Introduction to management liability

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Agenda

What we will cover

- History and evolution of management Liability
- Terms and conditions of management liability policies
- Underwriting management liability (private vs public)
- COVID-19 impact on management liability
- Claims examples
- Questions

History and evolution of ML insurance

History of management liability policies

1930's

First introduced into Lloyd's of London. However, indemnification agreements did not exist.

1967

US State of Delaware passed indemnification laws specifically allowing for the purchase of D&O

Late 1960's

Popularity grew in the US as a result of Escott v BarChris Const Corp case – personal liabilities of directors was brought into the spotlight. By the 70's, 70% of US public companies were purchasing cover.

1976

The London market introduced 'Llando No 1' policy – the first time the policy had been split into Side A/Side B. The 80's saw huge US claims experience leading to the introduction of Insured V Insured exclusions.

1990's/2000's

As the cover became more widely purchased among SME's, the package widened to become management liability.

What does ‘side a’ and ‘side b’ mean?

- D&O policies have two main insuring clauses
- Designed to provide indemnity for the individual directors and officers of a company against their legal liability.
- D&O insuring clause structure:
  - Side A – Directors and officers’ liability for non-indemnifiable loss. **Personal protection.**
    - This is protecting the personal assets of the director. They could lose their house, car, savings and family!
  - Side B – Directors and officers’ liability for indemnifiable loss. **Company balance sheet protection.**
    - Companies pay the claim, and the insurer reimburses the company, protecting the overall financial position of the company.
- Over time, Side C included – Entity Securities Cover, and in some markets, full Entity cover.

Evolution of management liability policies

Much broader coverage available under a typical ML policy.

Additional policy covers:

D&O

- Outside directorship cover
- Regulatory investigation costs
- Additional cover for non-executives

Entity cover

- Cover for claims against the company

Employment practices liability

- Cover for the company for any employment practice claims

Duties of directors and officers

As an example, the UK's Companies House suggests the following duties:

- Act within the company's constitution
- Promote the success of the company
- Use their own judgement
- Reasonable care, skill and diligence

Liabilities of directors & officers

Who can bring a claim against directors and officers?

- Employees – Wrongful termination and other employment related issues.
- Regulators – Investigation costs - Corporate Manslaughter/Accidental Homicide
- Customers – Unfair business practice
- Investors / Shareholders – Misrepresentation in securing financing
- Competitors – Breach in competition regulations
- Essentially… ANYONE!

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Terms and conditions of ML policies

Terms and conditions

Claims triggered by an alleged “wrongful act”

”negligent act, error, omission, advice, misstatement or misrepresentation; or breach of trust, neglect or breach of duty, including statutory duty.”

Standard conditions

- Professional services exclusion
- ‘for’ Bodily injury / property damage exclusion
- Prior and pending date
- Acquisition provisions

Optional conditions

- ‘absolute’ Bodily injury/property damage exclusion
- ‘absolute’ Pollution exclusion (defence costs in the policy)
- Medical Malpractice exclusion
- Intellectual property exclusion
- Product defect exclusion

Underwriting ML

Underwriting ML

SME Private business (up to £250m rev)

- Relaxed underwriting approach
- Do not need much to obtain quote
- Underwriting based off the financial statements
- Additional questions around M&A activity

VS

Publicly traded business

- Where are they listed
- Share price volatility
- Financial strength
- Recent raisings
- Activities
- Where they operate
- Media search
- Board composition

Employment practices liability

Optional cover alongside D&O

- Cover for workplace related harassment, discrimination, wrongful dismissal, failure to promote, breach of data protection, infliction of emotional distress, wrongful disciplinary action, negligent evaluation and more!
- Generally rated on the number of employees
- Underwriting concerns may include:
  - Redundancies
  - High staff turnover
  - Previous claims history
  - US exposure

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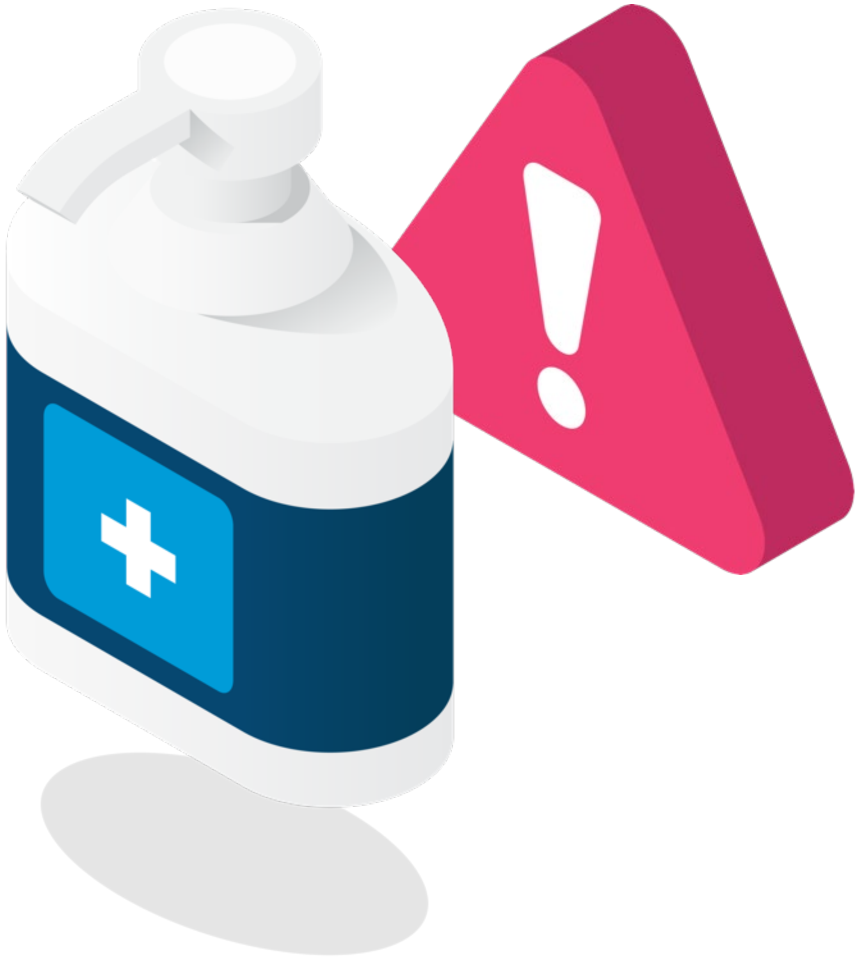
Underwriting response to COVID-19

