CONCERTIV INSURANCE

Top Insurance **Coverage Issues**

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Addressing
CRITICAL INSURANCE COVERAGE GAPS

Navigating the complexities of D&O/E&O insurance can be a daunting task, particularly for private equity firms and hedge funds with unique risk profiles. Without carefully crafted policies, firms risk facing significant financial losses due to coverage gaps, exclusions, or improperly structured terms. These issues are not just theoretical—they are the real-world challenges that leave firms exposed when claims arise.

Why These Issues Matter

Financial Risk

Unaddressed coverage gaps can lead to significant out-of-pocket expenses.

Operational Disruption

Legal disputes and claim denials divert resources from core business activities.

Reputation Management

Inadequate coverage can damage relationships with investors and stakeholders.

How
CONCERTIV HELPS

- **Analyze Policies**: Conduct comprehensive reviews to identify potential gaps and areas for improvement.
- **Negotiate Enhancements**: Work with brokers and underwriters to implement tailored policy language.
- **Provide Peace of Mind**: Ensure that firms are protected against unexpected liabilities, enabling them to focus on their strategic goals.

With this structured approach, Concertiv ensures its clients receive the best possible coverage at the most competitive rates. Let's explore each critical issue and how it can be resolved to safeguard your firm's future.

This whitepaper identifies nine of the top coverage issues that firms must address. Each section outlines:

- **The Issue/Gap**: A common problem found in standard policies.
- **Recommended Remedy:** Practical amendments and enhancements to mitigate the issue.
- **Real-World Ramifications and Claim Scenario:** Real-world examples illustrating the financial and operational impact of these gaps, or an outline of the potential costs incurred if left unaddressed.

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1. Defense Costs

Issue/Gap	Recommended Remedy	Real-World Ramifications
Policies often limit the ability to select preferred defense counsel or cap hourly rates, creating financial strain.	Remove restrictions on counsel choice and adjust caps to align with market rates.	Failure to address this can lead to significant out-of-pocket expenses during litigation.

2. Informal Investigations

Issue/Gap	Recommended Remedy	Real-World Ramifications
Coverage often excludes costs associated with regulatory inquiries not classified as formal investigations.	Amend policies to explicitly include informal investigation coverage.	Firms may face millions in costs responding to subpoenas or document requests.

Claim Scenario A PE firm received an SEC request for personal communications and depositions of several associates. Since this was not a formal proceeding, no Wrongful Act was triggered, classifying it as an "informal" investigation. After responding, the matter was resolved with no further action. However, the firm incurred $1.6M in defense costs to comply with the SEC’s requests.

3. Claim Reporting

Issue/Gap	Recommended Remedy	Real-World Ramifications
Claims made outside policy periods or grace periods are typically denied.	Extend reporting grace periods and specify that late notice must materially prejudice the insurer to be grounds for denial.	Late reporting can result in complete denial of coverage.

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4. Exclusions and Allocations for Covered and Uncovered Losses

Issue/Gap	Recommended Remedy	Real-World Ramifications
Broad application of exclusions can result in denied claims for mixed allegations.	Ensure exclusions apply only to the portion of loss directly linked to excluded events.	Coverage denials can result in millions in uncovered losses.

Claim Scenario A PE firm faced a Breach of Duty lawsuit after a portfolio company, a chemicals manufacturer, went bankrupt due to a chemical seepage event. While the Breach of Duty allegations were covered, the insurer denied the entire claim, citing the policy's pollution exclusion. This broad application of the exclusion left the firm with $3.25M in uncovered settlement and defense costs.

5. Outside Directorship / Portfolio Companies

Issue/Gap	Recommended Remedy	Real-World Ramifications
Misaligned policies between PE firms and portfolio companies can create gaps.	Ensure policies clarify coverage layers and responsibilities between firms and portfolio companies.	PE firms may face substantial costs for claims that should have been covered by portfolio company policies.

Claim Scenario A PE firm sponsor was named as a co-defendant in a Breach of Duty lawsuit involving a portfolio company. The portfolio company's policy, with a $50K self-insured retention, lacked the language to cover the sponsoring entity. As a result, the PE firm had to hire its own counsel and file a separate claim, incurring $750K in costs under its $1.5M self-insured retention.

6. Settlement and Defense

Issue/Gap	Recommended Remedy	Real-World Ramifications
Policies may require insurer consent for settlements and defense costs, creating delays.	Amend language to prevent unreasonable withholding of consent and allow partial settlements without prior approval.	Delayed resolutions can escalate legal costs and risks.

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7. Aiding and Abetting

Issue/Gap	Recommended Remedy	Real-World Ramifications
Policies often do not include explicit coverage despite increasing claims of this nature.	Add specific coverage for aiding and abetting allegations.	Firms may be left exposed to shareholder and third-party claims.

Claim Scenario Shareholders of an acquired company alleged that the acquiring firm aided and abetted breaches of fiduciary duty, leading to inadequate compensation for the acquired stock. Both the portfolio company and PE sponsor were named in the suit, resulting in $12.5M in settlement and defense costs, with only $1.1M covered by insurance.

8. Warranty and Severability

Issue/Gap	Recommended Remedy	Real-World Ramifications
Misrepresentation by one insured party can void coverage for all insureds.	Implement severability provisions to protect uninvolved parties.	Innocent insureds may face uncovered claims due to another party's misrepresentation.

Claim Scenario A PE firm's CFO knowingly misrepresented the firm's financial position during a D&O/E&O application. The underwriter issued the policy unaware of the deception. When the misrepresentation was later discovered, the insurer denied coverage for an unrelated claim against another insured party, imputing the CFO's knowledge to them. This denial left the firm with $1.4M in uninsured defense costs.

9. Conduct Exclusion

Issue/Gap	Recommended Remedy	Real-World Ramifications
Exclusions for fraudulent or illegal acts can apply prematurely or too broadly.	Restrict exclusions to apply only after final adjudication and ensure severability.	Improper application of exclusions can leave firms vulnerable during disputes.

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