

**THE 1985**

**WYATT**

**DIRECTORS AND OFFICERS**

**LIABILITY INSURANCE**

**SURVEY**

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## INTRODUCTION

The Wyatt Directors & Officers Liability Survey is normally conducted every two years. Under stable insurance market conditions that is sufficiently frequent to track such matters as losses, limits, deductibles, and premiums. However, the insurance markets since the collection of data for the 1984 survey have hardly been stable. Thus, some parts of the 1984 Wyatt D&O reports were quickly made obsolete, although this was not true of the entire content of those reports. Among the sections of those reports continuing to have substantial validity are those dealing with losses, prevalence of D&O coverage, and to a substantial degree the sections on fiduciary liability, personal coverage deductibles, and the identification of principal insurance carriers.

However, the insurance market conditions relating to limits, corporate reimbursement deductibles, and premiums have undergone radical changes since the Spring of 1984, when the data for the 1984 survey was collected. We therefore solicited responses to an abbreviated survey in the Spring of 1985, and present the results of that survey. This abbreviated survey did not concern itself with fiduciary liability coverage, or with D&O losses. The emphasis in this report is on D&O insurance, specifically on the limits, deductibles, premiums, insurers, and special coverage limitations. One question we asked was the date of last renewal or rewriting of the D&O coverage, so we could track developments within the last year. About 84% of the respondents provided this information.


This survey was participated in by 917 companies, of which 800 are in the United States and 117 in Canada. Of these, the responses of 399 U.S. participants (49.9%) and 50 Canadian participants (42.7%) indicated a renewal or rewriting since the 1984 survey, or their response served to so indicate even where they did not indicate the date of change themselves. Those reporting identical data in both 1984 and 1985 presumably had three year policies that remained intact, but we note a strong trend to one year policies at the insistence of underwriters at this time.

We have made comparisons for the 449 participants who indicated change track the extent of change by calendar quarter. Reference to this data will be made throughout this report.

As usual, we will refer from time to time to the size of participants. This refers to asset size -- not revenue or sales.

Readers of this report may find reference to the 1984 Wyatt Comprehensive Report helpful as well -- a limited supply of copies of that report as well as the 1984 Wyatt Summary Report remain available. Comments and suggestions in response to this survey will be appreciated.

Respectfully submitted,  
The Wyatt Company



Warren G. Brockmeier, CPCU  
Vice President  
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/cj

**THE YEAR IN REVIEW  
(1984 to 1985 Survey)**

The Wyatt D&O Survey is customarily based upon data collected in the spring, analyzed during the summer, and published in the fall. It is a snapshot of the D&O insurance portfolio of major U.S. and Canadian corporations, hospitals, and health care institutions, as of a particular time, but even then it is admittedly "fuzzy" because of two factors: (1) it includes a mix of policies written at various times -- some as long as two years eleven months ago, and (2) it includes responses typically collected over the span of about three months.

To increase the value of the survey this year, we asked participants for the last renewal or change date. While a number of participants supplied that information, others interpreted it as meaning the next renewal date, and still others did not supply it. However, using data from the 378 organizations who did supply the last renewal or change date, a summary of changes by calendar quarter can be developed.

2nd Quarter, 1984

This is the period when the D&O Insurance Market started to tighten. Nevertheless, there were no real problems for most purchasers of D&O coverage. Adequate capacity existed so that those who wished to increase limits could, and about 41% of those having renewals did so, with overall limits going up 28.4%. No one reported a limit reduction taking place during that quarter. Personal coverage deductibles could still sometimes be reduced, and 15% of the renewals arranged that change, 10% also reduced corporate reimbursement deductibles. However, 20% had an increase in personal deductible, and 16% an increase in corporate reimbursement deductible, so the total net shifts were a drop in personal deductibles of 7.5% and an increase in corporate deductibles of 5.2%. Premiums for primary coverage were increased on 79% of the renewals, but reduced on 21% of them, for a net increase of 35.7% in premium. In our 1984 survey 51% of the Excess Coverage attaching at \$10,000,000 or more was placed at a premium of less than \$500 per million, and another 30% at a premium of \$500 to \$999 per million. Only

19% of the excess placements involved premium of \$1,000 per million or more. In the Second Quarter of 1984 this had changed slightly, with only 21% of the placements at premiums below \$500 per million, and 37% involving a premium of \$1,000 per million or more. The average cost was \$739 per million. As evident, a modest adjustment in the market was underway, consisting of fairly moderate premium increases coupled with slightly higher corporate deductibles.

### 3rd Quarter, 1984

The tightening of the market continued in its modest way. Primary premium increases were experienced by 81% of those having renewals, and while the remaining 19% had premium reductions, the net result was an increase of 34.0%. However, 52% of the excess placements were at premiums below \$500 per million, and only 17% at premiums of \$1,000 or more. The average cost was \$1,170 per million. Corporate reimbursement deductibles increased on 29% of the renewals, and while reduced on 10% of the renewals the net increase was 22.4%. Personal coverage deductibles, on the other hand, were reduced by a net of 1.3%. Limits were increased on 44% of the renewals, but reduced on 5%. Overall, limits increased 25%.

### 4th Quarter, 1984

At this time the tightening of the market in terms of premium adjustment and corporate deductible became more significant. Primary coverage premiums were increased on 87% of the renewals, reduced on only 10% of the renewals, and the average net change was a 108.3% increase. The average cost of excess was \$1,136 per million, when the attachment point was \$10,000,000 or more, and 37% had a premium of \$1,000 per million or more. Corporate deductible increases were imposed on 48% of the renewals, reduced on only 8%, with a net increase of 102.3%. However, personal deductibles still went down. Limits were increased by 44% of those having renewals, reduced by 4%, with an average increase in limits of 21.3%. This all showed a more significant tightening, but still confined to pricing and to deductibles, with no impact as yet on availability or capacity.

#### 1st Quarter, 1985

At this time the magnitude of the premium and deductible increases changed dramatically, and the tight market was reflected in a change in capacity as well. As to primary premium, 93% of the renewals had an increase, and the average change was an increase of 189.5%. Even more significant was the impact on excess coverage, where 78% of the placements were at premiums of \$1,000 per million or more, and the average trebled to \$3,305 per million. Corporate deductibles increased on 61% of the renewals, with an average increase of 295.7%. Capacity was impacted, with 17% of the renewals being for reduced limits, although 23% managed increases and the result was a net reduction in limits of 3.5%. Similarly, personal coverage deductibles were increased on 17% of the renewals, reduced on 16%, and the net change was a reduction of 1.5%.

#### 2nd Quarter, 1985

In the current quarter, the pricing and deductible increases seem to have almost peaked. Increases in primary coverage premiums were imposed on 84% of the renewals, with an average increase of 124.3%. The cost of excess went to an amount of \$1,000 or more per million in 84% of the placements, with the average rising to \$3,574 per million. Corporate deductibles were increased in 57% of the renewals, and the average change was an increase of 221.7%. Personal coverage deductibles increased slightly as well, with an average increase of 3% (21% had increases, 23% reductions). The major change now is in availability of insurance. The survey data indicates that 4% of the coverages coming up are non-renewed, frequently because terms are deemed unacceptable but sometimes because coverage simply is not available. Another 19% of the accounts are reducing limits, and the average change is a limit reduction of 6.4%.

#### Summary

For those having a policy renewal in the last year (including those not indicating when in the year this took place), premium increases were the norm, with 85% of the organizations reporting an increase, and the average change being about 96%, with most increases in 1985 being much more significant than that.