How insurers have responded to COVID

- Reduced appetite for high-risk industry sectors.
- Increased use of the Insolvency exclusion.
- Statements from the insured as to how it has affected their ability to operate and H&S procedures implemented
- Increased scrutiny of financial statements
- Offering of Employment Practices Liability reduced



Claims examples

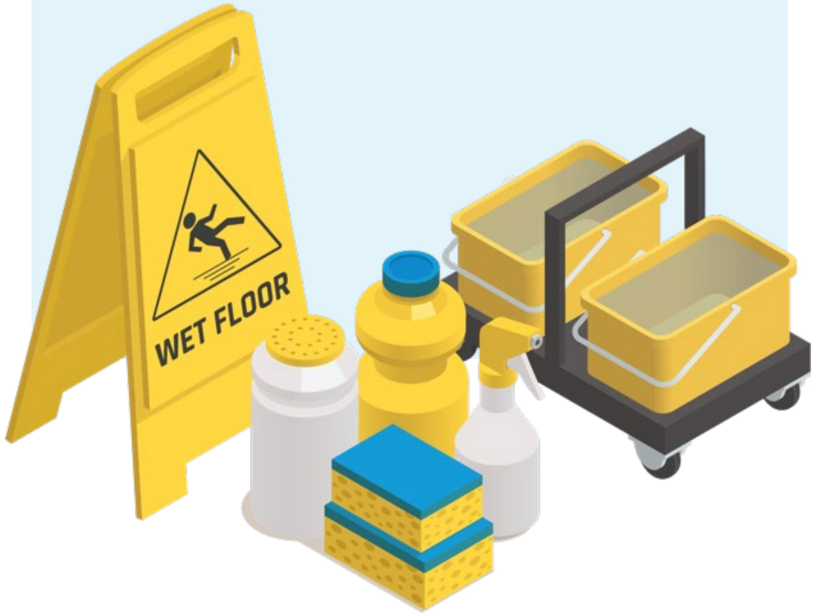
Claims examples

Trading while insolvent

In the two weeks before their company went into receivership, two Directors allowed their company to continue to trade. Trading during the two weeks created a VAT liability of £50,000, which, because of the receivership, was not paid to the Crown. For trading while insolvent the Directors received orders disqualifying them from being Company Directors.

Messy divorce

A husband and wife team equally owned a successful contract cleaning company. Following a messy divorce, the wife accused her husband of deliberately mismanaging the finances to distort the true worth of the business.



Too tired to work

A driver fell asleep whilst driving for a haulage company. Two motorists were killed. The court held that the operations manager should have ensured that his driver adhered to the relevant driving regulations. He had also failed to keep in close touch on these matters with his Co-Director.

Claims examples

Buy outs

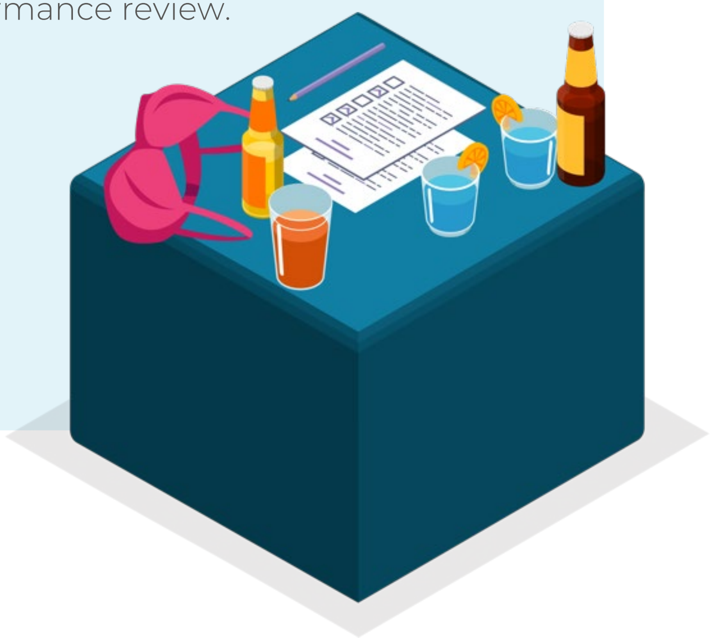
An insured designs, manufactures and installs computer control systems for the oil, gas and petrochemical sectors. The company was formed by a management buy out. Two separate claims were brought, one against the company itself, and one against the individual directors in response to the alleged breaches of two clauses in the agreement governing the buy out.

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.

Strip club performance review

A claimant alleges that one of the company directors took her to a restaurant for food then to several bars for drinks and then eventually took her to a strip club to conduct her performance review.



Questions?