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## EXECUTIVE LIABILITY OUTLOOK - FINANCIAL INSTITUTIONS

Monica M. Minkel

The Executive Liability marketplace for banks began to harden sharply in late 2008. The past 18 months have brought significant price increases and reduced coverage for many customers. This article briefly discusses the issues in the current market.

### FIDC Intervention

More than 275 banks have collapsed between September 2008 and September 2010 and more than 800 banks are on the FDIC "problem list". It is inevitable that even more banks will fail as we finish out 2010. As banks fail and require intervention by the FDIC, the motivation for the FDIC to recoup some portion of their losses increases. It remains to be seen whether the FDIC or other regulatory bodies will make it a habit to bring suits against individual directors and officers. However, recent trends show the FDIC being more aggressive in its pursuit of directors and officers as it has sought regulatory approval to target individuals personally.

### Market Update

Banks can expect to see double digit increases in their premiums for the remainder of 2010. As we approach 2011, the marketplace does not appear to be improving. Banks with capital needs or loan portfolio challenges may see even larger increases. Carriers indicate that writing coverage for financial institutions has not been profitable in recent quarters, and pressure will continue to weigh on pricing until profitability returns to this business. Insurers have also seen a decrease in their investment income, which reduces overall profits. Frequent and significant claims by banks are the single largest driver of expenses and the factor most responsible for the reduction in profitability of this business.

### Restrictive Trends

As we finish out the year, we expect to see carriers focus their efforts in a few categories:

1. Reduce limit capacity. Markets may continue to offer coverage to an insured, but may reduce their position.
2. Increasing retention and premium. While many Insureds will not see the kind of knee-jerk reactionary pricing that was present last year, price increases are still very common. Any bank with a difficult loan portfolio or in need of capital may see pricing increase by double digits for its upcoming renewal.

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3. Limiting coverage. When carriers can't increase pricing any further or limit capacity without getting off risk, they are limiting coverage through the use of exclusions.

### Key Coverage Issues

Areas where Insurers are limiting coverage include:

1. Regulatory exclusion. – Arguably, the presence of this exclusion will negate coverage in the event of an FDIC takeover event. This should strike fear in the heart of any bank director since the FDIC is taking a much more aggressive approach to pursuing directors and officers of failed institutions.
2. Eliminating entity coverage or applying a very high retention. – Elimination of entity coverage leaves the policy available to directors and officers for indemnifiable and non-indemnifiable situations. However, the presence of entity coverage serves an important purpose in protecting the balance sheet of the organization.
3. Prior acts coverage. – If the incumbent carrier takes a position at renewal that is incredibly adverse, such as removing regulatory coverage or reducing limits, the insured may find it unaffordable to obtain coverage for prior acts from a new carrier. The Insured may choose to tail out or purchase an extended reporting period on the current policy and have its renewal respond only to new acts.

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*“Directors and officers should consider excess limits dedicated to Side A claims.”*

### Mitigation strategies

The single most important thing to do with any bank renewal in the current marketplace is to start the renewal early. Conversations should take place early and often between client, broker and underwriter. Creative strategies to manage limits may also be necessary. When primary carriers limit capacity, excess markets may need to be engaged to meet limit needs and to minimize the risk of coverage gaps. Underwriter concerns can be mitigated with conference calls and carrier meetings. Insureds who take the time to meet with underwriters will find themselves with better renewal terms than those who play shy.

Personal asset protection continues to be a concern for board members and executive officers alike. Insureds need to be asking for a program that ensures the availability of coverage for their executive team. When the FDIC intervenes the D&O policy may be unavailable for individual directors

and officers, even though the limits are not actually exhausted. Directors and officers should consider excess limits dedicated to Side A claims (non-indemnifiable claims against individual directors and officers) to ensure that there are adequate insurance proceeds to protect them.

### When will it all end?

In short, the marketplace for financial institutions will continue to face challenges in the coming months. As with any economic issue, it remains to be seen how quickly or slowly the tide will turn on pricing for banks. Insureds should be mindful of the limitations of their policy and be sure they understand the changes that are applied. The marketplace for banks is likely to be a difficult one in which to place business for the foreseeable future.

### About the Author



Monica M. Minkel joined Van Gilder in January 2010 as the leader of the Executive Liability practice. In this role, she oversees a wide range of clients that include public, private, and non-profit companies in a variety of industries. She also manages the team of individuals who support this business. She has spent nearly a decade as an underwriter or broker focusing exclusively on Executive Liability products,

which include Directors and Officers, Employment Practices, Fiduciary Liability, Crime, Kidnap & Ransom, and Employed Lawyers Professional Liability.

Monica began her insurance career in 2001 underwriting Directors and Officers liability coverage for AIG. Most recently, Monica spent six years as Assistant Vice President of a Financial Services insurance brokerage team in Denver. She also spent five years working in Financial Institutions prior to coming to the insurance world.

Monica has published articles relating to Directors and Officers Liability in the PLUS Journal and American Agent & Broker Magazine. She holds a Bachelor's degree in Finance from Regis University in Denver and a Graduate Certificate in Leadership and Organizational Change from Colorado State University. In addition, Monica has earned the Management Liability Insurance Specialist (MLIS) designation.

### About Van Gilder Insurance Corporation

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With over 100 years of insurance company interaction, Van Gilder has the relationships to protect what is important to you and resolve issues. We are independent. Our duty is to serve you. When it comes to negotiating coverage and rates, we will use our experience to leverage the market on your behalf. We will keep you informed about what is happening in the insurance industry and how it affects you. We will show you best practices and share ideas so that you may make informed decisions.



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