and reduce postclosing tax disputes.

Claims management

Claim performance is the true measure of any insurance program. Lockton's Professional & Executive Risk Claims team is purposely structured to help our clients maximize their insurance recoveries.

Lockton does not silo claims, nor do we treat claims advocacy services as a profit center. Instead, we integrate experienced insurance and claims counsel within our brokerage teams. This ensures that claims strategy and advocacy begin at the very start of our client partnership, so when a claim does arise, we're fully prepared.

With dedicated local claims professionals supported by a national network, we commit to investing in claims infrastructure to drive continual improvement and set a higher standard for outcomes at every stage of an insurance claim.





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65,000⁺

CLIENTS WORLDWIDE

94%

CLIENT RETENTION

13%

ORGANIC
GLOBAL GROWTH

\$85B⁺

PREMIUM VOLUME
WORLDWIDE

150⁺

OFFICES WORLDWIDE

17

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BEST PLACES TO WORK



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