Excess layers had seen bigger premium increases. To illustrate this, note the data on Exhibit 1 and Figure 1. This shows that excess premium rates doubled in the second half of 1984, and then tripled that level in the first half of 1985.

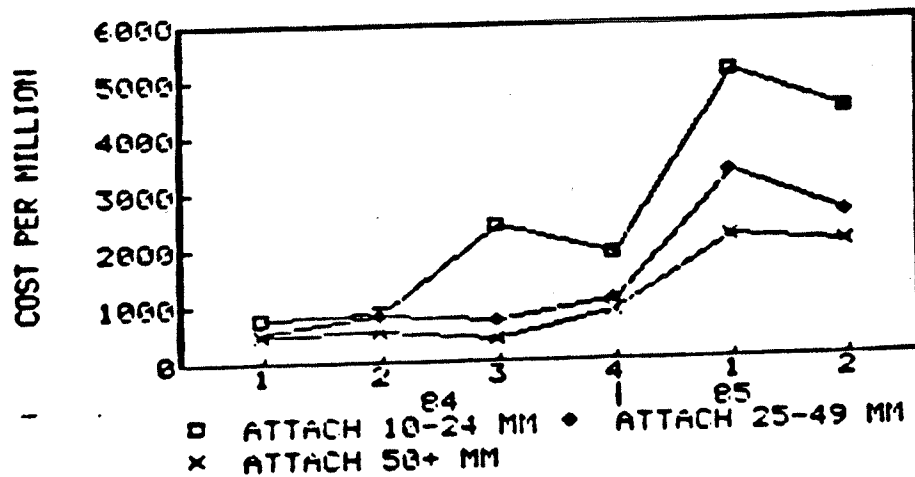
Exhibit 1

Average Cost of Excess D&O Liability Insurance

<u>Attachment Point</u>	<u>1984 Survey</u>	<u>Renewals 2nd Half of 1984</u>	<u>Renewals 1st Half of 1985</u>	<u>Total All Renewals</u>
\$10 to \$24 Million	\$ 767	\$ 2,183	\$ 4,779	\$ 2,599
\$25 to \$49 Million	529	988	3,110	1,813
\$50 Million or More	492	688	2,210	993
Total - \$10 MM or More	598	1,150	3,337	1,713

Figure 1

Cost - Excess per Million by Quarter



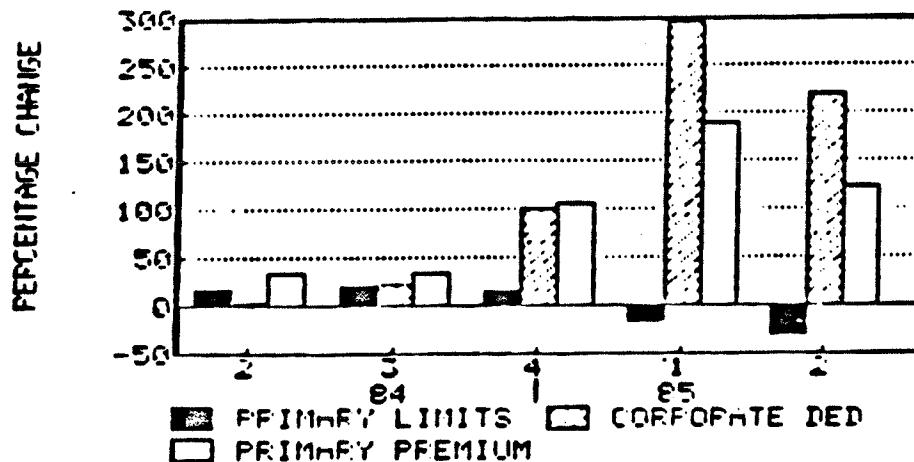


Corporate reimbursement deductibles went up for 42% of the organizations, but this was true of 60% of the organizations having 1985 renewals. The average increase was about 101% overall, but this changed to an increase in excess of 200% on 1985 renewals. In the meantime, personal coverage deductibles have decreased by 6% -- these are not a matter of great concern to underwriters, since few claims involve the personal coverage.

Policy limits actually increased 9.3% during the year for those having renewals, and only 1% of the participants have dropped D&O coverage. However, in the second quarter of 1985 policy limits did decline on renewals by about 4.3%, and most of the firms dropping D&O coverage did so in that quarter. There is severely curtailed capacity for certain types of risks (banks, utilities, and petroleum companies), and the total available limits are probably less than \$100,000,000 today for any class of account.

All of this is summarized in Figure 2.

Figure 2  
Shifts by Quarter



The primary limits written by five major D&O insurers, per data collected in our survey (which may not be totally credible on this subject) is shown in Exhibit 2. The curtailment of capacity by reason of reinsurance limitations is very evident in this exhibit.

Exhibit 2

Primary Limits Provided by Major D&O Insurers  
By Calendar Quarter  
(In Millions)

	<u>2nd Q</u> <u>1984</u>	<u>3rd Q</u> <u>1984</u>	<u>4th Q</u> <u>1984</u>	<u>1st Q</u> <u>1985</u>	<u>2nd Q</u> <u>1985</u>	<u>Total*</u>
<b>AIG Group</b>						
Median	\$20.00	\$20.00	\$20.00	\$17.50	\$15.00	\$20.00
3rd Quartile	50.00	40.00	30.00	25.00	20.00	30.00
Highest	50.00	75.00	50.00	50.00	30.00	75.00
Average	26.33	27.19	23.38	18.83	14.30	22.79
Number	12	16	21	15	10	87
<b>CNA Group</b>						
Median	15.00	15.00	15.00	20.00	5.00	15.00
3rd Quartile	20.00	20.00	20.00	20.00	10.00	20.00
Highest	25.00	25.00	25.00	25.00	20.00	25.00
Average	13.71	15.36	15.25	19.00	9.17	14.26
Number	7	14	12	5	6	47
<b>Chubb Group</b>						
Median	20.00	20.00	25.00	25.00	10.00	20.00
3rd Quartile	25.00	25.00	25.00	25.00	25.00	25.00
Highest	25.00	50.00	35.00	35.00	50.00	50.00
Average	15.55	21.47	22.35	23.21	16.43	19.86
Number	11	17	17	14	21	92
<b>Crum &amp; Forster Group</b>						
Median	10.00	7.50	10.00	15.00	15.00	15.00
3rd Quartile	15.00	17.50	15.00	20.00	20.00	25.00
Highest	25.00	20.00	15.00	20.00	25.00	75.00
Average	12.50	10.25	11.25	17.57	15.00	15.55
Number	6	8	4	7	2	33
<b>Continental Group</b>						
Median	12.50	22.50	25.00	15.00	5.00	20.00
3rd Quartile	15.00	25.00	25.00	22.50	10.00	25.00
Highest	20.00	40.00	25.00	40.00	10.00	40.00
Average	12.50	22.50	20.45	18.57	6.67	18.11
Number	6	6	11	7	6	47

- Includes some participants who did not indicate when their renewals or changes took place.

