

A blue-tinted photograph of a modern conference room. Several people are seated around a large, rectangular conference table, looking at laptops and discussing documents. The room has floor-to-ceiling windows that offer a panoramic view of a city with numerous skyscrapers. The lighting is bright, and the overall atmosphere is professional and focused.

# Top 10 D&O Stories of 2025

RT ProExec

# Introduction



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# Ryan Specialty Overview



Ryan Specialty was founded in 2010 by Patrick G. Ryan, the founder and former Chairman and CEO of Aon Corporation. Headquartered in Chicago, Illinois, Ryan Specialty has operations in North America, the United Kingdom and Europe. Ryan Specialty's strong start has been the result of organic growth further cultivated through strategic acquisitions.

Today, Ryan Specialty is a leading international specialty insurance firm which offers wholesale brokerage services, delegated underwriting expertise in the form of binding authorities, numerous national programs and over 35 highly specialized managing general underwriters, and other services designed for brokers, agents and insurance carriers. (NYSE: RYAN)

# RT Specialty Practices & Industries

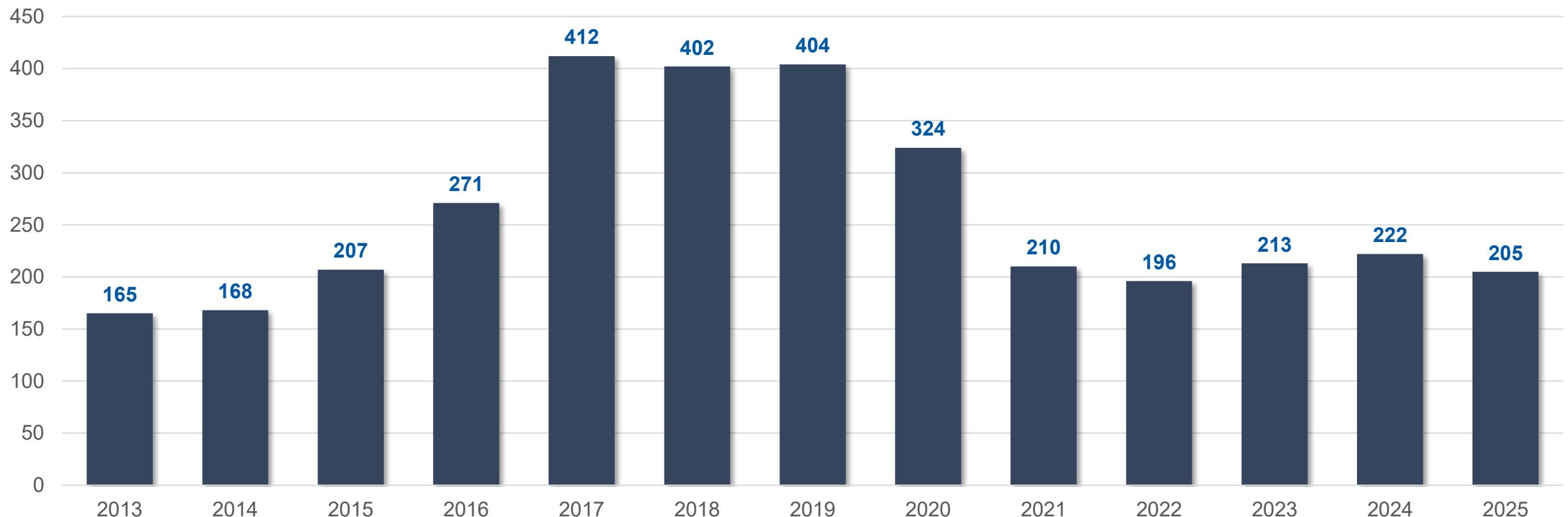




# Securities Class Action Lawsuit Filings Decreased Slightly in 2025

# Federal Court Securities Class Action Lawsuit Filings

Annual Number of Federal Court Securities Class Action Filings



Source: Cornerstone Research; The D&O Diary

# 2025 Filing Total Reflects Ongoing Filing Trends

- *Artificial Intelligence (AI): 14 Securities Suits (Representing about 7% of 2025 Filings)*
- *Cryptocurrency: 8 Securities Suits (Representing about 4% of 2025 Filings)*



