

UNITED INSURANCE HOLDINGS CORP.

Form S-3

October 31, 2017

As filed with the Securities and Exchange Commission on October 31, 2017

Registration No.

333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

UNITED INSURANCE HOLDINGS CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

75-3241967

(IRS Employer Identification No.)

800 2nd Avenue South
St. Petersburg, Florida 33701
(727) 895-7737

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

John Forney
Chief Executive Officer
United Insurance Holdings Corp.
800 2nd Avenue South
St. Petersburg, Florida 33701
Phone: (727) 895-7737

(Name, address, including zip code, and telephone number, including area code, of agent for service)

with a copy to:
Robert B. Lamm
Gunster
450 East Las Olas Boulevard,
Suite 1400
Fort Lauderdale, Florida 33301
Phone: (954) 468-1321

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest

reinvestment plans, check the following box. R

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. £

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. £

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. £

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging Growth company

If an emerging growth company, indicated by check mark if the registrant has elected to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(s)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽⁴⁾	Proposed Maximum Aggregate Offering Price ⁽³⁾	Amount of Registration Fee
Common Stock, \$0.0001 par value per share	(2)	(2)	(2)	(2)
Preferred Stock, \$0.0001 par value per share	(2)	(2)	(2)	(2)
Debt Securities	(2)	(2)	(2)	(2)
Warrants	(2)	(2)	(2)	(2)
Stock Purchase Contracts	(2)	(2)	(2)	(2)
Stock Purchase Units	(2)	(2)	(2)	(2)
Total			\$200,000,000 ⁽²⁾	\$23,180⁽⁴⁾

Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to (1) cover any additional securities to be offered or issued from stock splits, stock dividends, or similar transactions with respect to the securities being registered.

Includes an indeterminate aggregate principal amount or number of each identified class of securities up to a proposed aggregate offering price of \$200,000,000, which may be offered by the registrant from time to time in unspecified numbers and at indeterminate prices, and as may be issued upon conversion, redemption, repurchase, (2) exchange or exercise of any securities registered hereunder, including any applicable anti-dilution provisions. This registration statement also covers delayed delivery contracts that may be issued by the registrant under which the party purchasing such contracts may be required to purchase debt securities. Such contracts may be issued together with the specific securities to which they relate. Securities registered hereunder to be sold by the registrant may be sold either separately or as units comprised of more than one type of security registered hereunder.

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act (3) of 1933, as amended, based upon the average of the high and low prices for United Insurance Holdings Corp. common stock as reported on The Nasdaq Capital Market on October 31, 2017.

Pursuant to Rule 457(p) under the Securities Act, the Company hereby offsets the total registration fee due under this Registration statement by the amount of the filing fee associated with the unsold securities from the Company's Registration Statement on Form S-3, filed with the Securities and Exchange Commission on September 30, 2013 (SEC File No. 333-191472), registering securities for a maximum aggregate offering price of \$75,000,000 (the (4) "Prior Registration Statement"). The registrant sold \$50,000,000 of securities under the Prior Registration Statement. The associated filing fee of \$3,410 for such unsold securities, calculated under Rule 457(o), is hereby used to offset the current registration fee due. Accordingly, such offset against the \$23,180 registration fee currently due for this Registration Statement results in the Registrant paying \$19,770 in net filing fees for this Registration Statement.



The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

STATEMENT PURSUANT TO RULE 429(b)

The registrant is filing a single base prospectus in this registration statement pursuant to Rule 429 under the Securities Act, in order to satisfy the requirements of the Securities Act and the rules and regulations thereunder for (i) the offering, issuance and sale by the registrant of up to a maximum aggregate offering price of \$200,000,000 of the registrant's securities being registered in this new registration statement and (ii) the offering, issuance and sale by the registrant of up to a maximum aggregate offering price of \$50,000,000 of the registrant's common stock, preferred stock, debt securities, warrants, stock purchase contracts or units registered in the Company's Registration Statement on Form S-3 (Registration No. 333-201425), to enable an aggregate of \$250,000,000 of securities to be offered pursuant to the combined base prospectus. The combined base prospectus in this registration statement, which is a new registration statement, also constitutes a post-effective amendment to the prior Registration Statement. Such post-effective amendment shall hereafter become effective concurrently with the effectiveness of this registration statement and in accordance with Section 8(c) of, and Rule 429 under, the Securities Act.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy those securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED OCTOBER 31, 2017

Common Stock

Preferred Stock

Debt Securities

Warrants

Stock Purchase Contracts

Stock Purchase Units

We may offer and sell from time to time up to \$250 million of securities described in this prospectus, in one or more classes or series and in amounts, at prices and on terms that we will determine at the times of the offerings.

