Consistent with previous years, in 2018 life science face a higher likelihood of being sued than almost any other industry class. A review of federal securities class actions shows that 88 new federal securities cases in 2017 were filed against life science companies, 30% more than in 2016 and 225% more than 2012.¹ Plaintiffs continue to target the same segments of life science companies in the same venues. Approximately 50% of life science companies sued in 2017 had a market capitalization of less than $500M. Suits against life science companies are most commonly brought in the Ninth, Second and Third Circuits (primarily encompassing New Jersey, California and New York).¹

The D&O market is not welcoming for many life science companies

The D&O market had become/will remain challenging for life science companies even while most of their peers continued to enjoy favorable conditions with upward pressure on primary pricing and increased policy retentions in 2018. Some carriers whose D&O portfolio is unprofitable are looking for double digit increases on renewals, reducing capacity and narrowing coverage for accounts or segments that they view as high risk. With the securities litigation trends for life science companies continuing to look worse than for other industry segments, we can expect that carriers will focus “remediation” effort on life science companies.

But the news is not all bad for life science companies. While insurers may often look at the headline news and the number of cases filed as evidence of an unprofitable line of business, decisions in certain cases over the past 12 months indicate that that volume of litigation may not always mean a corresponding high loss ratio, this is why it is important that your broker understands your industry. Litigation against life science companies is quite likely to be industry-specific, focusing on regulatory approvals, clinical trial data, manufacturing and product safety/efficacy issues. While accounting issues drive securities suits in most industries, in the period from 2011 to 2017, only 6% of suits filed against life science companies with market caps of $1B or less allege accounting misstatements.² The rest are driven by key milestone events that a company may encounter with over 70% of suits during that period involving alleged misstatements between Phase II clinical trials and the outcome of an NDA.

However, the same period saw some positive news in decisions rendered by federal courts. Cases against life science companies were 35% more likely to be dismissed than the other industries. In the absence of accounting allegations, the cases against Life Science Companies typically relate to specific disclosures about foreseen events which can often be successfully defended with accurate and full disclosures of Risk Factors in SEC filings. The net effect of the various data available is both good and bad news for D&O buyers. While life science companies face a higher likelihood of being sued, and settlements in such cases that survive dismissal trend higher than other industries, the suits have a significantly higher likelihood of being dismissed, thereby reducing costs incurred by insurers. Companies involved in product development face numerous milestones that can materially impact the viability of a company. Ensuring that your policy responds to critical risk exposures at each juncture is essential. Equally important is selecting insurers who understand and will support you through the next stages, many insurers’ appetite for risk disappears as a company enters Phase II and III of clinical trials.

D&O for publicly traded life science companies
Everywhere you plan to be

Willis Towers Watson, a broker who understands your business, can help you plan your insurance accordingly. We have invested in specialists who understand both your industry and the D&O market.

**Will your policy respond to a claim?**
Willis Towers Watson relies on life science industry D&O experts to ensure that your policy provides the coverage and limits that you require. Our analytical approach to help you set the right limits combined with our line-by-line review of your policy wordings ensure you the highest level of comfort that you can rely on your policy in the event of a claim.

**Life science expertise**
- 300 industry colleagues in more than 100 countries including 200 in USA
- More than 500 clients in North America and 700 globally
- The most advanced loss modeling in the industry
- A globally integrated practice that operates as a key part of your team, providing industry specialist insight and complete insurance solutions

**D&O Practice**
- Operating within our overall financial and executive risks (FINEX) line of business
- Over 150 FINEX team members in North America, including 85+ risk and insurance specialists and 15 Claim & Legal Group members; global staffing of over 400
- D&O Quantified — a market leading model of a Life Science company’s exposure to D&O claims frequency and loss severity
- Peer benchmarking against over 200 life science D&O clients
- A life science industry D&O center of excellence (COE) located in Radnor, PA
- Manuscript policy language available with leading D&O carriers
- Coordination with other leading risk and insurance areas, such as cyber, employment practices liability (EPL), fiduciary/ERISA exposures and fidelity (social engineering exposures)
- Brand new FINEX Rate Report, detailing quarterly changes in pricing for all FINEX lines of coverage
- Free, no-obligation and confidential review of your D&O (and other FINEX) coverage, focusing on the key exposures of today’s world

**Sources:**
2. Michael Klausner, Professor of Law, Stanford Law School, Jason Hegland, Executive Director, Stanford Securities Litigation Analytics, and SSLA researchers Carin LeVine, Julia Laurence and Quito Mali Tin-Hung Tsui – The D&O Diary Feb 4, 2018

Copyright © 2018 Willis Towers Watson. All rights reserved.
WTW-NA-2018-7029
willistowerswatson.com

---

Please contact your Willis Towers Watson team or:

**John Connolly**
North America Practice Leader
Life Sciences
+1 610 254 5686
john.a.connolly@willistowerswatson.com

**Rob Yellen**
D&O and Fiduciary Product Leader - FINEX
+1 212 915 7919
robert.yellen@willistowerswatson.com