## POLICY LIMITS

During the soft market, D&O policy limits increased significantly as risk managers found it possible to increase coverage and reduce total cost simultaneously. This trend actually continued throughout 1984, in spite of some hardening of the market in the last three quarters of that year. Business corporations having renewals in the last three quarters of 1984 increased their primary D&O limits an average of 15.8% and their total D&O limits by 23.6%. During the first quarter of 1985 primary limits were reduced an average of 15.5%, but this was generally offset by additional excess layers, so total limits actually dropped an average of only 3.5%. During the second quarter of 1985 primary limits on policies being renewed have been reduced an average of 29.5%, and the excess market has been unable to supply the needed capacity so that total limits declined an average of 6.4%. Overall, for the 449 companies having renewals during the year, the primary limits dropped 1.2%, while total limits increased 9.3%. As the trend shown in the second quarter of 1985 continues, total limits will decline.

The "capacity crunch" has impacted large corporations more than modest ones, companies carrying high limits more than those with modest ones, and has particularly affected companies in certain industries -- petroleum, banking, and utilities in particular.

Of the 449 companies having renewals, 30 had limits reported for our 1984 survey of \$100,000,000 or more. With only one exception all of those with expirations in the last three quarters of 1984 were able to maintain those limits, and the average limit for that group actually increased by 8.3%. However, the capacity limitations after January 1st have caused 6 of the 9 companies reporting renewals after January 1 to drop their limits below \$100,000,000, with the average reduction on high limit renewals after January 1st being about 30%.

In terms of size and type of company, Exhibit 3 is indicative of some of the problems in securing coverage for Fortune listed companies. This shows that the average limit reported in 1985 vs. 1984 declined for the Fortune top 100 industrials, the 100 top financial companies, and 50 top retailers. While modest

increases appear elsewhere, the highest reported limits declined for the next 200 industrials, and the top 50 utilities. The presence in the survey of many companies who had not yet had renewals at the time of the '85 survey tempers this data, we are sure.

As to Canadian firms, the problems are not as severe. Exhibit 4 shows the statistics for organizations listed in the Financial Post Directory (1984). Top limits had not been affected, average limits had generally increased, with the only average to drop being that for banks.

Exhibit 5 shows average limit by size group in the U.S. for all 1985 participants, and the comparative data for Canada.

The effect of the tightened market in 1985 is shown by Exhibit 2 in the preceding section of this report, which shows the average limit and top limit reported for each insurer. It is quite apparent that each of the five major insurers has been restricted to some degree in its primary capacity.

The average primary limit reported (all insurers) for 1984 renewals was \$18.46 million. For 1985 renewals it was \$15.03 million, about a 19% reduction. An even more dramatic change exists in the excess market. In 1984 the average excess layer written was for about \$25 million per layer. In 1985 the average has been about \$15 million per layer, and in the 2nd quarter of 1985 the average excess layer has been about \$12.5 million per layer. This means that the excess market companies remaining are only taking about one-half the line they were a year ago, and there are numerous excess markets that have completely dried up. A number of insurers who used to write both primary and excess will now write primary only.

EXHIBIT 3

Limits Purchased by Fortune Listed Firms •  
(Millions of Dollars)

	Number	Lowest	First Quartile	Median	Third Quartile	1985 Highest	1986 Highest	1985 Average	1986 Average
Fortune 1 - 100	32	\$ 10	\$ 50	\$ 50	\$ 100	\$ 200	\$ 350	\$ 67.66	\$ 71.41
Fortune 101 - 200	29	20	30	30	60	195	175	34.48	33.10
Fortune 201 - 300	27	10	25	40	50	60	75	37.39	36.85
Fortune 301 - 400	36	10	20	25	35	50	50	26.11	25.62
Fortune 401 - 500	27	5	15	20	25	100	100	24.72	23.52
Fortune 100 Banks	29	10	20	25	30	100	100	31.81	27.39
Fortune 100 Financial Companies	16	5	20	30	50	75	100	35.31	37.19
Fortune 50 Life Insurance Companies	13	5	10	20	25	50	50	20.00	19.09
Fortune 50 Retailers	10	20	25	50	50	50	100	38.50	43.89
Fortune 50 Transportation	8	10	25	50	100	100	100	51.13	55.63
Fortune 50 Utilities	35	20	50	75	100	200	215	85.67	85.14
Fortune 100 Diversified Service Cos.	13	10	25	25	75	100	100	45.00	38.85

• Tabulation for participants in 1985 survey, including 149 having renewals or changes since the 1984 survey, and 136 without renewal or change. Based on 1984 Fortune rankings.

EXHIBIT 4

Limits Purchased by Financial Post Firms •  
(Millions of Dollars CDN)

	Number	Lowest	First Quartile	Median	Third Quartile	1985 Highest	1986 Highest	1985 Average	1986 Average
Financial Post 1 - 100	22	\$ 5	\$ 10	\$ 25	\$ 40	\$ 100	\$ 100	\$ 32.27	\$ 24.77
Financial Post 101 - 200	15	5	15	20	25	60	60	23.53	19.33
Financial Post 201 - 300	10	1	5	15	20	100	50	23.10	16.00
Financial Post 301 - 400	4	5	5	5	10	10	10	6.25	6.25
Financial Post 401 - 500	3	5	5	5	10	10	10	6.67	6.67
Financial Post Subsidiary List	6	15	25	50	100	100	100	52.50	51.67
Financial Post Banks	4	5	25	39	50	50	50	29.75	32.50
Financial Post Insurance Companies	4	1	10	20	20	20	20	12.75	10.33

• Tabulation for participants in 1985 survey, including 35 having renewals or changes since the 1984 survey, and 33 without renewal or change. Based on 1984 Financial Post rankings.

**EXHIBIT 3**  
**Policy Limits by Size of Organization**  
(Limits in Millions)

Asset Size	Number Reporting	1st Quartile	Median	3rd Quartile	High	1983 Average	1984 Data *	Percent Change
<b>U.S. ORGANIZATIONS</b>								
Under \$10 MM	6	\$ 2	\$ 0	\$ 5	\$ 10	\$ 4.33	\$ 4.83	- 10%
\$10-15 MM	8	5	7.5	17.5	30	10.87	7.20	+ 51
\$15-25 MM	20	5	5	10	20	6.65	5.70	+ 13
\$25-50 MM	48	5	9	10	50	10.00	9.83	+ 2
\$50-75 MM	36	5	10	17.5	40	11.97	11.67	+ 3
\$75-100 MM	22	5	10	20	25	12.27	12.27	N.C.
\$100-150 MM	40	10	10	20	35	13.30	12.45	+ 7
\$150-200 MM	71	10	15	20	100	17.13	16.54	+ 4
\$200-400 MM	67	10	15	25	50	18.72	18.88	- 1
\$400-600 MM	61	10	20	25	75	20.95	19.20	+ 9
\$600 MM-\$1 BL	63	10	25	40	100	26.92	24.77	+ 9
\$1-1.5 BL	65	15	25	35	110	28.13	27.20	+ 3
\$1.5-2 BL	24	20	30	75	150	49.37	48.96	+ 1
\$2-3 BL	104	20	40	50	146	44.23	42.99	+ 3
Over \$3 BL	89	25	50	100	200	63.41	59.38	+ 7
<b>CANADIAN ORGANIZATIONS</b>								
Under \$25 MM	3	3.5	5	7.5	10	5.67	5.67	N.C.
\$25-100 MM	13	5	5	10	15	5.96	5.52	+ 7
\$100-400 MM	18	5	10	20	100	21.47	18.28	+ 18
\$400 MM-\$1 BL	19	5	15	25	100	19.63	13.38	+ 46
\$1-2 BL	13	10	25	25	100	27.00	25.85	+ 4
Over \$2 BL	23	10	25	50	100	32.57	27.50	+ 18

\* Data from 1986 reports of 1983 participants. See Wyatt 1986 Comprehensive Report for complete tabulation of all 1986 participants.