# 2025 Decline Reflects Diminished Impact of Waning Long-Term Trends

Year	COVID-Related Securities Suits	SPAC-Related Securities Suits
2024	16	9
2025	3	5
<b>Difference</b>	<b>-13</b>	<b>-4</b>

**TOTAL DIFFERENCE = -17**

Source: Cornerstone Research; The D&O Diary

# Industries Targeted in 2025 Securities Suits

Industry	Number of 2025 Securities Suits	Percentage of 2025 Filings
Biotech, Pharma, Medical Devices	50	24.4%
Computing / High-Tech / Software	30	14.6%
<b>TOTAL</b>	<b>80</b>	<b>39%</b>

Source: Cornerstone Research; The D&O Diary

# Artificial Intelligence (AI) Corporate and Securities Litigation Risk

# Two Emerging Types of AI-Related Securities Suits

## **“AI Washing” Securities Suits:**

Alleging that the company *overstated* its AI prospects of capabilities

## **AI Risk Related Securities Suits :**

Alleging that the company *understated* the risks that AI adoption poses to the company

# AI-Related Securities Suits: AI Washing Allegations

## **AppLovin (March 2023):**

The company, which claimed to use “cutting-edge” AI technology in its web-based marketing, allegedly used manipulative practices to artificially inflate its ad click-through and app download rates.

## **Tempus AI (June 2025):**

Plaintiffs alleged that the company’s actual AI capabilities were overstated, resulting in an overstatement of the company’s business and revenue prospects.

# AI-Related Securities Suits: AI Risk Allegations



- **Reddit** (June 2025): Company allegedly downplayed impact on click-throughs and revenue from **Google's adoption** of AI generated search results.
- **Synopsys** (October 2025): Company allegedly omitted to disclose that its increased focus on **AI related customers** could cause the economics of its Design Intellectual Property (IP) business to deteriorate because of the increased customization that the AI- related customers require
- **DoubleVerify** (December 2025): Derivative Suit plaintiffs allege that the company's tracking technology could not differentiate between human traffic and **bad actors' AI generated bot traffic**

# Concerns About AI Risk-Related Exposures

Common Thread Among Case Examples: It was not the company's own adoption of AI that created the risk

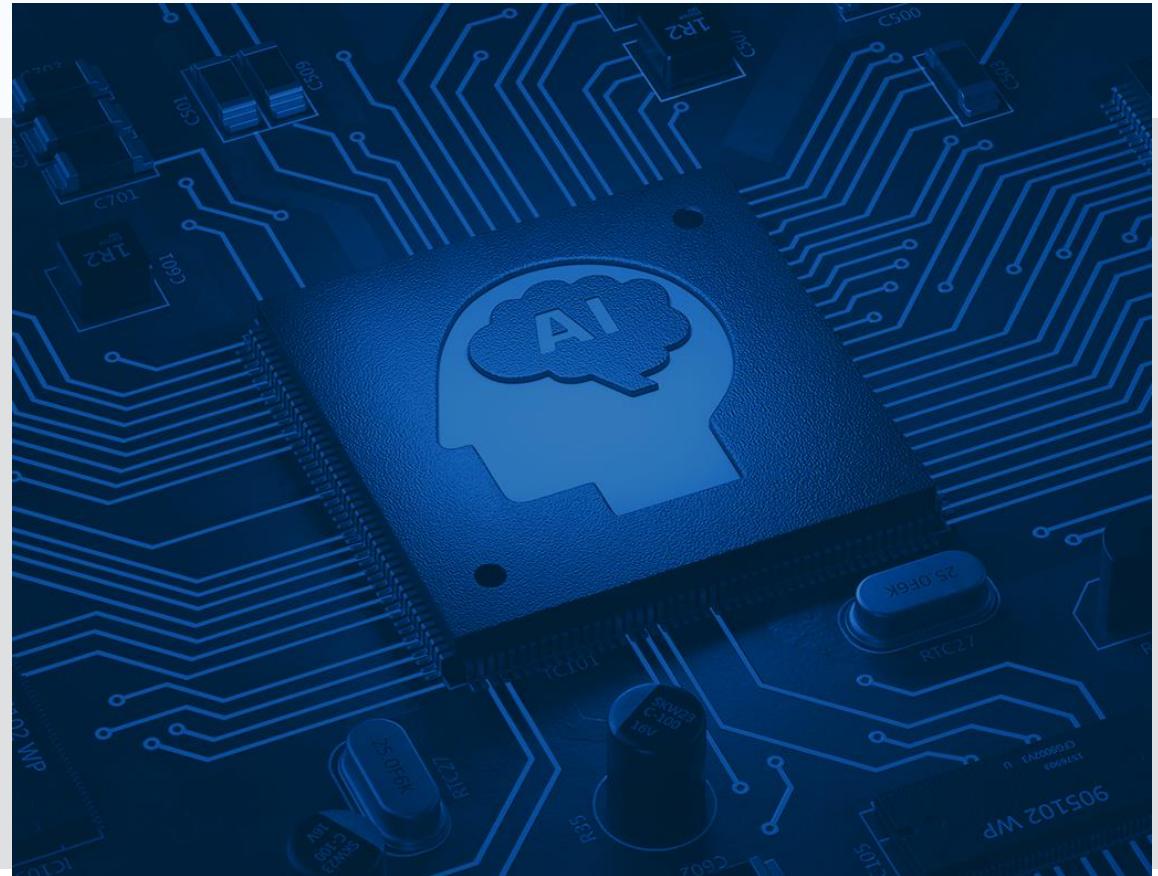
- Rather, it was **third-parties' AI adoption** (suppliers, customers, bad actors)

