



Financial risk coverage in a post-Roe business environment

15th Annual Rocky Mountain RIMS Educational Forum

John Orr
D&O Liability Product Leader, FINEX NA

September 20, 2022



Directors and Officers Liability Insurance

Regulatory investigations and (civil and criminal) proceedings

Civil proceedings brought by private citizens

- Coverage for individual insureds (Insured Persons)
- Coverage for the insured organization (the Company, the Entity)
- Distinction between public company and private company D&O coverage
- Potential coverage limitations
 - Civil fines and penalties
 - Criminal fines and penalties
 - Costs to comply with injunctive relief
 - Exclusions

Employment Practices Liability Insurance

- Theories of liability (types of claims)
 - Pregnancy discrimination
 - Gender discrimination
 - Privacy liability
 - Discrimination, harassment, retaliation arising from position advocacy
- EPL coverage
 - Generally covered, but notable potential coverage limitations
 - Bodily injury
 - Exclusions for failure to pay benefits
 - FMLA and NLRA
 - [note possible retaliation carveback for above exclusions]
 - Conduct exclusion

Fiduciary Liability Insurance

- Theories of liability (types of claims)
 - Claims asserted under ERISA – preemption question
 - Claims alleging *restrictive* changes in benefits may violate presidential Executive Order or give rise to reliance-based claims
 - State agency claims alleging violations of state law
 - Private citizen claims seeking to enforce state law
- Additional questions / areas of scrutiny
 - HSA compliance
 - HIPAA compliance
 - ERISA disclosure requirements



Thank you!

John M. Orr

D&O Liability Product Leader, FINEX NA

WTW

John.Orr@wtwco.com

wtwco.com