

D&O spotlight: Trust, transparency and teamwork

BHSI's Vanessa Maxwell shares her perspective on current dynamics in the D&O insurance market, what buyers can do to secure stable programs, and how insurers can step up to provide solutions in this challenging time.

WHAT TRENDS ARE YOU SEEING IN KEY D&O MARKETS, SUCH AS THE US, UK AND AUSTRALIA?

This year continues to be defined by the COVID-19 health and economic crisis, which is a recessionary-exposed line where insolvency can be a significant loss driver. The pandemic exacerbated the challenges customers were already facing at the end of 2019, particularly in those industries most directly impacted by the pandemic, such as airlines, tourism and commercial real estate.

Rates have been hardening for at least the last two years in all three of the markets you mentioned – UK, US and Australia – and longer in Australia and the UK, where more significant price corrections were needed. Generally speaking, rates continue to increase going forward this year, but not as significantly as in 2020, especially with some new excess capacity entering the market. Incumbent markets are still being cautious with capacity deployment and limits, but I expect we will see more variability by sector and territory.

Excess rate increases for foreign-domiciled, US-exchange listed companies, which have seen some of the most significant price corrections, are flattening out somewhat, with the exception of some more challenging sectors, such as biotech and IPO/SPAC-related segments. While there is new excess market capacity providing some relief, other carriers are now also re-entering the market. Primary policies are still seeing significant rate increases.

HOW CAN INSURANCE BUYERS LEAN ON THE TRIPARTITE RELATIONSHIP TO SECURE THE COVERAGE THEY NEED?

Speaking for our team here at BHSI, we want customers to know that we are here to find solutions for them – and solutions that are sustainable for the long term. Key to building these solutions and long-term relationships is close engagement and transparency. Here at BHSI, it's proven to be a winning formula for many companies.



“CUSTOMERS APPRECIATE OUR DILIGENCE IN WORKING WITH THEM TO GET A CLEAR UNDERSTANDING OF THEIR RISK PROFILE AND THEIR BUSINESS, AND OUR OPEN, HONEST DISCUSSIONS ABOUT AREAS OF CONCERN.”

Head of executive & professional lines and country manager in the UK, BHSI
Vanessa Maxwell

We work very closely with our customers, taking the time to understand their specific challenges and risk factors so we can offer terms that we are all comfortable are reasonable, accurately reflect the exposures, and provide competitive solutions for these customers.

And throughout these sessions, that's where transparency comes into play. Transparency is essential, both to help us understand the customer's risks, and to ensure our customer understands how and why we arrived at the program options we are providing for them.

This approach has enabled my team and I to consistently step in and provide solutions where customers needed them in a very difficult market environment. We began writing D&O in London in 2018 – with the clear objective of building a long-term focused and sustainable portfolio. We increased our customer base nearly five-fold in 2020 alone, and we are continuing this growth trajectory in 2021.

WHAT IS DRAWING D&O CUSTOMERS TO BHSI THROUGH THIS CHALLENGING TIME?

Our team has both the underwriting expertise and the mindset to be flexible and creative in providing options specifically requested by our customers, and capacity for those industry segments that are facing the toughest renewal challenges. These industries form a key component of our portfolio and will continue to do so in the future, as we work together with customers to adapt to an evolving claims environment.

Customers appreciate our diligence in working with them to get a clear understanding of their risk profile and their business, and our open, honest discussions about areas of concern. Equally important, we use our underwriting meetings to introduce customers to the BHSI brand and culture, which they see first-hand to be collaborative and solution-oriented. Building trust is key to every relationship, and we begin building that trust from day one.



From day one, we also introduce customers to our CLAIMS IS OUR PRODUCT philosophy – and they see it in action. Our claims team is involved early on during underwriting, working with our customer as we, for example, adapt policy wording to reflect their individual risks -- ensuring that coverage will respond as they expect should they have a claim.

There is also the security of our financial strength, and the ability to grow with us thanks to our robust multinational capabilities. Finally, customers realize that we don't, and won't, have the need to remediate a book as many others in the market have. Quite the contrary, we continue to expand our appetite, drop down to key primary/low excess positions, and position ourselves as key long-term partners to our customers and brokers. We are looking forward, building long-term relationships.

WHAT ARE SOME OF THE CURRENT D&O CLAIMS TRENDS YOU ARE SEEING?

A few key ones: US securities actions, particularly federal lawsuits, declined in 2020 and into 2021, but we have now begun to see case filing accelerating again, with the trend of accompanying derivative suits continuing. In particular, derivative suits filed in New York against non-US domiciled companies is an area we are continuing to watch closely for our customers.

There are COVID-19-related suits – a trend that will continue to evolve. This includes cases filed as a direct result of the pandemic's economic impact, for example, companies whose revenues and operations were impacted, and cases being filed based upon misrepresentations around the current and future effect of the pandemic on a business. We continue to see a trend of suits, in Europe and the US, following on Deferred Prosecution Agreements entered into by the UK Serious Fraud Office.

Finally, we also continue to see the impact of 'event-driven litigation', initially seen in the US but now spreading into other parts of the world, including

Europe and the UK. This can arise from anything from an oil spill to disruptions to a company due to a fire or manufacturing failure, and is frequently seen alongside or following regulatory investigations.

Of course, regulators have been far more active since the financial crash in 2007–09 and that trend is continuing. I expect that anti-trust actions will become more prevalent, too, following a period of intense consolidation in various industries. The need for many companies to push through price increases following the damage to their balance sheets due to COVID-19 will only increase this dynamic.

LOOKING AHEAD, WHAT DO YOU ANTICIPATE IN D&O CLAIMS AND LITIGATION?

Insolvencies are going to be a major factor. Despite the dramatic economic effects of the pandemic, the number of insolvencies initially decreased in 2020. This was due largely to the unprecedented amount of government and credit support made available to companies, but the level of insolvencies has already returned to pre-pandemic levels and is expected to rise significantly as this third-party support is withdrawn, and many companies' business models remain disrupted.

With the growing number of SPAC IPOs, and the number of SPACs yet to complete a merger or acquisition, increased SPAC litigation is inevitable. I also think we will continue to see litigation driven by diversity, equity and inclusion, and other employment-related issues, including the #MeToo movement, and more filings against companies that suffer large-scale data security breaches.

My team and I continue to watch evolving D&O claims trends carefully, so we can keep our customers educated on the newest exposures, and provide sustainable program options in an always-changing environment.

WHAT CAN WE EXPECT NEXT FROM BHSI IN THE EXECUTIVE AND PROFESSIONAL LINES SPACE?

As litigation trends develop and courts continue to interpret policy language, D&O policies must evolve to track or anticipate these trends. BHSI's tripartite approach ideally positions us to lead in the development of bespoke coverage that responds to emerging developments. **SR**