

MARSH

# Insurance Overview

Waterfront Toronto



May 18, 2011

**Leadership, Knowledge, Solutions...Worldwide.**

# Waterfront Toronto Insurance Program

## Type of Policies

- Property
- Property in the Course of Construction
- Machinery Breakdown
- Commercial General Liability
- Umbrella Liability
- Directors & Officers Liability
- Crime
- Contractor and Professional Services Liab.
- Contractors Pollution Liability
- Pollution Liability – 7 Queen’s Quay
- Pollution Liability – 54 Commissioners
- Pollution Liability – 190 Queen’s Quay

## Insurer

GCAN  
Chartis  
BI & I  
CNA  
CNA  
Chartis  
Travelers  
Liberty  
ACE/INA  
Zurich  
Chubb  
XL

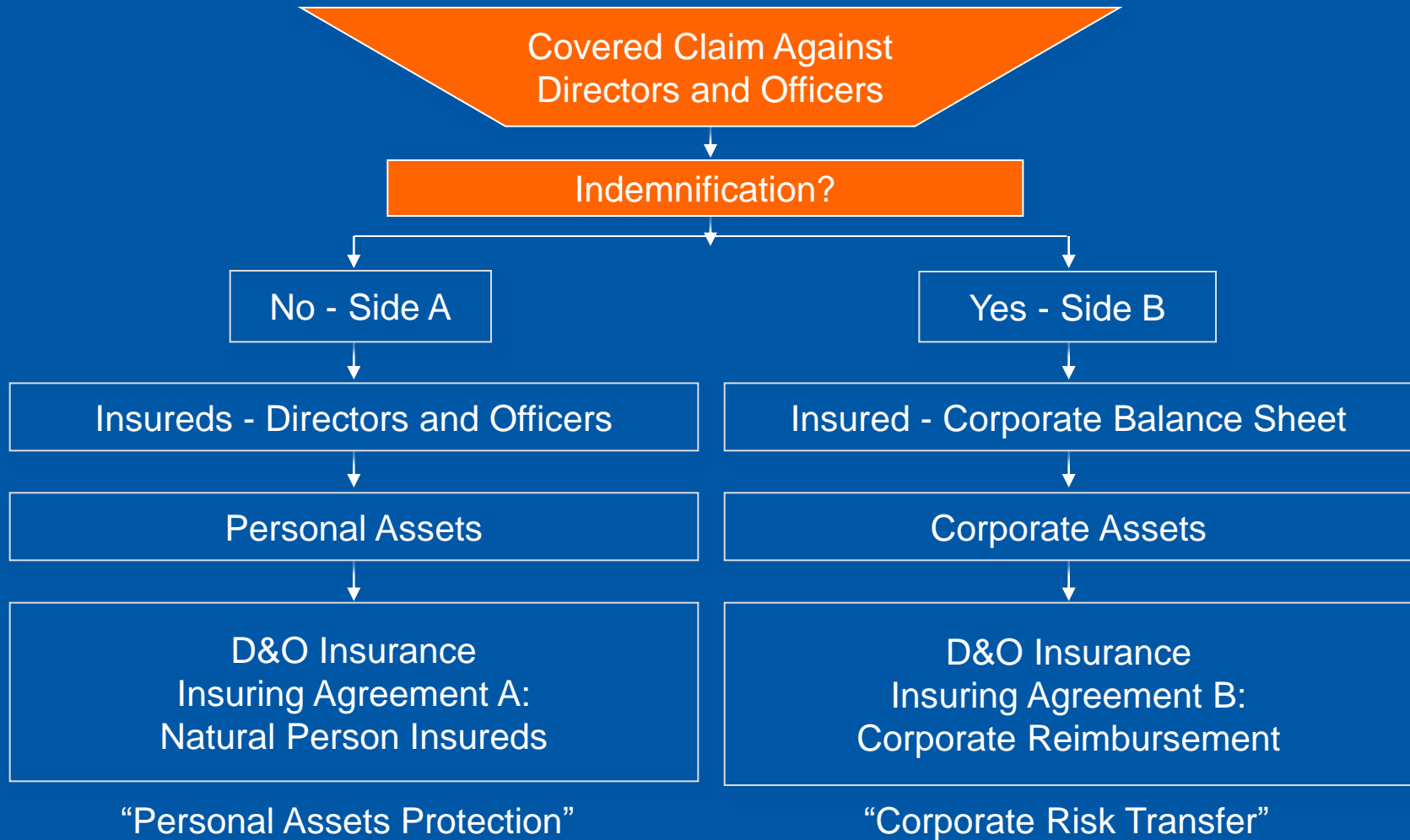


# Purpose of D&O Policy

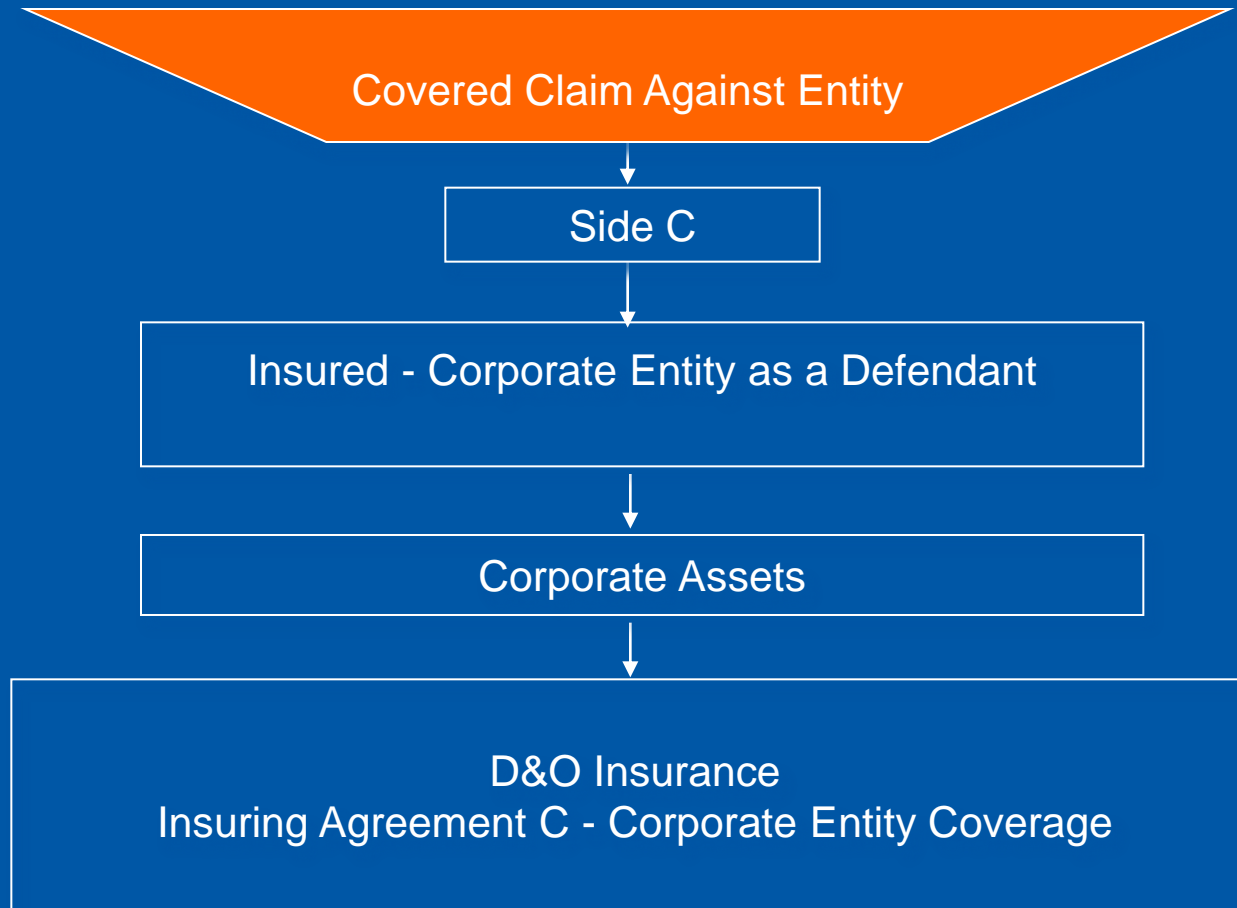
- **To protect and defend the personal assets of directors and officers**
  - By paying on behalf of directors and officers for non-indemnifiable claims
- **To protect the company's balance sheet**
  - By paying on behalf of the company for indemnifiable claims brought against the directors and officers
- **Covers loss that directors and officers become legally obligated to pay**
  - On account of a claim made against them for an alleged or actual wrongful act committed in their executive capacity