## DEDUCTIBLES AND RETENTIONS

The trend to use of split D&O deductibles continues, with the following comparison of 1985 data with that for the same participants in the 1984 survey:

	<u>Split Deductible</u>	<u>Single Deductible</u>	<u>No Deductible</u>
<b>U.S. Participants</b>			
'84 Data	86.2%	10.9%	2.9%
'85 Data	90.0	7.4	2.6
<b>Canadian Participants</b>			
'84 Data	85.9	12.9	1.8
'85 Data	87.6	10.1	2.2

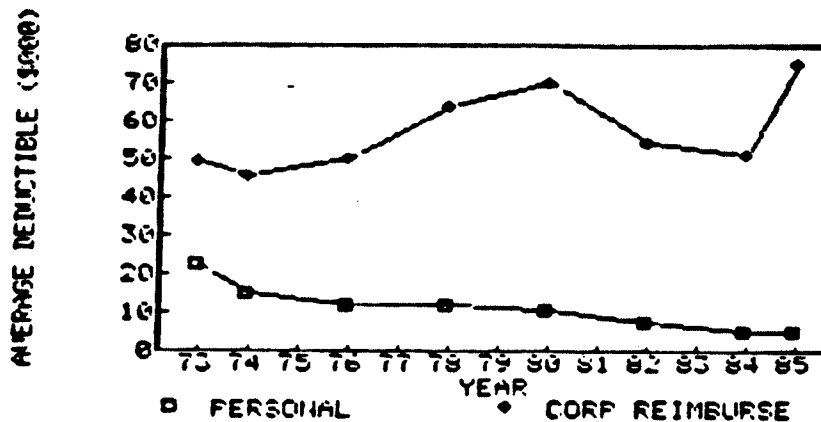
A number of those with single deductibles are educational institutions, and hospitals, where special policy forms with relatively small deductibles have prevailed. However, in the U.S. deductibles for these institutions have increased considerably, with the average deductible on those being renewed in 1984 rising 33% and those being renewed in 1985 rising 88%.

Exhibit 7 shows the deductible changes by corporate size classification for all U.S. participants, and Exhibit 8 shows similar data for all Canadian participants. From these exhibits, the following observations can be made:

1. Personal coverage deductibles have not changed appreciably, with reductions still appearing, and only modest increases for large U.S. companies.
2. The aggregate limitation on the personal deductible is being increased a little more significantly. This is logical in a tight market -- the underwriter is really not going to save many loss dollars in increasing the personal coverage deductible from \$5,000 to \$10,000, and may be satisfied with increasing the aggregate limitation per claim on that deductible from \$10,000 to \$25,000.
3. Corporate reimbursement coverage deductibles have increased significantly for most U.S. companies, and for large Canadian companies as well.

These trends are shown in Figure 3.

Figure 3  
Trends in D&O Deductibles



There has not been any impact on the percentage of retention above basic deductibles at this time. As a matter of fact, some of the corporations who had not eliminated the old 5% participation in losses above the deductible in the 1984 survey had managed to do so by the 1985 survey, as shown in Exhibit 6.

It is not likely that underwriters are going to be too concerned about this item, although they may reimpose 5% participations on the corporate reimbursement coverage, which is where the major loss dollars are spent.

#### EXHIBIT 6

##### Retention Above Basic Deductibles

	Personal D&O Insurance		Corporate Reimbursement Insurance	
	'84	'85	'84	'85
U.S. Organizations				
None	87.3%	88.5%	79.6%	81.1%
5% of 1st Million	9.4	8.7	16.2	15.2
5% to Policy Limit	3.3	2.8	4.2	3.7
Canadian Organizations				
None	88.2	88.8	88.2	87.7
5% of 1st Million	7.1	6.7	5.9	6.7
5% to Policy Limit	4.7	4.5	5.9	5.6



# EXHIBIT 7

## Deductibles - United States Data for All Organizations Participating in the 1985 Wyatt Survey

	Number Reporting	1st Quartile	Median	3rd Quartile	High	Average 1985	Average 1984*	Percentage Change
<b>Corporate Assets - Under \$25 MM</b>								
Personal Deductible	34	\$ 500	\$ 5,000	\$ 5,000	\$ 10,000	\$ 3,385	\$ 3,667	- 9%
Aggregate Limitation	33	1,000	5,000	10,000	20,000	5,735	6,892	- 17
Corporate Reimbursement	34	5,000	10,000	15,000	50,000	11,118	11,850	- 6
<b>Corporate Assets - \$25 MM to \$100 MM</b>								
Personal Deductible	106	2,500	5,000	5,000	10,000	3,981	4,555	- 13
Aggregate Limitation	106	5,000	7,500	10,000	50,000	9,206	9,925	- 8
Corporate Reimbursement	106	5,000	15,000	25,000	100,000	18,736	15,952	+ 17
<b>Corporate Assets - \$100 MM to \$400 MM</b>								
Personal Deductible	179	1,000	5,000	5,000	50,000	6,630	6,437	+ 3
Aggregate Limitation	179	5,000	10,000	15,000	100,000	11,550	10,308	+ 12
Corporate Reimbursement	179	12,500	20,000	25,000	1,000,000	60,851	29,086	+ 60
<b>Corporate Assets - \$400 MM to \$1 BL</b>								
Personal Deductible	126	2,500	5,000	5,000	30,000	6,981	6,989	N.C.
Aggregate Limitation	126	5,000	10,000	20,000	100,000	16,846	12,373	+ 36
Corporate Reimbursement	126	20,000	25,000	75,000	1,000,000	51,627	32,603	+ 58
<b>Corporate Assets - \$1 BL to \$2 BL</b>								
Personal Deductible	89	2,500	5,000	5,000	100,000	7,191	6,219	+ 16
Aggregate Limitation	89	5,000	10,000	20,000	100,000	13,916	12,708	+ 10
Corporate Reimbursement	89	20,000	35,000	75,000	250,000	55,113	61,180	+ 36
<b>Corporate Assets - Over \$2 BL</b>								
Personal Deductible	193	2,500	5,000	5,000	50,000	5,469	5,048	+ 8
Aggregate Limitation	193	10,000	20,000	25,000	100,000	17,116	16,895	+ 13
Corporate Reimbursement	193	50,000	100,000	150,000	1,500,000	178,652	110,929	+ 61

\* Data from 1984 reports of 1985 participants. See Wyatt 1984 Comprehensive Report for complete tabulation of all 1984 participants.

