

## USING PREMONITION TO BE A BETTER PRIVATE D&O UNDERWRITER

by TY R. SAGALOW<sup>1</sup>



According to a recent study by Chubb and Towers Watson, more than 1 out of every 4 privately held companies experience a D&O related claim, and more than 1 out of 10 in just the past 3 years. The average claim costs \$700,000, a “break-the-company” event for many small private companies. Meanwhile, according to a A.M. Best, for year-end 2017, D&O carriers have not been able to charge more premium despite a record increase in the overall D&O loss ratio (which includes both public and private companies.) According to Fitch, this has resulted in D&O liability underwriting falling to a seven-year low.

For the insurance underwriter of privately held D&O companies (Private D&O), another statistic foreshadows additional problems: the greater likelihood that control of the insured company will be in the hands of just a handful of people. According to the Equilar Institute, 1 out of 4 small company CEOs (companies with market cap of less than \$100 million) control at least 25% of the equity of their companies (enough to probably give them effective control) while in very large companies (those with \$50 billion or more in market cap), only 1.63% of CEOs have this type of control.

It is no wonder that most Private D&O underwriters will tell you that understanding the people that run a small business is as important as understanding the business itself. However, up until very recently, there was not an effective way in which the Privately Held D&O underwriter could access hard data about how often the leaders of a small business applicant are sued, and sue, and in what type of litigation. (Beyond the limited information obtained in the insurance application itself.)

**PREMONITION HAS BEEN CALLED THE “MONEYBALL” METHOD OF INSURANCE UNDERWRITING. D&O UNDERWRITERS CAN, FOR THE FIRST TIME, MAKE DATA-BASED DECISIONS ON THE EXTENT OF THE APPLICANT’S AND KEY MANAGEMENT’S TOTAL LITIGATION HISTORY.**

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Recently, however, a data and analytics company, Premonition ([www.premonition.ai](http://www.premonition.ai)), has emerged as the “go to” company for D&O underwriters. Premonition has the largest civil litigation database in the United States holding information on approximately 87% of all state cases and 100% of all federal cases. The database not only contains information on the name of the parties, their attorneys, the judge, case type and length of case but the outcome as recorded by the court.

While all of this information can be helpful to the Private D&O underwriter, what is especially important is the number of cases brought against, and brought by, the company applicant and its key management. For example, even knowing that the CEO is in the midst of a bitter divorce or is being personally sued by his creditors is relevant to a Private D&O underwriter. Furthermore, since the Private D&O underwriter largely expects that there is no litigation of any kind against the company applicant, the discovery of any litigation likely increases the risk to the insurer.

One way a Private D&O underwriter could use the Premonition system is as follows: When the D&O underwriter receives an application for insurance from a privately held company, the underwriter will run the name of the company and its key management through the Premonition system. The underwriter will then be given a full litigation profile for the applicant company and management. This profile will include historical and pending litigation of any nature. If there is litigation, the underwriter can see when it was originally filed, if it is open or closed, and if closed, what was the result. Armed with this data, the underwriter can decide whether to ask more questions of the applicant, increase the rate or modify the terms or conditions of the policy. In extreme cases, the underwriter could refuse to offer coverage.



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