# Overview of the D&O Policy



# Overview of the D&O Policy (continued)



# Key Components of Coverage

- Insuring Agreements
- Who is covered under a typical policy?
- Key Definitions
  - Wrongful Act
    - Attempted or allegedly attempted
  - Claim
  - Loss
    - Defense Costs are included within the limit of liability



# What Is Not Covered

- There are 4 categories of exclusions:
  1. Insurable elsewhere
    - e.g. Environmental, Bodily Injury/Property Damage Liability
  2. Uninsurable by law
    - e.g. criminal or fraudulent acts
  3. Outside the intent of the D&O policy
    - e.g. organization vs. insureds
  4. Specific Risk Related Exclusions
    - e.g. errors & omissions exclusion with respect to professional services



# Claimant/Types of Claims

Claimant	Types of Claims
Stakeholders and other investors	<ul style="list-style-type: none"><li>▪ Inadequate disclosures</li><li>▪ Challenge to takeover</li><li>▪ Merger/acquisition</li><li>▪ Financial performance</li><li>▪ Executive compensation</li><li>▪ General negligence</li><li>▪ Gross negligence</li><li>▪ Breach of fiduciary duty</li></ul>
Past, current, or prospective employees	<ul style="list-style-type: none"><li>▪ Wrongful employee dismissal or termination</li><li>▪ Salary, wage, or compensation dispute</li></ul>





# Claimant/Types of Claims

Claimant	Types of Claims
Competitors, suppliers, and other contractors	<ul style="list-style-type: none"><li>▪ Anti-trust</li><li>▪ Copyright/patent infringement</li><li>▪ Contract disputes</li></ul>
Government and regulatory agencies	<ul style="list-style-type: none"><li>▪ Dishonesty/fraud</li><li>▪ Bankruptcy (statutory duties, i.e. taxes)</li><li>▪ Environmental safety</li></ul>
Other third party claimants: (i.e. clients, employees, unions, and creditors)	<ul style="list-style-type: none"><li>▪ Merger/acquisition/divestiture</li></ul>



# Overview of the Environmental Insurance Policies

- Contractor and Professional Services Liability policy
  - Requirement of 2006 Memorandum of Understanding between City of Toronto and Waterfront Toronto
  - Provides coverage for **Professional Services**
    - **Covered Professional Services:** Environmental site assessment, remediation design plans and specifications, contaminated media management, project management
  - Coverage for sums the Insured (Waterfront Toronto) becomes legally obligated to pay arising from professional services "claims".
  - Includes coverage for defence



# Overview of Environmental Insurance Policies

- Owners Controlled Contractors Pollution Liability (CPL) policy
  - Put in place in 2009 to deal with contingent environmental risks associated with projects being completed by contractors on the East Bayfront, West Don Lands and Canada Square sites
  - Responds to claims related to the Covered Operations of contractors working on projects that are scheduled to the policy.
  - Coverage for 3<sup>rd</sup> party claims of bodily injury, property damage, and cleanup related to pollution conditions caused by Covered Operations
  - Waterfront Toronto allowed to make claims against their contractors



# Overview of Environmental Insurance Policies

- **Site Specific Environmental Impairment Liability policies**
  - 7 Queen's Quay (Zurich)
  - 54 Commissioners (Chubb)
  - 190 Queens Quay (XL)
  - King St/West Don Lands -TCHC site (XL)
- Coverage for discovery of, and/or claims related to, pre-existing pollution conditions - Cleanup costs, 3<sup>rd</sup> party Bodily Injury and Property Damage
- Waterfront Toronto work with Marsh and outside legal counsel to review the potential environmental risks/liabilities associated with all sites purchased by Waterfront Toronto and assess the availability, potential cost, and advisability of purchasing environmental insurance



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