# EXHIBIT 1

## Deductibles - Canada Data for All Organizations Participating in the 1983 Wyatt Survey

	Number Reporting	1st Quartile	Median	3rd Quartile	High	Average 1983	Average 1984	Percentage Change
<b>Corporate Assets - Under \$100 MM</b>								
Personal Deductible	16	\$ 1,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 3,596	\$ 3,596	N.C.
Aggregate Limitation	16	1,000	5,000	10,000	20,000	6,875	6,562	+ 5%
Corporate Reimbursement	16	1,000	10,000	20,000	30,000	11,250	11,333	- 1
<b>Corporate Assets - \$100 MM to \$400 MM</b>								
Personal Deductible	18	1,000	5,000	5,000	5,000	3,681	4,013	- 8
Aggregate Limitation	18	2,500	10,000	10,000	20,000	9,083	9,142	- 1
Corporate Reimbursement	18	20,000	20,000	25,000	75,000	27,556	26,895	+ 2
<b>Corporate Assets - \$400 MM to \$1 BL</b>								
Personal Deductible	19	0	2,500	5,000	5,000	2,603	3,094	- 16
Aggregate Limitation	19	0	10,000	20,000	25,000	9,790	11,625	- 16
Corporate Reimbursement	19	25,000	25,000	50,000	100,000	32,421	33,812	- 4
<b>Corporate Assets - \$1 BL to \$2 BL</b>								
Personal Deductible	13	1,000	2,500	5,000	10,000	3,346	3,346	N.C.
Aggregate Limitation	13	5,000	10,000	15,000	20,000	10,000	10,000	N.C.
Corporate Reimbursement	13	25,000	50,000	75,000	250,000	70,000	67,692	+ 3
<b>Corporate Assets - Over \$2 BL</b>								
Personal Deductible	23	0	2,500	5,000	20,000	3,196	7,182	- 56
Aggregate Limitation	23	0	7,500	15,000	20,000	7,804	16,091	- 65
Corporate Reimbursement	23	50,000	50,000	100,000	200,000	62,391	33,565	+ 86

• Data from 1980 reports of 1983 participants. See Wyatt 1980 Comprehensive Report for complete tabulation of all 1986 participants.

## PREMIUMS

It was no secret that D&O coverage was underpriced in the U.S. during the soft insurance market. We cannot compile loss ratios, not having access to the total premium and loss information of all insurers. (An effort to secure that information was made by us several years ago, but the major insurers were not interested in compiling industry-wide data.) However, as best we could judge, the D&O policies written in 1979 were probably adequately priced, and not excessively so -- it constitutes a good base year for measuring premium adequacy thereafter. In the five years from 1980 to 1984, the frequency of D&O claims rose about 58%. The average claim severity rose about 69%, and the compound effect of these changes should have indicated to underwriters that their 1984 premiums should have been about 267% of the 1979 level. As a matter of fact, however, in early 1984 D&O premiums were at a level of only 56% of what they were in 1979. Stated another way, premiums were at about 21% of a proper rate level in early 1984, and an increase of five-fold to adjust to a profitable level for underwriters was called for.

Underwriters have taken corrective action, but there still remain a number of three year policies on which they are incurring losses at less than adequate premiums. The actual premium increases have generally been less than that indicated as necessary, but they are being coupled with reductions in limits, increases in corporate deductibles, and restrictions in coverage, so that the insurance industry is making an adequate correction, and overall probably not an excessive one -- although there are anecdotal incidents of overcompensation on specific accounts. As an example, one public utility responding to our survey indicated a 600% increase in premium, for one-tenth the policy limit with a 50 fold increase in deductible. A bank reported a 315% increase in premium for 75% of the policy limit and a 75% increase in deductible. An industrial company reported a 550% increase in premium for half the policy limit and a 15 fold increase in deductible. However, the mainstream D&O account should not be treated in the same manner as those in troubled industries or circumstances, and hopefully will

not be so treated if any element of competition can be maintained in the D&O marketplace.

The typical primary premium change on D&O coverage, by calendar quarter, is shown in Exhibit 9. This exhibit is limited to those participants indicating a positive change in premium and the time that change took place. Some other indicated no change in premium (which may then have only been the occasion of an anniversary review, not a renewal), and others indicated premium reductions, but those were generally for greatly reduced limits -- at least if reported in 1985.

### EXHIBIT 9

#### Premium Changes for Participants Reporting Premium Increases

	Amount of Premium Change				
	Up to 50%	50% to 100%	100% to 200%	200% to 500%	500% or More
2nd Quarter - 1984	63%	22%	4%	7%	4%
3rd Quarter - 1984	51	31	10	6	2
4th Quarter - 1984	38	18	24	13	7
1st Quarter - 1985	27	21	25	12	15
2nd Quarter - 1985	25	13	27	27	8

The premium range for some typical sub-groups in the U.S. is shown on Exhibit 10. It should be remembered that this includes a number of responses from organizations whose coverage has not yet been impacted by the present insurance market. Thus, the 1986 survey is likely to show much more significant change.

# EXHIBIT 10

## U.S. Companies Premium Trends in Three Typical Sub-Groups

	Number Reporting	Lowest	First Quartile	Median	Third Quartile	Highest	Average
--	---------------------	--------	-------------------	--------	-------------------	---------	---------

Limit \$5,000,000  
Size Group 7  
(\$100MM - \$150MM Assets)

1976	33	\$ 5,833	\$ 11,000	\$ 13,333	\$ 17,000	\$ 40,000	\$ 16,591
1976	32	6,299	10,333	11,936	16,090	250,000	16,609
1978	48	3,071	7,929	10,371	13,603	46,332	17,416
1980	43	3,596	8,386	10,356	20,000	65,000	17,416
1982	26	1,667	3,923	8,489	13,000	29,000	17,416
1984	16	1,333	3,750	5,000	8,333	16,600	6,000
1985	7	3,000	4,772	7,185	7,340	18,523	7,560

Limit \$10,000,000  
Size Group 8  
(\$150MM - \$250MM Assets)

1976	29	\$ 9,322	\$ 18,811	\$ 24,398	\$ 28,083	\$ 40,933	\$ 24,227
1976	38	5,842	12,188	15,000	20,975	41,667	17,305
1978	67	6,667	15,930	19,147	27,128	89,950	24,596
1980	69	6,433	13,020	17,833	26,450	59,497	21,940
1982	57	2,000	8,725	16,075	19,172	44,000	15,024
1984	37	3,051	6,300	7,900	14,073	43,556	11,677
1985	20	6,083	5,665	8,700	19,706	40,000	12,835

Limit \$20,000,000  
Size Groups 14 & 15  
(Over \$2 Billion Assets)

1976	13	\$ 41,666	\$ 45,333	\$ 80,000	\$ 96,669	\$ 146,632	\$ 77,804
1976	25	45,000	49,800	59,586	82,000	99,016	65,721
1978	31	17,953	69,333	85,833	103,333	360,000	114,660
1980	42	34,837	62,468	81,573	102,865	500,000	102,350
1982	33	17,000	32,865	49,245	73,838	166,667	55,110
1984	45	14,615	24,738	37,316	47,900	180,000	41,867
1985	33	14,615	27,169	52,035	86,690	625,000	80,974

The impact on premiums for excess coverage has been far more drastic than that on primary policy premiums. This is shown on Exhibit 11, as follows:

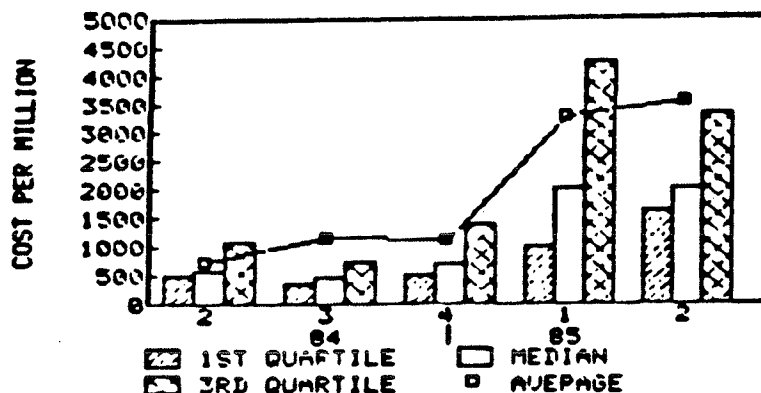
EXHIBIT 11  
Average Excess Premiums

	Attachment Point		
	\$10 MM to \$24 MM	\$25 MM to \$49 MM	\$50 MM or More
1984 Survey	\$ 764	\$ 329	\$ 492
2nd Quarter 1984	903	856	530
3rd Quarter 1984	2,420	744	386
4th Quarter 1984	1,869	1,085	885
1st Quarter 1985	5,124	3,329	2,156
2nd Quarter 1985	4,423	2,540	2,000
Average - 1985 Survey	2,599	1,813	1,015

The apparent peaking of excess premiums in the 1st Quarter of 1985, and downward trend in the 2nd Quarter, may be an illusion. The fact is that upper layer excess coverage was becoming a scarce commodity in the 2nd Quarter of 1985. The cost of all excess, regardless of attachment point is shown in Figure 4. This graphically illustrates the impact in cost for those organizations requiring coverage above limits available in the primary D&O market.