Economy-wide AI Adoption Presents a Host of AI-Related Risk

- Not just risk to companies themselves from their own AI adoption
- But risks to companies from AI adoption by customers, suppliers, competitors, regulators, and even bad actors.

# AI-Related Issues Ahead in 2026?

- AI-Related Regulation
- AI Bubble Vulnerability



# AI Regulation Development

- Efforts to regulate AI emerging at state, national, and international levels
- Regulatory initiative derives from a host of concerns
  - Bias; Deep Fakes; Exposures to Children; Intellectual Property; Privacy
- Within the U.S., federalism showdown looms:
  - Several states (including, for example, California, New York, others) have passed AI regulatory regulation
  - White House Executive Order (December 2025): “Ensuring a National Policy Framework for Artificial Intelligence.” The new Executive Order (EO) seeks to override or preempt state laws on AI in favor of unified federal regulation.
  - EO implements formation of an AI Litigation Task Force for the purpose of challenging state laws inconsistent with the Executive Order

# What Happens to the AI Investment Bubble in 2026?

- Massive amounts of investment in AI startups: Over 1,500 ventures valued at over \$100 million
- Just the big four (Meta, Alphabet, Microsoft, Nvidia) committed in 2025 alone to over \$400 billion in AI Capex
- Top 38 AI-centric stocks represent only about 8% of the Standard and Poor's (S&P) 500 companies, but represent nearly 50% of the index's total market cap.
- Industry leaders (including AI execs) warn of an AI Bubble.
- Eventually, investors are going to demand to see returns.
- Will AI investors lose confidence?
- If the bubble bursts, will it affect the wider market?



# The Trump Administration's Tariff Policies and Related D&O Risk

# How the Tariff Policies Can Translate into D&O Claims

- Regulatory Enforcement
- Private Civil Litigation



# Regulatory Enforcement of Tariffs

- Tariff evasion typically involves misrepresentation of country of origin or of valuation
- Trump Administration using two tools to pursue enforcement
  - Civil: False Claims Act
  - Criminal: Tax Evasion
- Tariff Enforcement Priority
  - May 2025: Department of Justice (DOJ) Criminal Division announces it will prioritize “trade and customs fraud, including tariff evasion.”
  - August 2025: DOJ announced formation with the Department of Homeland Security of cross-agency Task Force “to bring robust enforcement against importers and other parties who seek to defraud the United States.”



# Tariff-Related Civil Litigation

## **Dow, Inc. (August 2025):**

After company had said it was well-positioned to deal with the tariffs, and reaffirmed its commitment to its dividend, company announced disappointing results due to macro factors including tariffs and cut dividend.

