The current state of the management liability market

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Risks we will cover

- Consequences of the economic situation
- Changing regulatory landscape
- Rising employment related claims
- Emerging areas of concern for directors

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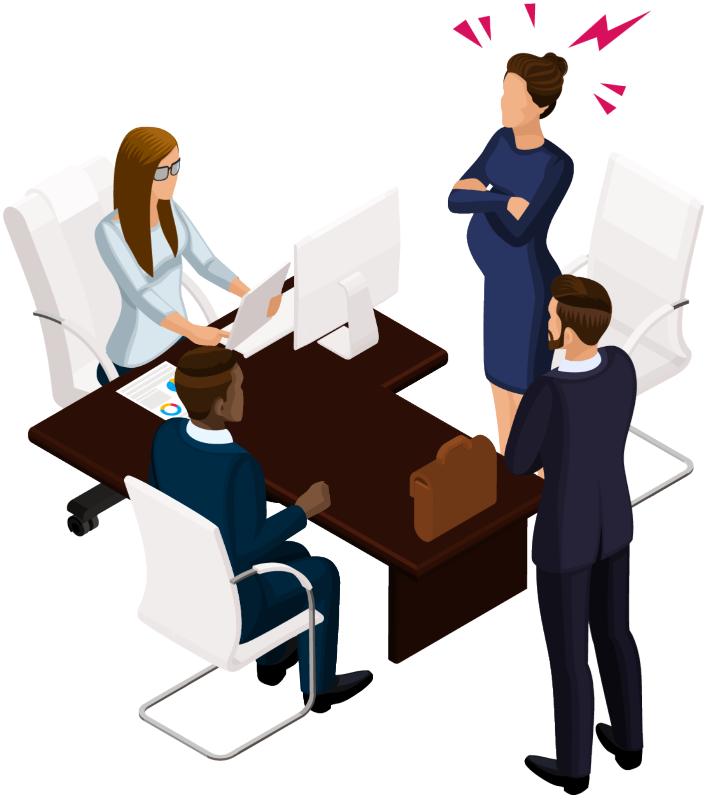
State of the market

We have seen a continuous softening of rates from peak periods 2020 and 2021

- High rates attracted new entrants to the market and increased appetite for sectors that were judged as distressed during the hard market has led to significant rate reductions
- Changes to SME ML market:
- Proactive risk management tools
- Broader terms and conditions available
- Increase in portfolio facilitisation and e-trade



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Rising corporate insolvencies

Statistics from The Insolvency Service confirmed that 2023 was the worst year on record for corporate insolvencies in the UK, surpassing 2009 in the aftermath of the financial crisis.

In Q2 2023, the EU Commission noted that the number of insolvency declarations of EU businesses increased for the sixth quarter in a row – reaching the highest level since the start of data collection.

Accommodation & food services, transportation & storage, and education, health & social activities were worst affected.

Common claims arising out of insolvency:

- Wrongful trading
- Misfeasance/breach of duty
- Disqualification proceedings
- Indirect insolvency related claims

Insolvency claim examples

Trading whilst insolvent

In the two weeks before their company went into receivership, two Directors continued to trade as normal. Trading during the two weeks created a tax liability that was not paid to HMRC. For trading while insolvent the Directors received orders disqualifying them from being Company Directors.

Subsidiary issue

A manufacturing company entered administration. The procurator of the company's German subsidiary claimed against the MD alleging breach of German Insolvency Law and a liability to reimburse the company for all sums spent since the ‘true’ date of insolvency.

Post pandemic fallout

The Insolvency service issued proceedings against a director of a company as a result of abuse of the Bounce Back Loan scheme during the pandemic. The director was ordered to repay the full loan amount of £50,000 and was disqualified from serving as a director for 13 years.

Tech firm goes bust

Relying on the UAE Bankruptcy Law, the court found a struggling software company did not have sufficient assets to cover 20% of it’s debts and it’s directors had breached the law by concealing the true financial position of the company – they were held liable for it’s debts and pecuniary penalties.

Cyber

GDPR main piece of legislation for EU. Each member incorporates it into its own laws with varying levels of penalties across each country. The Irish regulator is particularly prolific in issuing fines, including a €1.2bn fine against Meta!

Directors can be held personally liable for cyber-security failures, in all jurisdictions.

Growing trend to hold directors personally accountable. Particularly directors appointed to manage cyber risk.

Health and safety

Increased regulatory focus in the UK and EU spreading globally following a string of accidents and near misses.

Management Liability will typically respond to the regulatory aspect of a health and safety issue, typically in conjunction with the General Liability policy.

Comes with a variety of names – Corporate Manslaughter, Occupational H&S, Workplace H&S and Accidental Homicide.

Rising employment claims

Employment related claims and average awards are increasing. In 2022/23, the total number of employment tribunal cases reached unprecedented levels.

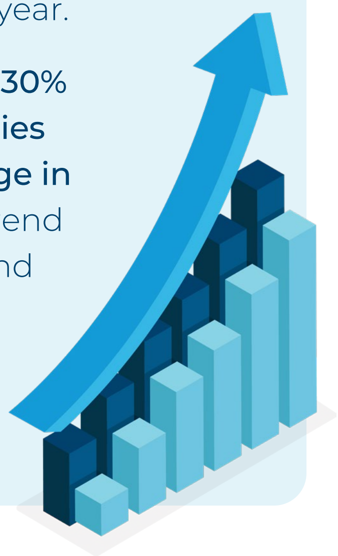
Increases can be attributed to:

- COVID-19
- Social issues
- Ease of access to legal advice

Claims will typically fall under company Employment Practice Liability (EPL) section of a Management Liability policy, but liability can arise individual directors if it is alleged, they subjected employees to unlawful harassment, discrimination themselves or in a whistle blowing scenario.

In 2022 the Irish WRC held saw a **30% increase in hearings** held and decisions issued compared to the previous year.

They also saw a **30% increase in parties willing to engage in mediation** – a trend spreading around the world.



Claims examples

Discrimination

A man attended an interview for a security guard position. He was asked whether he would be willing to cut his long hair for the position. As he left, he noticed female employee with long hair. He brought a claim for sexual discrimination – the court found in his favour.

! EPL extends to potential employees!

Failure to promote

An employee who unsuccessfully applied for a promotion took his employer to court. Their argument was that they were the most qualified and experience person for the job, yet the company had failed to promote them. The court found in favour of the company. The company still faced a large legal bill for having to defend themselves.

Whistleblowing

An employee made a whistleblower report to their manager. This report was then disclosed to various other people within the organisation leading to the employee feeling harassed and bullied. She brought a claim against her employer for constructive dismissal, alleging she had no choice but to leave her role.

Emerging risks

Supply chain risk

Brexit implications

Rise of artificial intelligence

- Management Liability typically responds to all exposures relating to how a company is run and managed – governance. Claims can arise from a broad range of proximate causes and ultimate responsibility in managing stakeholder concerns falls on the people managing the company.

Questions?