Comprehensive Side A solutions start with a carrier that specializes in them.

Dedicated Side A coverage is necessary for all directors and officers to consider given the potential for exhausting traditional D&O coverage limits or when a company is unable to, (e.g., bankruptcy) or legally prohibited from indemnifying. The following scenarios demonstrate the type of exposures and how we can help protect the personal assets of key leadership and board members.

Financial Institution: Derivative Settlement Triggers Side A Coverage	
What happened	The insured was subjected to a regulatory investigation, securities class action and derivative lawsuit pertaining to its cross-selling practices and compensation plans that allegedly motivated employees to participate in improper business practices. The regulatory investigation and securities class action resulted in fines and settlements which led to the filing of the derivative litigation.
What followed	Given that the derivative action was filed in a jurisdiction that did not permit indemnification of derivative settlements, the settlement, which was in the hundreds of millions, was covered by the Side A insurance.

Manufacturer: Bankruptcy Triggers Side A Coverage	
What happened	A complaint was filed by the Unsecured Creditors Committee of a bankrupt insured against the directors and officers of the bankrupt entity. The Creditors Committee alleged that the board breached its fiduciary duties and mismanaged the company leading to its bankruptcy.
What followed	Given that the entity was bankrupt, Side A coverage was triggered. Although the defendants have received favorable rulings in the litigation, defense costs are in the seven-figure range.

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Software Company: Criminal Claims Lead to Exclusion to Indemnify	
What happened	The insured was faced with a securities class action and a derivative action stemming from allegations that materially false and misleading statements were made concerning the integration of acquired companies, as well as the company's operation and profitability. In addition, the SEC filed an enforcement action, and a criminal indictment was handed down against the company's CEO and CFO on charges of manipulation of the company's stock price. Thereafter the company filed for bankruptcy, precluding indemnification by the company.
What followed	The ABC primary carrier denied coverage for the criminal proceedings since criminal actions were excluded from the definition of claim. Consequently, the Side A DIC policy dropped down and covered the defense costs of the criminal proceedings.

Hospitality: Financial Insolvency Leads to Non-indemnifiable Loss	
What happened	The board members which entered receivership following the pandemic were faced with mismanagement claims from creditors. Specifically, the creditors alleged that the board elected to pay down debt that was personally guaranteed ahead of the debt instruments held by the plaintiffs.
What followed	Due to the insolvency of the insured and the lack of indemnification from the entity, the defense expenses were paid under the Side A coverage section without a self-insured retention.

Fast Food Delivery Company: Wage and Hour Exclusion Triggers Side A Coverage	
What happened	An executive of a subsidiary of the policyholder had filed for Chapter 11 and faced a class action by employees for failure to properly pay wages. As well as unlawful retention of those wages, transportation expenses and seeking recovery of unpaid wages.
What followed	The ABC polices had a wage and hour exclusion; the Side A DIC policy did not and the policy paid out in full.

Financial Institution: Insolvency Triggers DIC Provision	
What happened	A specialist insurer and reinsurer were put into liquidation after its regulator concluded it had been insolvent for at least five years, because of under reserving, and a series of allegedly questionable transactions. This led to a criminal prosecution against two D&Os, an action by the liquidator against all D&Os.
What followed	The Side A DIC and excess carriers paid costs on a drop-down basis on several grounds. 1) Delay on the part of the ABC carriers (who subsequently reimbursed the Side A carriers), 2) Denial by the ABC carriers of certain categories of costs. Ultimately, Side A carriers were required to contribute to a global settlement, given the size of the claims and the low level of coverage.

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