

## **Directors and Officers Transurance**

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There are many options for structuring a directors and officers insurance program, but no matter how well the program is designed, traditional insurance never pays enough to fully cover the loss. Risk managers, attorneys, brokers, insurers are aware of this shortfall and know that it is substantial, but until now there was no real solution. Modifying coverage terms is a first step that is somewhat helpful, but risk management professionals are beginning to recognize that Transurance is a much more comprehensive solution to this problem.

Transurance is a new form of insurance that pays a pre-agreed percentage of the loss paid by a referenced traditional insurance policy. Transurance proceeds benefit the policyholder and help pay for the losses that were not paid for by traditional insurance. Some of the items not paid by traditional D&O insurance include the following.

- Uncovered investigative costs and expenses (e.g. informal government investigations or pre-indictment costs)
- Legal cost of establishing a right to insurance
- Loss within deductible or self-insured retention
- Co-insurance
- Loss in excess of limit
- Un-reimbursed defense costs due to application of insurer litigation management guidelines, application of partial exclusions; and out-of-pocket costs pertaining to management participation in the case
- Coverage concessions or “limits shaving deals” (to resolve coverage or valuation issues)
- Fines and penalties (e.g. FCPA penalty)
- Costs of remediation (hiring accounting, legal, PR professionals to help fix problems)
- Expense of additional corporate governance including third party monitors
- Other economic damages that are difficult to quantify such as lost revenues due to reputational injury; and the costs of internal investigations, IT processing efforts and management and in-house counsel time

For a given claim, the items causing the shortfall will vary, but experts agree that no matter how broad the coverage or how skillful the claim negotiation, these items always add up to at least 20% of what is paid by traditional D&O insurance. For example, if D&O insurance pays \$1 million, the insured will suffer a shortfall of at least \$200,000. If \$10 million is paid, then the shortfall is at least \$2 million, and so on.

Transurance pays a benefit equal to the pre-agreed percentage of the loss paid by the referenced D&O policy. The policyholder does not have to “prove” the extent of the payment shortfall they have experienced and may use the Transurance proceeds for anything. The premium for the Transurance is the equal to the payout percentage times the premium for the referenced insurance.

Yes, it’s that simple.