## **CarMax (November 2025):**

Plaintiffs allege that the company misled investors by portraying the quarterly sales surge that preceded the tariffs' impact as being due to longer-term company advantages rather than tariff-motivated consumer behavior

# Looking Ahead on Tariffs for 2026

- U.S. Supreme Court Case (*Learning Resources v. Trump*): Claimants Allege:
  - President Trump exceeded his authority under the International Emergency Economic Powers Act (IEEPA) and the Constitution by imposing tariffs.
  - Tariffs are taxes reserved for Congress and not permissible "regulation" under IEEPA, thus violating separation of powers and non-delegation principles.
- Court heard oral argument in November 2025; Decision expected in early 2026

# Even if Trump Loses in the Supreme Court, That Does Not Mean the End of the Tariff Policies

- Some of the existing tariffs (for example, tariff on steel and aluminum) promulgated under alternative statutory authority.
- Alternative Pathways (other than the International Emergency Economic Powers Act (IEEPA))
  - Section 232 of the Trade Expansion Act of 1962
  - Section 301 of the Trade Act of 1974
- Likelihood is that regardless of outcome, Trump Administration Tariff policies will continue to affect global trade and will continue to present enforcement and litigation risks.

# Changes at the Securities and Exchange Commission (SEC) Mean Altered Regulatory and Enforcement Environment



# Under SEC Chair Paul Atkins, Many Changes at the SEC

- Headcount reduced by more than 15%; Impact particularly pronounced in the Enforcement Division
- At least so far, reduced enforcement activity in FY 2025 (ended September 30, 2025):
  - Standalone enforcement actions down 27%
  - Public Company enforcement actions down 30%
- Of the 56 FY 2025 Public Company Enforcement Actions, only 4 filed after the advent of the Trump Administration.
- Important Note: Enforcement Division head, Margaret Ryan did not even take office until early September 2025.

# Policy Changes at the SEC Under the Trump Administration

- Cross-Border Enforcement: August 2025 creation of Cross-Boarder task force focused on identifying and combating cross-border fraud harming U.S. investors.
- Elimination of “Regulation by Enforcement”:
  - *Crypto*: Numerous pending cryptocurrency enforcement actions dismissed.
  - *ESG*: Agency advises Eighth Circuit that it will not defend the Biden era Climate Change Disclosure Guidelines.
  - *Cybersecurity Disclosure*: Agency dismissed enforcement action pending against SolarWinds.

# Other Proposed Policy Changes

- Elimination of **Quarterly Reporting** in favor of semi-annual reporting
- Permitting Prospective Initial Public Offering (IPOs) to file registration statements containing Bylaws with **Mandatory Arbitration** requirements
- Change policies and procedures with respect to **Wells Notices**
- Revise rules requiring companies to include shareholder proposals in **proxy statements**
- “Revitalize America’s markets,” among other things by “reforming the litigation landscape for securities lawsuits to **eliminate frivolous complaints**.”

# Many Changes, But the SEC Remains On Duty

- Atkins: SEC intends to target “quality over quantity” with a “back to basics” approach
- Focus on “core” issues such as insider trading and accounting fraud
- Emphasizing “investor protection”
- Promoting capital formation with less burdensome compliance for companies



# Cybersecurity Remains a Critical D&O Insurance Issue

# Despite a Mixed Track Record, Plaintiffs' Attorneys Continue to File Cyber-Related Securities Suits

## December 2025:

- **Coupang:** Lawsuit relates to the “Largest Data Breach in South Korean History.” Claimant misrepresented its security and systems controls.

## December 2025:

- **F5:** Lawsuit follow company’s disclosure of a long-term nation state actor intrusion in the company’s systems. Plaintiffs allege the company made misleading statements about the true state of the company’s security capabilities and had about its ability to safely secure data for its clients.

# Trump Administration's Enforcement Approach to Cybersecurity Not Yet Clear



## February 2025:

SEC announces formation of Cyber and Emerging Technology Unit

- To date, SEC has yet initiated any new cyber-related enforcement actions.

## July 2025:

DOJ enters \$9.8 million settlement in case alleging Illumina violated the False Claims Act when it sold genomic sequencing systems with cybersecurity vulnerabilities to federal agencies

## November 2025:

SEC Dismisses Remaining Cyber-Related Allegations against SolarWinds

## Wild-Card:

Will the Current SEC withdraw or non-enforce the Biden Era Cybersecurity Disclosure Guidelines?