The premium impact in Canada has not been nearly as severe in the United States, although most certainly increases are taking place. The highest reported cost of excess coverage in Canada was \$2,000 per million, reported by several in the utility and/or petrochemical field, and we gather that is a present ceiling on excess costs in that country.

Figure 4  
Cost of Excess by Quarter



## COVERAGE LIMITATIONS

The tight D&O insurance market has resulted not only in higher premiums, higher deductibles, and reduced capacity, but it has also resulted in coverage restrictions for many insureds. Some of these limitations are specific as to particular accounts, others as to particular classes of accounts, and still others are being introduced by endorsement to every new or renewal policy issued by specific insurers. As this is written, revisions in the policy forms used by the two major D&O insurers are in process, and when introduced those policy forms will probably incorporate certain exclusions and limitations not previously found in "standard" policy wording, whatever that is. No two policy forms in the D&O field were identical before, and we do not expect there to be an "ISO" D&O policy in the near future. To the extent that reinsurers control coverage, however, some commonality of limitations can be expected. The reader is referred to the Wyatt D&O Policy Analysis, published in 1984, for a full discussion of the differences in policy forms at that time.

Some of the coverage limitations reported were items which really were standard exclusions before, i.e. ERISA, Nuclear, or claims of which an insured was aware at the time of policy inception. The newer limitations will be discussed in order of the frequency with which they have been reported by the 449 participants indicating a renewal or policy review during the past year.

Pending & Prior Litigation (29). This exclusion was reported by 34% of the U.S. and 44% of the Canadian participants in the 1984 survey, so its being added on another 6% of the renewals is not surprising. As pointed out in the 1984 report, an exclusion which can limit coverage more than the initial reading of the exclusion might indicate.

Pollution (14). Again a pretty standard exclusion, reported by 47% of the U.S. and 59% of the Canadian participants in the 1984 survey, so its addition on another 3% of the renewals is not surprising. In view of the moves to absolute exclusion of pollution under general liability policies and umbrella policies, we expect a pollution exclusion to be part of every D&O policy renewal.

Mergers, Acquisitions, Tender Offers, Going Private (10). Underwriters have had some losses from these activities, and have acted to limit coverage. Hopefully this will not become a widespread limitation -- what is the point of purchasing insurance if every foreseeable cause of loss is excluded?

Outside Directorships (9). In the 1984 survey, 33% of the participants reported blanket coverage for service on outside boards of directors where such service was at the request of the corporation. The response this year indicates that on 2% of the renewals, this coverage grant has been removed.

Discovery Period Limitations (11). During the past few years, it was very easy to secure a full year Extended Discovery Period provision. On 2% of the renewals, that provision has been restricted. In two cases it was reported reduced to 90 days, in three cases the Extended Discovery Period provision was totally eliminated, and in the remaining six cases some other amendment of it took place. This is a potentially important part of the policy, limitations of it should not be taken lightly.

Professional Services (8). One does not expect the D&O policy to respond to claims for any professional errors or omissions, so this exclusion may be more of a clarification than a new limitation. In two instances the exclusion was of medical malpractice claims, and in one of publisher's errors or omissions claims.

Securities Transactions/Public Offerings/SEC (5). The comments made under the heading of mergers, etal above might be appropriate here, although underwriters will point out that specific SEC liability coverage is available to those making public offerings.

Failure to Maintain Insurance (4). This used to be a standard exclusion in D&O policy forms, but during the last decade it gradually had been either removed by endorsement, or written out of the basic policy forms of many insurers. In the 1984 survey, 14% of the U.S. and 16% of the Canadian participants still reported having this exclusion. In view of some of the aspects of litigation revolving around events like Bhopal and Three Mile Island, underwriters are beginning to reintroduce this limitation, and we expect it to become a fairly common provision again. The



argument of underwriters is that they do not intend to write a master DIC policy for the insured corporation, or a risk managers error. . . omissions policy, and we really cannot argue with that position.

Joint Ventures/General Partnerships/Limited Partnerships (4). There generally have been limitations in D&O policies on claims arising out of these ventures by a corporate entity, and coverage tailored to the situation is called for. This is one of the (many) areas where risk managers, knowledgeable brokers, and consultants earn their keep.

Cancellation Notice Reduction (4). Replacing a D&O policy in a tight market can demand every bit of the 60 or 90 days afforded under most policies, and we strongly advise resistance to any limitation in the time allowed under cancellation provisions.

Illegal Payments (3). This is another of the more common exclusions that has been around for some time, growing out of the disclosures of bribes to foreign government officials in the early 1970's. It was reported by 21% of the U.S. and 31% of the Canadian participants in the 1984 survey. We would have no problem with such an exclusion if it applied only to those who knew of such payments, feel that coverage should be there for those swept into such litigation who were unaware of the shenanigans -- particularly as to defense costs.

Suits by Government Agencies (2). We were surprised that this was only reported by two participants, for we understand that many financial institutions are facing this form of exclusion relative to actions by the FDIC, FSLIC, or other regulatory bodies.

Insured vs. Insured Litigation (2). We expect that this limitation will become more common, arising out of the fear of suits by the corporation directly against a Director or Officer. One problem with the exclusion, as it is generally drafted, is that it is so broad that it applies to suits against Directors or Officers by a fellow director or officer as well -- and the risk manager who did a good job of having the policy extended to also include plant managers can now find that in so doing he created a gap in coverage for the senior officers or directors. Underwriters have expressed concerns about the D&O policy being subverted to a corporate E&O

policy. This may be a legitimate concern, although they have been well aware of that exposure for many years, and we believe their more legitimate concern may be over "friendly" suits against directors or officers, merely intended to recoup a loss from some misadventure from the D&O insurer. The better solution, from the risk managers viewpoint, would be to have any suits by or in the name of the corporation subject to a higher deductible and possibly a co-insurance feature and/or sublimit. If coupled with the requirement that coverage would only apply if the services of the directors or officers have been terminated, this would certainly remove the temptation of insured corporations to file such "friendly" lawsuits -- they would have to realize that they could not keep the person being sued on the payroll, and that that person would be incurring a personal loss beyond just a nominal deductible.

Other Limitations or Conditions (20). In addition to the above limitations, a variety of other limitations or conditions were reported once or twice per item. Among them were these:

**Exclusions:**

- Claims by a foreign parent corporation
- Transactions with parent corporation
- Directors or officers of parent corporation
- Directors or officers of subsidiaries
- Any employee except Board of Regents (University)
- Acts of which D&Os had prior knowledge
- Acts of which D&Os had reason to know
- Anti-Trust claims
- Litigation involving asbestos
- Litigation involving trade secrets
- Claims arising out of bankruptcy
- Claims from malfunction of business machines
- Defense Costs!!

