Lowenstein Sandler's In the Know Series
Video 8 – Recent Trends in D&O Insurance

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Eric Jesse: Hi, I'm Eric Jesse, partner in Lowenstein Sandler's Insurance Recovery Group, and welcome to "**In the Know**."

As we move past the pandemic and begin confronting new and different types of challenges in the insurance market, today we're going to talk about some recent developments and trends in the D&O insurance market.

The D&O market has always been cyclical. In recent years, the pandemic and economic instability fueled significant increases in premiums and constricting of terms, but more recent trends indicate that insurers are far more flexible these days. Rather than substantial premium increases, pricing has started to stabilize and may decrease for public companies and financial institutions, and private companies may see more modest increases than what they're used to in the past.

A second related trend is insurers' increased flexibility during the underwriting process. In recent years, policyholders were prevented from meaningfully negotiating with insurers, and had to accept strict terms, such as lower limits and sublimits, and restrictions on investigations coverage, as well as an extensive underwriting process previously reserved for "risky" entities. Although the market has not completely shifted back, companies with favorable risk profiles are likely to find insurers are far more willing to negotiate. This gives policyholders an opportunity to secure stronger coverage, especially by engaging with coverage counsel during the underwriting process to proposed beneficial changes to policy language.

Finally, perhaps the biggest trend in the D&O insurance market is the shifting nature of claims. While filings and the cost of traditional claims like securities class actions have fallen, a new crop of "event-driven" litigation focused on ESG issues has arisen. This includes diversity claims, environmental claims, cyber and privacy claims, and even cryptocurrency litigation. This change goes far beyond traditional litigation, as the SEC now confronts how to regulate ESG and investors become more active in challenging corporate management. Regardless of the potential success of these claims, they will likely be expensive to navigate.

The full impact of these changes won't be felt for several years, but there is no question that underwriters and policyholders are already adapting their efforts and strategy to this new environment.

Thank you for joining us and we look forward to seeing you next time on "**In the Know**."