Winter 2015

The Hardening Management Liability Market for Non-Profit and Privately-Held Companies

How hard is it?

Gradually, over the last 4+ years, several management liability insurance ("MLI") carriers have shifted their underwriting appetite/guidelines for their non-profit and privately-held insureds nationally; most dramatically in California. These changes have included some combination of one or more of the following:

- Increased rates
- Increased retentions
- Reductions in coverage
- Reductions in total limits offered
- Reductions or removal of wage and hour defense cost sub-limits
- Non-renewal of insureds based upon industry, asset size, financial condition and/or loss experience.

This is quite a change, as for the previous 10+ years there has been a surplus of capacity and MLI carriers were eager to write these accounts at very attractive rates and terms. While there are still numerous MLI carriers with significant capacity, including some new entrants, the marketplace appears to be reaching a point where this capacity will no longer be utilized to offer the terms and pricing that we had been accustomed to seeing. All of this begs the question, "Why is this happening?" Based on our conversations with MLI carriers in this niche, here are a few of the reasons:

- Poor economic conditions 5-7 years ago leading to a significant spike in the frequency of EPL and D&O related claims
- Dramatically rising EPL claims expenses (even if a claim is without merit - remember these policies cover defense costs)
- Significant and continual increase in the filing of Wage and Hour claims (wage and hour suits are up 4.7% in the last year and 437% in the last decade)
- Uptick in D&O claims involving bankruptcy related allegations, breach of contract, intellectual property, federal agency investigations/judgments, family claims and restraint of trade
- Duty to defend nature of the policies forcing carriers to provide a wide expanse of defense coverage for what might be arguably uncovered claims and/or insureds.

What can our current (and new) non-profit and privately-held management liability insureds expect as a result of the changes in the marketplace?

Our recommendation is to set expectations as follows:

- Increases in retentions and premiums.
    - Smaller clients will need to absorb bigger increases (percentage wise) in premium and retention (as well as possible reductions in coverages), although in many situations, their incumbent carrier will still be the best option if the increases are not outrageous.

  - A reasonable degree of competition/capacity will still be available for the larger management liability client. This may help mitigate increases in premium and retention.
  - Increases will be felt by insureds located in major cities (carriers generally still like risks in smaller cities and outside of states such as CA, FL, IL NY & NJ)
- Coverage for the defense of wage and hour claims will be more difficult to obtain, and when available, likely more expensive to purchase and with possibly lower limits and/or higher retentions.
- Non-renewals by some carriers, based primarily upon class of business and /or location. Some of these classes of business include:
  - Real estate
  - Healthcare
  - Restaurant/retail
  - Social Media
  - Pharmaceuticals
  - Tech Co./Start-ups
- Carriers are asking for much more underwriting information than they have previously, especially if the insured has challenging financials, the insured is seeking additional funding, or has a challenging loss history.

Since 2010, Socius has been advising our clients that the MLI market appeared to be trending toward a hardening, following on the heels of numerous years of softness. As we get deeper into 2015, we continue to believe that this is the case. The gradual transition which we initially described has in fact taken firm hold, and has gained real traction. We hesitate to pronounce the market as officially "hard" only because we hear rumblings which suggest that – as we head into 2015 market conditions could very well deteriorate further making what we consider hard today even "harder". For the moment, the watchword to agents and brokers is: "Manage expectations! Difficult news is coming, so let clients know early – and often."

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.

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How hard is it?

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