This prospectus provides you with a general description of the securities we may offer. Each time securities are sold using this prospectus, we will provide a prospectus supplement to this prospectus and possibly other offering material containing specific information about the offering and the terms of the securities being sold, including the offering price. The prospectus supplement or other offering material may also add, update or change information contained or incorporated by reference in this prospectus. You should read this prospectus, the prospectus supplement, any other offering material and the information incorporated by reference carefully before you invest.

We may offer the securities independently or together in any combination for sale directly to purchasers or through underwriters, dealers or agents to be designated at a future date. The supplements to this prospectus will provide the specific terms of the plan of distribution.

Our common stock is traded on The Nasdaq Capital Market under the symbol "UIHC." On October 31, 2017, the closing price of our common stock was \$15.74 per share.

Investing in our securities involves risks. See "Risk Factors" beginning on page 2 of this prospectus and in any applicable prospectus supplement, for a discussion of the factors you should consider carefully before deciding to purchase these securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is October 31, 2017.

TABLE OF CONTENTS	
TABLE OF CONTENTS	<u>i</u>
ABOUT THIS PROSPECTUS	<u>i</u>
CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS	<u>i</u>
PROSPECTUS SUMMARY	<u>1</u>
RISK FACTORS	<u>2</u>
RATIO OF EARNINGS TO FIXED CHARGES	<u>2</u>
USE OF PROCEEDS	<u>2</u>
DESCRIPTION OF CAPITAL STOCK	<u>2</u>
DESCRIPTION OF DEBT SECURITIES	<u>5</u>
DESCRIPTION OF WARRANTS	<u>14</u>
DESCRIPTION OF STOCK PURCHASE CONTRACTS	<u>15</u>
PLAN OF DISTRIBUTION	<u>16</u>
LEGAL MATTERS	<u>17</u>
EXPERTS	<u>17</u>
WHERE YOU CAN FIND MORE INFORMATION	<u>18</u>
INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE	<u>19</u>

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the “SEC”). You should read this prospectus together with the more detailed information regarding our company, our common stock, and our financial statements and notes to those statements that appear elsewhere in this prospectus and any applicable prospectus supplement together with the additional information that we incorporate in this prospectus by reference, which we describe under the heading “Incorporation of Certain Documents By Reference.”

You should rely only on the information contained in, or incorporated by reference in, this prospectus and in any accompanying prospectus supplement. We have not authorized anyone to provide you with different information from that contained in, or incorporated by reference in, this prospectus. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of those documents or that any document incorporated by reference is accurate as of any date other than its filing date. You should not consider this prospectus to be an offer or solicitation relating to the securities in any jurisdiction in which such an offer or solicitation relating to the securities is not authorized. Furthermore, you should not consider this prospectus to be an offer or solicitation relating to the securities if the person making the offer or solicitation is not qualified to do so, or if it is unlawful for you to receive such an offer or solicitation.

In this prospectus, we frequently use the terms “we,” “our,” “us,” “UPC Insurance,” and the “Company” to refer to United Insurance Holdings Corp. and our subsidiaries, except where it is clear that the terms mean only United Insurance Holdings Corp.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements included in this prospectus or in the documents incorporated by reference in this prospectus, other than statements of historical fact, are forward-looking statements (as such term is defined in Section 27A of the Securities Act of 1933 (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934 (the “Exchange Act”), and the regulations promulgated thereunder), which are intended to be covered by the safe harbors created thereby. These forward-looking statements involve risks and uncertainties and are based on the beliefs and assumptions of our management and on information available at the time these statements and disclosures were prepared. Forward-looking statements include, but are not limited to:

certain statements contained under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2016;

certain statements contained under the heading “Business” in our Annual Report on Form 10-K for the year ended December 31, 2016;

certain statements contained under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in the notes to our financial statements in our Annual Report on Form 10-K for the year ended December 31, 2016, our Quarterly Report on Form 10-Q for the quarter ended March 31, 2017 and our Quarterly Report on Form 10-Q for the six months and quarter ended June 30, 2017; and

certain statements as to trends or events or our management’s beliefs, expectations, objectives, plans, goals, intentions, estimates, projections and opinions.

