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Insurance Rates Rising; Limits Lowering: What to Do?

Premiums for commercial insurance were already on the rise before the onset of the COVID-19 pandemic. Average U.S. commercial insurance premiums experienced progressively higher year-over-year increases from 1.1% in the first quarter to 10.4% in the fourth quarter of 2019. That's according to Marsh & McLennan's Fourth Quarter Market Report released in February.^[1] Companies now have potentially more exposure, including directors and officers and workers' compensation coverages, depending on how they have reacted to the pandemic, including actions taken to protect employees, vendors and the public, both initially and in reopening. Carriers are continuing to raise rates and reduce policy limits in 2020.

With budgets squeezed, CEOs and CFOs, along with their boards of directors, are faced with hard choices of either paying more for less or going without altogether. And yet, there are a variety of ways companies can address the increasing risk and associated cost. In fact, in the right circumstances, it's possible to not only hold or reduce the cost of insurance expense but add a revenue stream to the business plan.

Corporate boards should ensure that all records are in good order. Minutes of meetings should contain details of the decision-making process to build a strong case of business judgment. For companies operating within a group, it is vitally important that each separate business entity maintain their own distinct set of records.

Intercompany transactions should be fully documented. Too often, business leaders are in a rush to get a deal done, and they tend to gloss over the intercompany details and accounting. And then, out of the blue, tragedy hits and a thorough plaintiff's lawyer pierces the corporate veil before there is a chance to react.

Other steps business executives should take include implementing clear written policies, procedures, processes, and controls for all aspects of business operations. It is just as important to test the procedures, processes and controls on a regular basis to ensure

they are adapting to the ever-changing nuances of the business cycle. Emerging tools such as data analysis and artificial intelligence can be utilized to dive deeper into the end-to-end operation, to identify problem areas that often go undetected.

Business executives and boards may want to consider alternative risk management options, including a self-insured risk retention program or captive insurance company. Under the right circumstances, a business could take advantage of enhanced controls and risk management practices, together with a risk retention program or captive, to not only reduce or slow the rise of its insurance expense, but potentially create a revenue source by keeping a share of its insurance dollars.

For more information, please contact [Alan Meek](#), [Michael Case](#), [Jesse Wilson](#) or any attorney in Frost Brown Todd's [Insurance Regulation & Risk Management](#) practice group.

^[1] See Global Insurance Market Quarterly Report, Fourth Quarter, 2019. Marsh LLC, Figure 4, Page 4, February 2020.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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