



2009 Update on the insurance market for Venture Capital & Private Equity firms.

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Our Take

The market is starting to harden slightly, primarily for Venture Capital Asset Protection policies otherwise known as **VCAP policies**. VCAP policies typically included D&O for the VC firm itself, Excess D&O over Portfolio Companies, and Professional Liability (E&O) for Fund Management. The increase in premiums on renewals is ranging from 10% - 25%, depending on the carrier, type of risk and the investments being made. There seems to be four factors driving this change:

- **Carriers and market share**
- **Increased Litigation**
- **Ailing Economy**
- **Increased Defense Costs**

The Insurance Carriers Viewpoint

HCC and Hartford, have been market leaders due to their soft market pricing the past several years. Both have high market share and are reevaluating their overall books of business to "right-size" the premiums in relation to the anticipated litigation. The smallest increases are coming from Chubb due to the fact that they have historically priced their risks where they think they should be and not what their competitors in the market dictate (their book of business is "adjusting" on a case-by-case basis).

The **increase in litigation claims** for Private Equity have been alleging "self-dealing", tortious interference and shareholder dilution in LBO transactions. We do expect to see the VC litigation environment follow the same path as PE. Investors are asking their portfolio companies to streamline expenses, and put a hold on their investments in portfolio companies that are being reevaluated. It is expected that the reduced cash flow of the portfolio companies from lack of VC investment dollars will have an impact on insurance premiums the portfolio companies pay for their programs. These **portfolio companies are likely to realize higher costs and greater coverage restrictions if their balance sheet is not in alignment with expected return on investment.**

We expect additional litigation to increase on the excess ODL coverage grant on the VCAP policies for situations where the portfolio company is not able to maintain the broadest possible coverage or even any coverage at all. We are seeing this first hand in our technology practice. Smaller clients are dropping coverage because they simply don't have money to pay the premiums and additional venture funding is not coming through.



The Voice of Law Firms

The legal community is having an impact on insurance premiums too. The costs associated with defending these lawsuits have skyrocketed over the past two years. A claim that cost \$200,000-\$300,000 to defend four or five years ago is now costing \$1,000,000 or more. On a case-by-case basis, they will also be evaluating the adequacy of retentions, The biggest increases are currently being felt by Private Equity firms, big and small, across the board. For VCs, the hardening in the short-term is expected to be most severe for early stage investors who:

- **maintain preferred shareholder status**
- **provide management advice and consulting to the PCs**
- **direct the PCs to certain vendors and service providers**
- **maintain a seat on the PC board**

By 2010, it is anticipated that all VC firms, even those that are late stage with little to no board representation, will be seeing rate increases to some extent. The hard market is expected to worsen into 2010 and then hopefully moderate by 2011. However, it is too soon to say how fast the economic recovery will happen.

CSI welcomes the opportunity to discuss how these changes may affect your firm, as well as areas where you may realize cost savings to offset rising premiums in the VCAP program (such as the exclusive package policy available to NVCA members through One Beacon and CSI's membership in TechAssure).



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