SOCIUS

IS IT REALLY GETTING SOFT... AGAIN?

By: Paul Lefcourt, Co-Founder and Management Liability Practice Leader

Over the last 12-24 months, several management liability insurance ("MLI") carriers have shifted their underwriting appetite/guidelines nationally for nonprofit and privately-held risks, most dramatically outside of California. Instigated primarily by newer market entrants, these changes include one or more of the following:

- Decreased rates
- Decreased retentions
- Expansions in coverage, although mostly "tweaks" at this point
- More carriers offering lower ($25k - $150k) wage and hour defense cost sub limits
- Automatic renewal options
- Multi-year renewal options

This current shift is being fueled by a surplus of capacity, largely coming from the infusion of private equity and venture capital coupled with fewer catastrophic P&C losses. In trying to determine how to deploy their unused capacity, larger carriers are attracted by MLI's historic overall underwriting profitability, while newer carriers and MGAs are benefiting from the massive VC/PE capital coming into our industry. Some mostly newer MLI carriers are eager to write accounts at lower rates and with more liberal terms, while several more established carriers are trying to get increases on renewal, despite intel telling us MLI losses are not getting better and in fact may be getting worse, especially for private D&O.
You may be wondering, "Are MLI claims really getting worse?" The answer is yes, most notably in California as well as a few other tougher states such as FL, IL, NY, and NJ. Based on our discussions with MLI carriers, here are a few of the reasons:

- EPL plaintiffs are as aggressive as ever (especially in California)
- Plaintiff EPL attorney fees keep increasing along with costs for experts they hire, with discovery and other defense costs also skyrocketing
- EPL wage and hour claims have not slowed down
- While the large number of EPL losses and their rising costs is nothing new, the losses seen on the private company D&O front are alarming, especially given the historical severity of these types of losses compared to more frequency-driven EPL losses
- On the private company D&O claim front, some of the most troublesome allegations include:
    - Contractual and Intellectual Property ("IP") suits, with IP suits alleging theft of trade secrets and/or breach of non-compete agreements against employees when leaving a company
    - Traditional IP allegations (trademark, patent, etc.) are on the rise. Typically, these are the most costly allegations because they include defending multiple interests and require many expert witnesses as well as complicated discovery, driving up costs
    - Duty to defend policies, including 100% defense cost allocation, is driving up costs as carriers are defending all allegations even when there are uncovered persons/allegations
    - Antitrust exclusions (especially those exclusion with the broadest exclusionary language) and SEC exclusions are coming into play more frequently, with the SEC reviewing corporate activities more regularly and across the board, including for 'unicorn' companies
    - Allegations from governmental agencies are growing in number. These are very expensive to defend and settle. Some of the agencies in question include the Consumer Finance Protection Board (CFPB), the Federal Exchange Commission (FTC), the Department of Justice (DOJ), and the Security Exchange Commission (SEC), as well as new allegations relating to the Fair Credit Reporting Act (FRCA) and the Telephone Consumer Protection Act (TCPA)

SOCIUS

IS IT REALLY GETTING SOFT... AGAIN?

By: Paul Lefcourt, Co-Founder and Management Liability Practice Leader

Despite losses getting worse, MLI rates are going down and terms are broadening. This begs the question: Why is this happening? Based on our conversations with carriers in this niche, here are a few reasons:

- Not enough catastrophic losses that drain P&C capacity
- Newer MLI carriers/MGAs do not have the loss history that more established MLI carrier/MGAs have, resulting in the newer markets being able to charge lower rates than established carriers
- Private Equity/Venture Capital investors pushing carriers to put more premium on the books even if not ultimately profitable business

Based on the above, what can our nonprofit and privately-held management liability insureds expect as a result of the changes in the marketplace?

Our recommendation is to set expectations as follows:

- Expect flat to small decreases on renewals if exposures are similar to the previous year, with exceptions in the more challenging industries
  - Note: decreases will not be as large in more litigious states like CA, FL, IL, NY, and NJ
- Potential for lower retention options and/or broader terms on renewals
- Expect to see carriers offer more automatic renewals and possibly multi-year renewals on small, low-exposure accounts

As we move into 2017, it will be interesting to see if mounting MLI losses take enough of a bite out of the large deployment of MLI capacity, reversing the softening trend of the market back toward a hardening maret. Another potential element that could affect the MLI market condition is the evolving economic and political landscape.

As always, please don't hesitate to contact your local Socius representative for further details related to appetite changes of any specific management liability markets.

CONTACT

Paul Lefcourt
Co-Founder and Management Liability Practice Leader

Socius Insurance Services, Inc.
301 Howard Street, Suite 1030
San Francisco, CA 94105

415.796.0609 direct
plefcourt@sociusinsurance.com

OFFICE LOCATIONS

San Francisco
301 Howard Street
Suite 1030
San Francisco, CA 94105
Tel: 415-778-0310

Empower EPL Program
301 Howard Street
Suite 1030
San Francisco, CA 94105
Tel: 415-778-0310

Los Angeles, CA
500 South Grand Avenue
Suite 1680
Los Angeles, CA 90071
Tel: 213-243-1226

Chicago, IL
222 W Merchandise Mart Plaza,
Suite 1225
Chicago, IL 60654
Tel: 312-382-5373

Elgin, IL
2205 Point Blvd
Suite 250
Elgin, Illinois 60123
Tel: 847-551-5120

Tampa, FL
1408 N Westshore Blvd.
Suite 810
Tampa, FL 33607
Tel: 813-281-4400

Miami Beach, FL
301 Arthur Godfrey Road
Suite 550
Miami Beach, FL 33140
Tel: 305-867-3300

Birmingham, AL
One Chase Corporate, Suite 120
Birmingham, AL 35244
Tel: 205-796-2752

sociusinsurance.com