Directors & Officers Claims: A growing global trend

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The rest of the world may be behind the United States in the league of D&O claims, but they are occurring and with increasing frequency and severity. The impact of the global financial crisis has turned the heads of regulators and shareholders toward the conduct of directors and officers.

There are many cases which demonstrate this growing trend:

- Subprime-related claims are leading the way with a number of companies accused of misrepresenting their exposure to the U.S. subprime mortgage market. According to Julian Martin, Executive Director at Willis, “The credit crisis and economic downturn have led to an increase in the number of all management liability-related claims being brought against our financial institution customers worldwide. These claims are brought in the first instance by customers and investments and/or fraud related issues, and then by shareholders and regulators against the D&O’s once the initial problems have become public knowledge.”

- Corporate governance is under question for a number of banks accused of failing to spot millions of dollars of money laundering and profiting from such activities.

- Increased regulatory scrutiny is inevitable. In the UK, the Financial Services Authority (FSA) has fined the UK branch of a Swiss investment bank GBP 5.6 million for failing to act with due skill, care and diligence. When a regulator enforces such a large fine, one has to question the severity of what has happened and how far reaching its impact will be. In the case of this company, a class action ensued in the U.S. Such fines by one regulator can only give rise to increasing investigations by regulators in other countries.

- The commercial sector will inevitably start to see more claims. Take the example of a former managing director for a UK construction company’s subsidiary and two colleagues who were charged with fraudulent trading.

- A successful class action in Nigeria could also encourage greater shareholder activism in Africa and other emerging markets, where previously plaintiffs may have been deterred by the cost of such lawsuits and the time they take to reach court.

We can clearly see that D&O cases are increasingly being filed in different jurisdictions around the world. The claims that started with the U.S. subprime mortgage crisis will inevitably lead the way to claims in different sectors and jurisdictions that have previously seen little to no shareholder activism.
With constantly changing legal environments across the world and dependencies on a global economy, potential exposures for companies and their directors and officers have never been greater. The days of one global D&O policy may be limited as questions are asked of potential exposures in local territories. Naturally, senior management will scrutinize the extent of policy coverage and limitations across all areas.

Paul Schiavone has over 15 years of experience in the insurance industry and Financial Line (specializing in D&O and EPL insurance). He has worked in San Francisco, New York and is now based in Europe.