# Trump Administration Targets Environmental, Social, and Governance (ESG)



# ESG Under the Trump Administration

- White House arguably most active with respect to “S” pillar, in its anti-DEI efforts, discussed below
- White House has also Issued Numerous ESG-Related Executive Orders:
  - January 20, 2025: “Unleashing American Energy.”
  - February 14, 2025: “Establishing the National Energy Dominance Council”
  - April 8, 2025: “Reinvigorating America’s Beautiful Clean Coal Industry”
  - April 8, 2025: “Protecting American Energy from State Overreach”
- SEC advises Eighth Circuit that it is withdrawing its defense of the Biden-era Climate Change Disclosure Guidelines

# Is ESG Dead?

- Political developments notwithstanding, companies must still plan for the long-term.
- Decisions corporate boards and management make (or fail to make) today will be subjected to scrutiny in the future
- Future claimants will ask what decisions boards and management made to address operational redundancy, durability, resiliency.



# Trump Administration Targets “Illegal DEI”

# DEI-Related Executive Orders and Other Administration Pronouncements

- January 20, 2025: White House issues Executive Order “Ending Radical and Wasteful Government Diversity, Equity, and Inclusion (DEI) Programs and Preferences.”
- January 21, 2025: Additional Executive Order “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.”
- February 5, 2025: AG Pam Bondi Issues Memo “Ending Illegal DEI and Diversity, Equity, Inclusion, and Accessibility (DEIA) Discrimination and Preferences.”
- June 11, 2025: DOJ’s Civil Division Designates Combatting “Illegal DEI” as top priority, aims to use False Claims Act to enforce
  - December 31, 2025: *Wall Street Journal* report that the U.S. Department of Justice (DOJ) is investigating numerous companies for possible DEI-related False Claims Act violations.

# Threat of Anti-DEI Actions?

- To date, Trump has not yet initiated Anti-DEI litigation.
- Trump Administration has sent investigative demand letters to law firms, colleges, and universities.
- Individual claimants and conservative activist groups have filed numerous complaints alleging discrimination based on “illegal DEI.”
- DEI-related follow-on civil litigation remains a threat as well.
  - Prior Target litigation possibly a model? The case survived a motion to dismiss based on court’s finding that company’s DEI-related disclosures “could be materially misleading.”



# SEC Changes its Policy on Mandatory Arbitration Bylaws

# Proposed Mandatory Arbitration Bylaws?

- Proposed Mandatory Arbitration Bylaws have a long history going back many years.
- Previously, the SEC has taken the position that bylaws requiring arbitration of securities claims violate the anti-waiver provisions of the securities laws.
- SEC previously declined to accelerate the registration of prospective IPO companies that had mandatory arbitration bylaws.
- September 2025: Agency announces an applicant's arbitration bylaw will no longer affect decision whether to accelerate the registration statement.
  - While agency says it has no position on whether it supports or promotes use of arbitration bylaws, SEC Chair Atkins says that the move will help "make IPOs great again."

# Does This Mean the End of Securities Litigation?

- Whether a company can actually adopt an arbitration bylaw is a matter of state law.
  - Many states – including, most notably, Delaware – do not permit mandatory arbitration bylaws.
- Proposed Change is Prospective Only, and Only Addresses IPO Companies.
- Many Companies May Prefer Class Litigation.
  - Class Actions are Efficient.
  - Settlement Releases Obtain Releases from Everyone Not Just Parties.
  - Mass Arbitration May Not be Less Expensive.
- Investors / Markets May Well Prefer Litigation to Arbitration.
- To Date, only one company has stepped forward with a mandatory arbitration by law (oddly, not an IPO company).

A woman in a dark business suit walks away from the camera down a modern office hallway. Large windows on the left and right sides of the hallway provide a view of the city outside. Several large, leafy plants are arranged in white rectangular planters along the right wall. The lighting is bright and even, typical of a large office space.