These statements are included throughout this prospectus, and in the documents incorporated by reference in this prospectus, and include statements about anticipated growth in our revenues, estimated unpaid losses on insurance policies that we write, our investment returns and expectations about our liquidity. These statements also relate to our business strategy, goals and expectations concerning our market position, future operations, profitability, liquidity, and capital resources. The words “believe,” “anticipate,” “continue,” “could,” “estimate,” “endeavor,” “expect,” “intend,” “may,” “predict,” “project,” “will,” “would,” and similar terms and phrases identify forward-looking statements in this prospectus and in the documents incorporated by reference in this prospectus.

Although we believe the assumptions upon which these forward-looking statements are based are reasonable, any of these assumptions could prove to be inaccurate and the forward-looking statements based on these assumptions could be incorrect. Our operations involve risks and uncertainties, many of which are outside our control, and any one of which, or a combination of which, could materially affect our results of operations and whether the forward-looking statements ultimately prove to be correct. Actual results and trends in the future may differ materially from those suggested or implied by the forward-looking statements depending on a number of factors. Some of the risks, uncertainties and other factors that may cause actual results, developments and business decisions to differ materially from those anticipated by such forward-looking statements include the risk factors in our Annual Report on Form 10-K for the year ended December 31, 2016 and the following:

- the regulatory, economic and weather conditions in the states in which we operate;
- the impact of new federal or state regulations that affect the property and casualty insurance market;
- the costs, variability and availability of reinsurance;
- assessments charged by various governmental agencies;
- pricing competition and other initiatives by competitors;
- our ability to attract and retain the services of senior management;
- the outcome of litigation pending against us, including the terms of any settlements;
- dependence on investment income and the composition of our investment portfolio and related market risks;
- our exposure to catastrophic events and severe weather conditions;
- risks and uncertainties relating to our acquisitions including our ability to successfully integrate the acquired companies;
- downgrades in our financial strength rating; and
- other risks and uncertainties described in our filings with the SEC from time to time.

Because of these and other risks and uncertainties, our actual future results may be materially different from the results indicated by any forward-looking statements. In addition, our past results of operations may not be indicative of future performance and new risks and uncertainties may arise in the future. Therefore, we caution you not to place undue reliance on our forward-looking information and statements. We undertake no obligation to update or otherwise revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

PROSPECTUS SUMMARY

The Securities and Exchange Commission, or SEC, allows us to “incorporate by reference” certain information that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will update automatically, supplement or supersede this information. Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any other document which also is or is deemed to be incorporated by reference in this prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. You should read the following summary together with the more detailed information regarding our company, our common stock and our financial statements and notes to those statements appearing elsewhere in this prospectus or incorporated herein by reference.

Overview

United Insurance Holdings Corp. serves as the holding company for United Property & Casualty Insurance Company and its affiliated companies. Our business is conducted principally through eleven wholly owned subsidiaries: United Property & Casualty Insurance Company, Family Security Insurance Company, Interboro Insurance Company (“IIC”) and American Coastal Insurance Company (our insurance affiliates), United Insurance Management, L.C. (our management affiliate), Skyway Claims Services, LLC (our claims adjusting affiliate), UPC Re, BlueLine Cayman Holdings and Skyway Reinsurance Services, LLC (our reinsurance affiliates), as well as two holding companies, Family Security Holdings, LLC (“FSH”) and AmCo Holding Company. Collectively, including United Insurance Holdings Corp., we refer to these entities as “UPC Insurance,” which is the preferred brand identification we have established for our Company.