**Policy Conditions:**

- Retrospective premium provisions
- Annual policy review mandated
- Pyramiding of limits prohibited
- Quarterly financial statements required
- Prohibition of purchase of excess coverage

## D&O INSURANCE CARRIERS

In past years our reports have listed the principal insurers, in rank order, and indicated their share of the market. This was appropriate in a competitive market situation. In this report, however, the listing will be in alphabetical order, and while share of the market statistics will appear, the emphasis is on who is left, what they are writing, and what capacity they have available. In this connection, we should warn that these comments are as of June 25, 1985, and things may have changed by June 26st -- or may have changed yesterday unknown to us. The 1984 rankings of each insurer are shown following the company name.

### AEGIS, LTD. (U.S. #10)

U.S. Primary	2.2% of accounts, 6.1% of premium
U.S. Excess	1.6% of accounts, 1.3% of premium

A utility industry specialty company. D&O only written for accounts on general liability program, capacity has been reduced to \$2.5 million.

### AMERICAN INTERNATIONAL GROUP (AIG) (U.S. #1, Canada #1)

U.S. Primary	21.9% of accounts, 31.0% of premium
U.S. Excess	26.9% of accounts, 47.2% of premium
CDN Primary	29.3% of accounts, 25.3% of premium
CDN Excess	5.0% of accounts, 6.6% of premium

Still the major factor in D&O, has capacity of \$22.5 million as presently reported. Principally appearing as National Union or American Home.

### AMERICAN STATES (Not ranked in 1984)

U.S. Primary	0.1% of accounts, 0.2% of premium
U.S. Excess	None indicated

Was available only to agents of this midwestern insurer, for relatively modest accounts. Has now withdrawn from the commercial D&O market.

**CALVERT (Canada #9)**

U.S. Primary	None indicated
U.S. Excess	None indicated
CDN Primary	5.2% of accounts, 3.4% of premium
CDN Excess	None indicated

Writes non-profit accounts only, has \$5 million capacity.

**CANADIAN INDEMNITY (Canada #15)**

CDN Primary	None indicated
CDN Excess	None indicated

No longer writing D&O.

**CHUBB GROUP (U.S. #2, Canada #2)**

U.S. Primary	21.2% of accounts, 16.9% of premium
U.S. Excess	16.1% of accounts, 13.0% of premium
CDN Primary	29.3% of accounts, 34.9% of premium
CDN Excess	22.5% of accounts, 30.8% of premium

Last year's second largest insurer still is taking new business, has a capacity of \$30 million.

**CIGNA GROUP (U.S. #9, Canada #16)**

U.S. Primary	2.1% of accounts, 1.7% of premium
U.S. Excess	3.1% of accounts, 1.0% of premium
CDN Primary	None indicated
CND Excess	None indicated

Policies were issued by INA or INAPRO. Not accepting any new business at this time, limited acceptance of renewals, reportedly has \$5 million capacity.

**CINCINNATI INSURANCE CO. (Not ranked in 1984)**

U.S. Primary	None indicated
U.S. Excess	None indicated

Available only to agents of this midwestern insurer, for relatively modest accounts. Capacity is \$10 million.

**CNA GROUP (U.S. #4, Canada #7)**

U.S. Primary	1.1% of accounts, 9.0% of premium
U.S. Excess	8.0% of accounts, 5.8% of premium
CDN Primary	None indicated
CDN Excess	2.5% of accounts, 5.3% of premium

Now underwriting through own facilities instead of through Stewart Smith.  
Capacity reported as \$10 million.

**CONTINENTAL GROUP (U.S. #3, Canada #3)**

U.S. Primary	14.0% of accounts, 9.5% of premium
U.S. Excess	9.6% of accounts, 9.3% of premium
CDN Primary	8.3% of accounts, 8.0% of premium
CDN Excess	None indicated

Companies used are Harbor and Buffalo Re, capacity reported as \$5 million.  
Loss of Swett & Crawford as marketing arm bound to affect status, reportedly not accepting new business.

**CRUM & FORSTER GROUP (U.S. #5, Canada #10)**

U.S. Primary	8.3% of accounts, 5.2% of premium
U.S. Excess	9.1% of accounts, 3.0% of premium
CDN Primary	2.1% of accounts, 0.5% of premium
CDN Excess	7.5% of accounts, 7.3% of premium

Underwriting and marketing arm has been L. W. Biegler, a subsidiary company, and principal insurer for D&O in this group is International Surplus Lines Insurance Co. Capacity now reported as \$5 million.

**EVANSTON INSURANCE COMPANY (U.S. #11)**

U.S. Primary	2.1% of accounts, 1.4% of premium
U.S. Excess	0.3% of accounts, 0.1% of premium

Was aggressively writing financial institutions and insurance companies a few years ago, reportedly out of the market now, business is running off, except possibly for insurance companies.

**FIDELITY & DEPOSIT (Not ranked in 1984)**

U.S. Primary      0.1% of accounts, 0.1% of premium  
U.S. Excess       None indicated

Writes only financial institutions carrying major lines of coverage with the Fidelity & Deposit. Capacity not known.

**FIRST STATE (U.S. #7, Canada #12)**

U.S. Primary      2.5% of accounts, 1.9% of premium  
U.S. Excess       4.7% of accounts, 1.9% of premium  
CDN Primary      None indicated  
CDN Excess       2.5% of accounts, 2.6% of premium

An autonomous operation within the Hartford Group. Reportedly not accepting any new business, very limited renewals. Has \$5 million capacity.

**FORUM (Not ranked in 1984)**

U.S. Primary      None indicated  
U.S. Excess       1.8% of accounts, 1.8% of premium

This insurer is the principal underwriter used by Stewart Smith, replacing the CNA in that context. Has \$10 million capacity, with another \$10 million available through this facility on the paper of Associated International, a sister company.

**GENERAL ACCIDENT (U.S. #13, Canada #14)**

U.S. Primary      0.3% of accounts, 0.3% of premium  
U.S. Excess       0.3% of accounts, 0.1% of premium  
CDN Primary      2.1% of accounts, 0.6% of premium  
CDN Excess       7.5% of accounts, 1.5% of premium

Reported as retiring from the D&O market in the United States, status in Canada not known.

**GESTAS (Canada #4)**

CDN Primary      5.2% of accounts, 1.3% of premium  
CDN Excess       None indicated

Was a growing factor in the Canadian D&O scene, is reportedly withdrawing from the market.

**HOME INSURANCE GROUP (U.S. #8, Canada #7)**

U.S. Primary	1.4% of accounts, 1.6% of premium
U.S. Excess	0.8% of accounts, 0.1% of premium
CDN Primary	None indicated
CDN Excess	None indicated

Has withdrawn from the market, is cancelling policies.

**KANSA (Canada #11)**

CDN Primary	5.2% of accounts, 2.6% of premium
CDN Excess	None indicated

Purely Canadian operations, still active.

**LIBERTY MUTUAL (U.S. #15)**

U.S. Primary	0.4% of accounts, 0.5% of premium
U.S. Excess	None indicated

Has written coverage only for accounts for Liberty Mutual on major lines, no current information.