# DExit Questions Roil Corporate America

# Movement for Companies to Reincorporate from Delaware to Elsewhere

- Conservative activists and pundits launched the initiative for companies to reincorporate from Delaware to other states (Texas, Nevada)
- Movement gained momentum after Elon Musk called for Tesla to reincorporate in Texas after Delaware court struck down his ginormous pay package
- Two Arguable Inflection Points During 2025:
  - June 2025: Andressen Horwitz announces a move from Delaware to Nevada
  - November 2025: Coinbase announces it is moving from Delaware to Texas

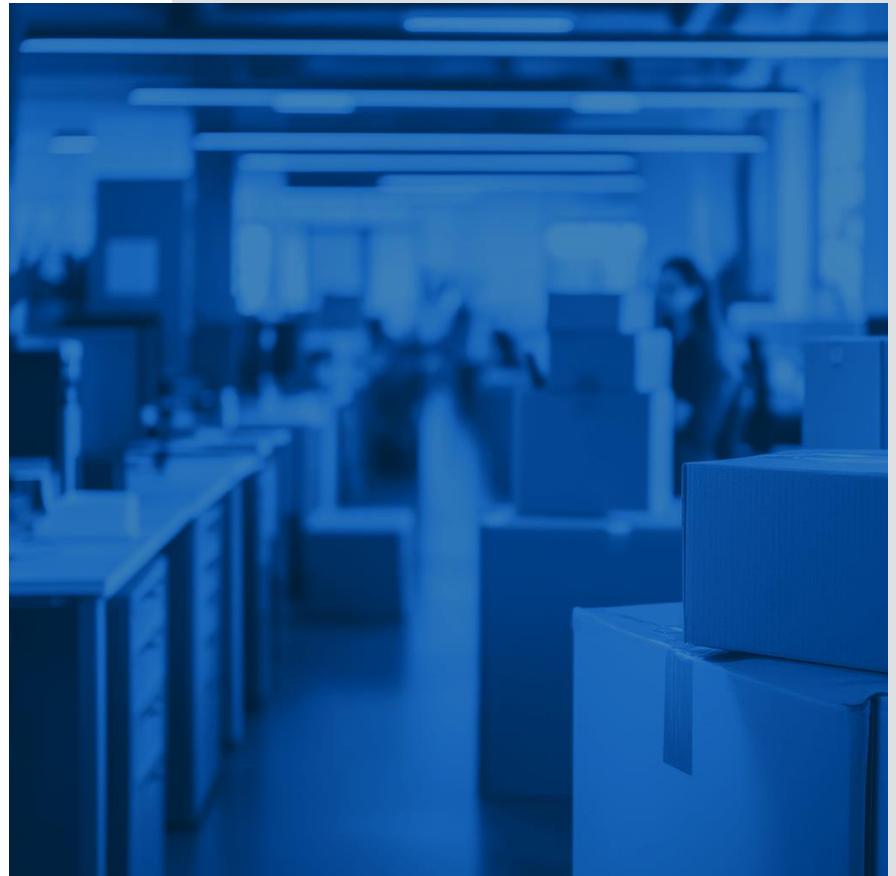


# States Racing to Address the DExit Movement

- March 2025: Delaware legislature enacts S.B. 21 designed to address many of the supposed concerns
  - Constitutional challenge to S.B. 21 currently pending in the Delaware Supreme Court
- Texas and Nevada have not been idle, each state has enacted reform legislation of their own, designed to try to make their states more attractive to companies and their executives

# What Does DExit Mean?

- A few high-profile examples of companies leaving Delaware, but in 2025, only 28 companies reincorporated from Delaware, while 250,000 firms chose to organize under Delaware law.
- What Happens if More Companies Choose to Leave?
  - Could corporate litigation shift from Delaware to Texas or Nevada?
  - Could the corporate laws of Texas or Nevada supplant Delaware?
- How Does This Affect D&O Underwriting and Pricing?
  - Insurers unlikely to price differently unless and until there is data showing a diminished D&O risk in alternative jurisdictions



A professional setting with a person in a suit writing in a notebook. In the background, there are scales of justice and a laptop, symbolizing law and insurance. The entire image has a blue tint.

# State of the D&O Insurance Marketplace

# Where is the U.S. D&O Market Now?

- Hard Market from 2019-2021 attracted new capital and new players; the new capacity came online in 2022, just as the IPO and Special Purpose Acquisition Companies (SPAC) market went cold.
- Surging supply as demand declined caused the market to move to the next phase of the cycle: the hard market was replaced by a softening market.
- Beginning in 2022 and continuing through today, most buyers have enjoyed relatively favorable pricing on relatively favorable terms and conditions.
- More recently, pricing has leveled off for primary public company D&O; excess D&O, private company D&O, and nonprofit D&O remain competitive.