UPC Insurance is primarily engaged in the residential property and casualty insurance business in the United States. We currently write in Connecticut, Florida, Georgia, Hawaii, Louisiana, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, South Carolina and Texas, and we are licensed to write in Alabama, Delaware, Maryland, Mississippi, New Hampshire and Virginia. Our target market currently consists of areas where the perceived threat of natural catastrophe has caused large national insurance carriers to reduce their concentration of policies. In such areas, we believe an opportunity exists for UPC Insurance to write profitable business. We manage our risk of catastrophic loss primarily through sophisticated underwriting procedures and pricing algorithms, avoidance of policy concentration, and the use of a comprehensive catastrophe reinsurance program. UPC Insurance has been operating continuously since 1999, and has successfully managed its business through various hurricanes, tropical storms, and other weather-related events. We believe our record of successful risk management and experience in writing business in catastrophe-exposed areas provides us with a competitive advantage as we grow our business in other states facing similar perceived threats.

Recent Events

On April 3, 2017, UPC Insurance successfully completed its merger with AmCo Holdings Company. The acquisition was completed through a series of mergers that ultimately resulted in the Company issuing 20,956,355 shares of its common stock, \$0.0001 par value per share, as merger consideration to the equity holders of RDX Holding, LLC, a Delaware limited liability company.

Corporate Information

On December 11, 2012, in connection with an underwritten public offering of 5,000,000 shares of our common stock, we were approved to begin trading our common stock on The NASDAQ Capital Market (NASDAQ). On February 3, 2015, we successfully completed the acquisition of FSH and its two wholly owned subsidiaries in an all-stock transaction which resulted in the issuance of 503,857 shares of our common stock. On April 29, 2016, we completed the acquisition of IIC. The purchase price for IIC consisted of \$48,450,000 in cash, \$8,550,000 in a note payable, and an accrued liability for \$3,471,000 which we paid during July 2016. On April 3, 2017, we completed our merger with AmCo Holdings Company which resulted in the issuance of 20,956,355 shares of our common stock.

Our principal executive offices are located at 800 2nd Avenue S, St. Petersburg, Florida 33701, and our telephone number at that location is (727) 895-7737. Our website is www.upcinsurance.com. The information contained on our

website is not incorporated by reference into this prospectus, and such information should not be considered to be part of this prospectus.

1

RISK FACTORS

Investing in our securities involves significant risks. Before making an investment decision, you should carefully consider the risks and other information we include or incorporate by reference in this prospectus and any prospectus supplement. In particular, you should consider the risk factors under the heading “Risk Factors” included in our most recent Annual Report on Form 10-K, as revised or supplemented by our subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, each of which are on file with the SEC and are incorporated herein by reference, and which may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones facing our company. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also affect our business operations.

RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges for each of the periods indicated is as follows:

Six Months

Ended	Year Ended December 31,						
June 30,	2017	2016	2016	2015	2014	2013	2012
	13.23	99.51	10.47	105.71	137.28	82.56	40.89

For purposes of calculating these ratios, earnings consist of pre-tax income from continuing operations and fixed charges. Fixed charges consist of interest expensed and capitalized; amortized premiums, discounts and capitalized expenses related to debt; and estimated interest within rental expense.

We did not have any preferred stock outstanding and we did not pay or accrue any preferred stock dividends during the periods presented above.

USE OF PROCEEDS

We will describe the use of the net proceeds from the sales of the securities in the applicable prospectus supplement.

DESCRIPTION OF CAPITAL STOCK

General

We are authorized to issue up to 50,000,000 shares of common stock, par value \$0.0001 per share, of which 42,753,504 shares were issued and outstanding as of October 31, 2017. We are also authorized to issue up to 1,000,000 shares of preferred stock, par value \$0.0001 per share. No shares of preferred stock were outstanding as of October 31, 2017.

Common Stock

The holders of our common stock are entitled to one vote per share on all matters to be voted upon by our stockholders. Subject to any preferences that may be applicable to any preferred stock issued in the future, the holders of our common stock are entitled to receive ratably any dividends that may be declared from time to time by our board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to share ratably in all assets remaining after the payment of liabilities, subject to the prior distribution rights of any preferred stock then outstanding. Our common stock has no preemptive or conversion rights. There are no redemption or sinking fund provisions applicable to our common stock.