**LLOYDS OF LONDON (U.S. #6, Canada #5)**

U.S. Primary	4.5% of accounts, 8.5% of premium
U.S. Excess	6.2% of accounts, 7.2% of premium
CDN Primary	5.2% of accounts, 2.9% of premium
CDN Excess	20.0% of accounts, 9.8% of premium

Will always be a major factor in the marketplace. whether direct or as a reinsurer. Capacity available -- at a price.

**MIDLAND (U.S. #16)**

U.S. Primary	0.6% of accounts, 0.1% of premium
U.S. Excess	Not indicated

Formerly a significant excess carrier, and primary insurer of hospital D&O, now reported out of the D&O market.

**NATIONAL FARMERS UNION (Not ranked in 1984)**

U.S. Primary	0.3% of accounts, 0.1% of premium
U.S. Excess	None indicated

Writes only agricultural related risks.

**NATIONAL PROGRAM ADMINISTRATIO. (Canada #6)**

CDN Primary 7.6% of accounts, 1.1% of premium  
CDN Excess 15.0% of accounts, 13.9% of premium

A consortium of Canadian insurers, which remains a viable market for risks in that nation.

**NORTHBROOK (U.S. #17)**

U.S. Primary None indicated  
U.S. Excess 0.3% of accounts, 0.1% of premium

Retired from the D&O excess market about two years ago, a few policies apparently remain on books until expiration.

**OLD REPUBLIC (U.S. #19)**

U.S. Primary 0.3% of accounts, 0.3% of premium  
U.S. Excess 1.0% of accounts, 0.5% of premium

A facility brought on stream just about two years ago, using its \$3.5 million capacity conservatively.

**RLI (Not previously ranked)**

U.S. Primary 0.1% of accounts, 0.1% of premium  
U.S. Excess 1.3% of accounts, 0.6% of premium

A relatively new facility, capacity now increased from \$1 million to \$5 million.

**ROYAL (U.S. #18, Canada #13)**

U.S. Primary 0.3% of accounts, 0.1% of premium  
U.S. Excess 1.0% of accounts, 0.2% of premium  
CDN Primary 2.1% of accounts, 0.6% of premium  
CDN Excess 10.0% of accounts, 1.5% of premium

Was gearing up for entry into commercial D&O market in the U.S. when the soft market ended. Has capacity of \$2 million.

**ST. PAUL (U.S. #14, Canada - not ranked)**

U.S. Primary 2.2% of accounts, 1.1% of premium  
U.S. Excess 3.4% of accounts, 2.4% of premium  
CDN Primary Not indicated  
CDN Excess 2.5% of accounts, 2.0% of premium

Developing facility with acquisition of Swett & Crawford as a marketing arm, but proceeding cautiously. Has \$10 million capacity.



**SCOTTISH & YORK (Not rated in 1984)**

CDN Primary	2.1% of accounts	2.3% of premium
CDN Excess	None indicated	

A Canadian insurer, writings appear concentrated in field of educational institutions.

**TWIN CITY (U.S. #20)**

U.S. Primary	0.4% of accounts, 0.1% of premiums	
U.S. Excess	None indicated	

A market for educational institutions only.

**VIRGINIA SURETY (Not ranked in 1984)**

U.S. Primary	None indicated
U.S. Excess	None indicated

MGA is Scarborough & Co., is assessing its position. Had written financial institutions.

**WAUSAU UNDERWRITERS (U.S. #12)**

U.S. Primary	1.4% of accounts, 1.1% of premium
U.S. Excess	1.6% of accounts, 0.8% of premium

Capacity variously reported to be in \$5 million to \$10 million range. Not accepting any new business.

**WESTERN EMPLOYERS (Not ranked in 1984)**

U.S. Primary	1.7% of accounts, 0.6% of premium
U.S. Excess	None indicated

A relatively new facility, available for small to medium financial institutions, \$10 million capacity.

**WESTERN WORLD (Not ranked in 1984)**

U.S. Primary	None indicated
U.S. Excess	None indicated

A New Jersey based insurer, was offering \$5 million capacity on small accounts.

In addition to the foregoing list of companies, a few other insurers were reported one time each in our 1985 survey. We do not know whether these reports are accurate, or indicate any current interest on the part of these insurers in the D&O field. They were as follows:

- Aetna Casualty (A U.S. Bank)
- Cooperators General (A Canadian Organization)
- Fremont Indemnity (A U.S. School)
- Mutual Fire & Inland (A U.S. Organization - excess)
- Simcoe & Erie (A Canadian Organization)
- Tudor (A U.S. Organization)

## CONCLUSIONS

Things are probably going to get worse for the buyer of D&O coverage before they get better. The stories of premiums rising five-fold or ten-fold abound, and these will continue since the degree of underpricing of D&O coverage in the past was so substantial. Capacity may have shrunk about as much as it is going to shrink, but no new capacity is likely to be attracted to writing D&O coverage since available insurance capacity can be employed to greater advantage by those insurers possessing it on more conventional lines of insurance, which they understand and are better equipped to underwrite. Thus, the only new capacity will probably be that developed by industry sponsored insurance organizations -- i.e., hospitals, financial institutions, petroleum companies, utilities, etc.

From the viewpoint of the corporate risk manager, a few things should be kept in mind:

1. Do not panic! There are still several good insurers out there, and when the smoke clears they will be competing for business. The big difference will be that this time they will not be giving away the store.
2. Make sure your application forms are prepared well in advance of expiration, that they are complete and have been reviewed by your senior officers and corporate counsel, and that the presentation to market is fully supported by adequate information about your company. Don't make life difficult for the underwriter by making him guess what your company does, how it is organized, or how it is managed. If he sees everything well organized and complete, he is going to be more favorably inclined to give your application favorable attention.
3. In this market, choose one broker for this line of insurance, and let him carry out the entire marketing efforts. More than one broker may damage your chances in the marketplace. That means, however, choosing a broker who is very knowledgeable in this field.
4. Be prepared to pay more for the coverage than in the past, and to accept higher deductibles for corporate reimbursement.

5. Do not roll over and play dead as far as personal coverage deductibles are concerned. One of the principal reasons corporations buy this coverage is for the comfort of corporate directors. The corporation can very well afford to see its deductible go from \$25,000 to \$250,000, but the Board of Directors will be quite upset if their deductibles go from \$5,000 to \$50,000 apiece. The underwriters should be willing to keep these at reasonable levels, possibly just increasing the aggregate limitation on the sum of such deductibles in a single claim.
6. Be prepared for some coverage limitations -- exclusion of pollution, nuclear perils, illegal payments, etc. will become universal (they already apply to many policies). Possibly an exclusion of loss due to failure to maintain insurance will reappear as a standard exclusion, and very probably punitive damages will be specifically excluded. However, some of the other exclusions requested by underwriters (claims by regulatory agencies, claims arising out of bankruptcy, claims by any other insured except in a derivative action) will tend to defeat the very purpose of carrying D&O coverage. Alternatives to outright exclusion should be sought, such as use of sublimits for these exposures, higher deductibles, and possibly significant co-insurance.
7. Be very cautious in transferring from one carrier to another, whether at the primary level or any excess level, to be sure you do not have potential losses falling through the "claims-made crack". Do not expect the glowing promises of "continuity" made through the soft market to be continued tomorrow.

Frequently underwriters seem to forget two fundamental principles of insurance -- that the purpose of insurance is to pay losses, and that the mechanism of insurance is to collect an appropriate premium from each policyholder to, in the aggregate, fund those losses. If those principles -- BOTH OF THEM -- can be re-established in a sane way, both the underwriters and the insureds will be far better off.