# Will the D&O Market Move to the Next Phase in the Cycle?

As always happens in a soft market, commentators are claiming decreasing pricing has gone below risk-based pricing levels.

The problem for the industry is that the primary cause of the softening – abundant insurance capacity – remains in place.

Important to remember that hard market phases are relatively short and infrequent while soft market phases are more prevalent and longer-lasting.

The likelihood is that most D&O insurance buyers will continue to enjoy relatively favorable market conditions in the months ahead.



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The D&O Diary

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By: Kevin M. LaCroix

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# The D&O Diary

A Periodic Journal Containing Items of Interest From the World of  
Directors & Officers Liability, With Occasional Commentary

## The Top Ten D&O Stories of 2025

By Kevin LaCroix on January 5, 2026

Posted in Director and Officer Liability



D&O insurance marketplace. The past year's many developments also have significant implications for what may lie ahead in 2026 – and possibly for years to come. I have set out below the Top Ten D&O Stories of 2025, with a focus on future implications. Please note that on Thursday, January 15, 2026 at 11:00 am EST, my colleagues Marissa Strelakoff, Chris Recchia, and I will be conducting a free, hour-long webinar in which we

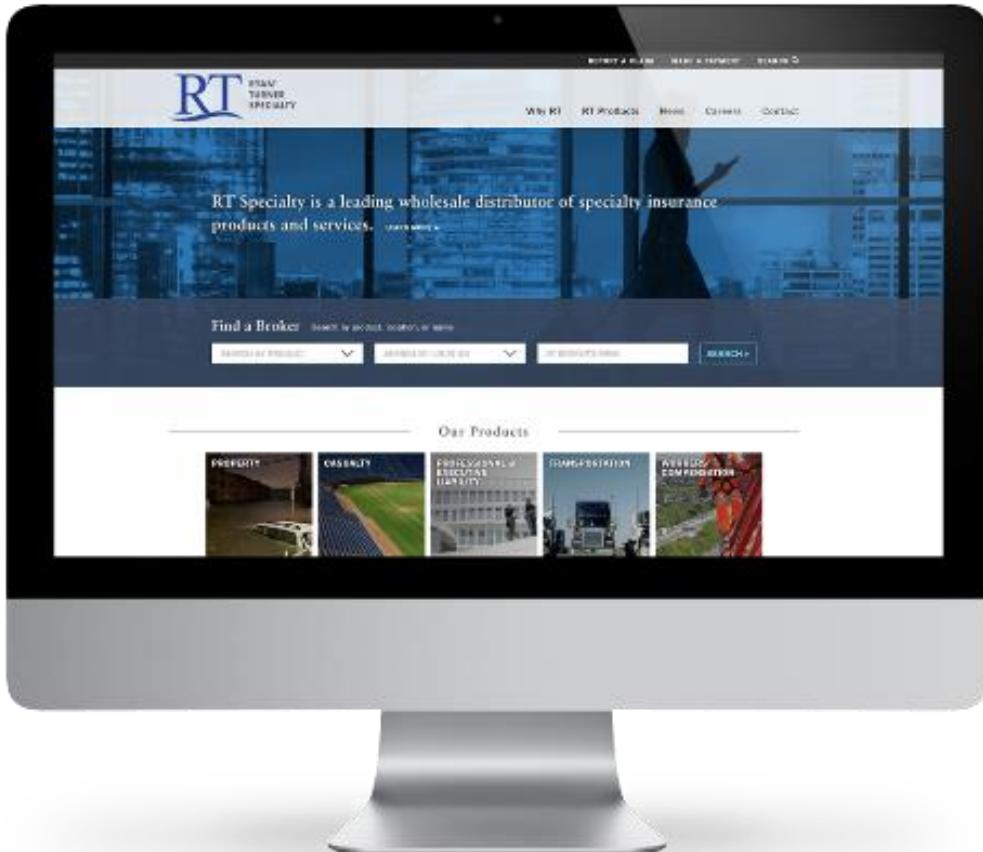
The directors' and officers' liability environment is always changing, but 2025 was a particularly eventful year, with important consequences for the



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