Preferred Stock

We are authorized to issue 875,000 shares of “blank check” preferred stock, which may be issued from time to time in one or more series upon authorization by our board of directors. Our board of directors, without further approval of

the stockholders, is authorized to fix the designations, powers, including voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

If we offer preferred stock, we will file the terms of the preferred stock with the SEC and the prospectus supplement or

other offering material relating to that offering will include a description of the specific terms of the offering, including any of the following applicable terms:

- the series, the number of shares offered and the liquidation value of the preferred stock;
- the price at which the preferred stock will be issued;
- the dividend rate, the dates on which the dividends will be payable and other terms relating to the payment of dividends on the preferred stock;
- the liquidation preference of the preferred stock;
- the voting rights of the preferred stock;
- whether the preferred stock is redeemable or subject to a sinking fund, and the terms of any such redemption or sinking fund;
- whether the preferred stock is convertible or exchangeable for any other securities, and the terms of any such conversion; and
- any additional rights, preferences, qualifications, limitations and restrictions of the preferred stock.

It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of our common stock until our board of directors determines the specific rights of the holders of the preferred stock. However, these effects might include:

- decreasing the amount of earnings and assets available for distribution to holders of common stock;
- restricting dividends on the common stock;
- diluting the voting power of the common stock;
- impairing the liquidation rights of the common stock; and
- delaying, deferring or preventing a change in control of our company.

Anti-Takeover Provisions

In our Second Amended and Restated Certificate of Incorporation, we elected not to be governed by Section 203 of the Delaware General Corporation Law which regulates corporate takeovers. This section prevents certain Delaware corporations, under certain circumstances, from engaging in a “business combination” with an “interested stockholder.”

Our Second Amended and Restated Certificate of Incorporation (as amended) and By-Laws contain provisions that may discourage unsolicited takeover proposals our stockholders may consider to be in their best interests. Our board of directors is divided into two classes, each of which will generally serve for a term of two years with only one class of directors being elected each year. At a given annual meeting, only a portion of our board of directors may be considered for election. Since our “staggered board” may prevent our stockholders from replacing a majority of our board of directors at a single annual meeting, it may entrench our management and discourage unsolicited stockholder proposals.

Liability Limitations and Indemnification

Second Amended and Restated Certificate of Incorporation (as amended)

Our Second Amended and Restated Certificate of Incorporation (as amended) provides that a director of our company shall not be personally liable to our company or our stockholders for monetary damages for any breach of fiduciary duty by such director in his or her capacity as a director, except for liability (a) for any breach of the director’s duty of loyalty to our company or our stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law (“DGCL”), or (d) for any transaction from which the director derived an improper personal benefit. Our Second Amended and

Restated Certificate of Incorporation (as amended) further provides that, to the fullest extent permitted by Section 145 of the DGCL, as amended from time to time, we shall indemnify all persons whom we are permitted to indemnify pursuant thereto.

By-Laws

Our By-Laws require us to indemnify any person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of our company) by reason of the fact that such person is or was a director, officer, employee or agent of our company, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of our company, and, with respect

to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. Our By-Laws also require us to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of our company to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of our company against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of our company, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to our company unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the court shall deem proper.

Liability Insurance

We maintain directors' and officers' insurance coverage for our directors and officers.

Indemnification Agreements

In addition to the indemnification required in our Second Amended and Restated Certificate of Incorporation (as amended) and By-Laws, we have entered into indemnification agreements with each of our directors. These agreements require us to indemnify such directors, subject to certain conditions and exclusions, against certain costs actually and reasonably incurred in connection with a proceeding (a) if they were, are, or are threatened to be made, a party to or a participant in a proceeding and (b) to the fullest extent permitted by applicable law if they are party to or threatened to be made a party to a proceeding. The indemnification agreements also provide that, if the indemnification rights provided in the indemnification agreements are unavailable, then (to the fullest extent permissible under applicable law) we will pay, in the first instance, the entire amount incurred by the applicable director in connection with a proceeding without requiring such director to contribute to such payment. These indemnification agreements also require us to advance expenses reasonably incurred by these directors in connection with a proceeding upon the execution and delivery by the applicable director of an undertaking to repay the advance to the extent that it is determined that such director is not entitled to be indemnified by us. These rights of indemnification and to receive advancement of expenses are not exclusive of any other rights to which such directors are entitled. In addition, such rights shall continue, under certain circumstances, after the term of such directors' service to us has ended.

Delaware Law

Section 145 of the DGCL provides that a Delaware corporation may indemnify any persons, including officers and directors, who were, are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such officer, director, employee or agent acted in good faith and in