



HENDRICKS & CO GMBH
D&O Insurance Brokers

Speech by Counselor-at-Law

Dr. Burkhard Fassbach

**The mode of operation and the functionality of D&O Insurance Cover
in the
German D&O Claims Arena**



- The Regime of Management Liability in Germany
- Insured persons (Managing Directors, Executive Board Members and Supervisory Board Members) as addressees of Directors' and Officers' Liability
- Delegation of decision-making and allocation of duties
- Internal spheres of resort responsibility
- Legal successor
- Angle of view: legal protection and balance sheet protection
- Company's Duty to bind D&O Cover arising from the service- / employment agreements with the Managing Directors
- D&O Policy – storage in a safe
- The rights arising from the D&O Policy
- The legal status of insured persons
- Special Condition of Cover: Benefits granted to insured persons are subject to prior approval by the Policyholder
- No subtraction of the own damage – Fully comprehensive insurance cover for entrepreneurs



- Statutory basis and case law regarding management liability
- Business Judgement Rule
- The doctrine of business expansion opportunities
- The four elements: Breach of duty – financial loss – causal link between breach of duty and financial loss – negligence
- Landmark decision by the German Federal Court of Justice regarding D&O liability (ARAG vs. Garmenbeck)
- Shareholder’s authority to give directives / instructions and the Managing Director’s duty to obey directives / instructions
- Discharge from liability / Quitclaim / Waiver / Settlement / Limitation of Liability / General Claims Adjustment
- Limitation of liability in time and extended reporting period (Germany and International)
- The burden of presentation and the burden of proof / reversal of the burden of proof
- Insured Person’s Right to information (in the civil liability trial and court proceedings)
- Claims examples / Case studies / D&O Moot Court / Public openness of court proceedings / Headline Cases



- The genuine interlocking of issues regarding liability and cover
- Precautionary legal counseling
- The definition of the insured event
- Exclusions in the D&O Policy Wording
- Claim triggered by an Attorney-at-law
- Claims-made Principle and Occurrence Principle
- Litigation Funds
- Assignment of management liability claims



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- Hostile Claims
- Friendly Claims
- Side Letter
- Breakup of management service agreement clause



- The insurer's statutory option right between defending the claim and adjusting the claim
- Vexatious requests and demands for information made by the insurer
- Obligations in the event of a claim
- The so-called "Claims Talk" between the insurer and the insured person / Statements made by the insured person / Hearing of the insured person
- Saved defense costs as the starting point for settlement talks and out-of-court payments / adjustments
- Settlement deals including a real contribution of funds out of the insured person's own pocket
- Low settlement quotas as criminal embezzlement
- The liability court proceedings from District Court to Appellate Court up to the Federal Court of Justice



- Insurance benefits promised by the D&O Insurance Policy
- Hendricks Lawyer Network (The leading lawyers in the field of Management Liability)
- The free choice of a lawyer
- Attorneys' Fees / The deduction of defense costs from the insurance limit
- The billing practices of the lawyers
- Lawyer's fees under pressure from the D&O insurer
- Complementary and additional elements of cover in the D&O Policy wording and supporting legal defense costs cover / Hendricks Cover for the Protection of the Executive Management
- Separation of criminal defense protection and D&O Cover



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- The actual total loss in the D&O insurance
- The limit of exemption from execution
- The reduction procedure and the distribution procedure in the D&O Insurance framework



- The insurance broker's role and position in the event of a D&O claim in the area of conflict between the parties
- Betrayal of client / conflicting interests / clash of interests / Personal D&O
- The insurance broker's D&O Claims files
- (Notification of claim, confirmation of cover, denial and decline of cover, coverage claims)
- The avenues of mail in the D&O claims procedure between Policyholder, insurance broker, insurer and insured person
- The information blockade / the ordering of the interception of mail
- Facilitating settlement talks with the insurer / insurance program (layer structure / Co-insurance)
- The flaw and the impact on the insured person's reputation incurred by breach of duty / clean record and clean slate



- Fields of conflict in the liability court proceedings
- (Active defense of liability, collaborative defense, insurer's intervention on the side of the defendant, third party notice, joint and several compensation)
- The obligation to tell the truth pursuant to the German Code of Civil Procedure / Giving false evidence in the course of a court proceeding / Fraud in obtaining a judgment / Collusive behavior / Insurance fraud



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- Ordinary jurisdiction
- Hendricks Arbitration Procedure
- Direct action against the insurer – a new approach for the code of the D&O claims practice?



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- Worldwide D&O Cover
- International D&O Claims
- Howden Broking Group – International



- The D&O Claims experience as the engine for the further development of D&O Policy Wordings
- Example: Twin Tower and Two-Tier Trigger Policy = Separate D&O Cover for Supervisory Board Members in the German Two-Tier Board System
- D&O Claims Manual – Commitment made by the insurers



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- Insured Person's Individual Crisis Management
- Google / Elimination of flaws affecting the insured person on the Internet / Recruitment Consultants bringing insured persons back to the career track



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Behavior in the event of EMERGENCY

Call the Hendricks D&O Emergency Number:

+49 (0)151 - 46717029



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Many thanks for Your kind attention!

Dr. Burkhard Fassbach, Counselor-at-Law
Hendricks & CO GmbH Düsseldorf
Arnheimer Straße 142 - 40489 Düsseldorf

burkhard.fassbach@hendricks.eu.com

www.hendricks.eu.com

fon +49 (0)211 940 83 37

fax +49 (0)211 94083 83

mobile +49 (0)151 46 717 029