

FINPRO PRACTICE

Mitigating Bankruptcy-Related Risks: D&O Solutions for Distressed Energy Companies

Solvency risk in the energy sector is nearing crisis levels. Through the first nine months of 2019, [50 US-based oil and gas companies](#) filed for Chapter 11 or Chapter 7 bankruptcy protections, totaling over \$20 billion in debt. Bankruptcies, and the approach leading up to them, tend to create heightened concerns for directors and officers.

With its significant experience handling insolvency risks and developing creative insurance solutions, Marsh is well positioned to assist companies in distress. Over the last 10 years, Marsh's FINPRO Practice has successfully negotiated debtor-in-possession and runoff directors and officers (D&O) liability coverage for more than 50 US companies holding more than \$900 billion in debt.

Potential D&O Coverage Pitfalls

The escalation of risk in the energy sector requires thoughtful solutions. Lending resources are extremely limited and bankruptcies are on the rise. The

design and coverage breadth of D&O insurance is more important now than ever before. With many kinds of D&O policies available, choosing the right one can mitigate the personal financial exposure of directors and officers during a bankruptcy.

The following pitfalls should be avoided when considering D&O coverage in connection with an insolvency or bankruptcy situation:

- Endorsements that restrict coverage.
- Change of control wording that may inadvertently trigger runoff coverage.
- Delayed quotes, creating limited options, or subpar terms and pricing.

WHO IT'S FOR

Energy sector companies contemplating financial restructuring, including potential mergers, divestitures, or bankruptcy protection.

WHAT YOU GET

- Prepaid extended Chapter 11 D&O coverage, including prepaid run-off.
- Debtor-in-possession coverage to ensure that directors and officers are covered before, during, and beyond Chapter 11.
- Multiple Side A limit reinstatements.
- Automatic 10-year Side A tail coverage following insolvency with no additional premium.
- Ability to structure multiple renewal towers to address various potential outcomes.
- Liquidating trust errors and omissions coverage.

- Deficiencies in critical areas, such as non-rescission, severability, or insured versus insured exclusion carve backs.
- Inadequate D&O limits.

Lessons Learned - D&O Solutions and How They Are Applied

Case	Resolution
Energy companies with catastrophic wildfire liabilities face significant challenges related to solvency, adequacy of D&O limits, and D&O claim recovery.	Marsh is actively consulting with California utilities directly impacted by recent wildfires. In addition to facing securities and derivative litigation, at least one affected utility has sought bankruptcy protection. Marsh has worked closely with these companies to provide ongoing claims advocacy and D&O coverage in a challenging environment.
An energy company faced multiple claims from investors and regulators, which led to an executive management shakeup and, ultimately, bankruptcy. New management and board members needed assurance of coverage for prior acts and claims already on notice, which were specifically excluded by the company's D&O program.	Marsh negotiated broad coverage terms, including a carve back to the prior acts exclusion that covered the new management team for its potential liability exposure regardless of whether new claims were related to existing claims.
A midstream energy company filed for Chapter 11 bankruptcy after amassing more than \$2 billion in total debt.	Marsh was appointed the company's D&O broker during its Chapter 11 filing after the incumbent broker failed to secure coverage. Despite challenging circumstances, we successfully negotiated separate runoff and debtor-in-possession programs that protected the personal assets of directors and officers. The company successfully emerged from bankruptcy more than 12 months later. Directors and officers were defendants in multiple lawsuits filed during and after the bankruptcy proceeding.
When an energy company prepared a Chapter 11 filing for an underperforming subsidiary, it was apparent that the parent and subsidiary had conflicting priorities regarding D&O insurance.	Marsh secured an innovative D&O runoff program that incorporated separate towers of insurance to address the conflicting needs of the different corporate entities. We also placed a long-term, multiyear debtor-in-possession policy designed to address directors and officers' needs throughout the Chapter 11 period, including prepaid runoff that was triggered upon the debtor's emergence from bankruptcy.

ABOUT MARSH FINPRO

Marsh's financial and professional liability practice (FINPRO) has the expertise to negotiate optimal risk transference and favorable claims recoveries in challenging times. We have developed creative solutions for distressed companies with manageable pricing and favorable coverage. We place more than \$6 billion in premium annually on behalf of our clients. Our claims advocates are engaged in 25% of all securities class actions annually. And we have established relationships with the majority of bankruptcy and reorganization legal counsel in the US.

For more information on D&O solutions for energy companies, please contact:

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