



ALTA SIGNA

Market Bulletin:
European D&O Liability Claims
Trends Update



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Key Findings



- **Regulatory Proceedings Dominate Claims:** Regulatory breaches, including health and safety violations, environmental infractions, and data protection failures, represent **34%** of all notified D&O claims. These often result in significant legal and defence costs.
- **Rising Bankruptcy Litigation:** Bankruptcy-related claims, often tied to alleged mismanagement and exacerbated by economic pressures like the pandemic and interest rate hikes, account for **12%** of claims. Liquidators and creditors frequently target directors to recover unpaid liabilities.
- **Shareholder Actions Highlight Mismanagement:** Shareholder-initiated litigation constitutes **11%** of claims, primarily stemming from allegations of misleading public statements, undisclosed financial risks, and disputes over M&A decisions or conflicts of interest.
- **Significance of Precautionary Notifications:** General business litigation and precautionary claim notifications, many of which do not escalate to formal legal proceedings, make up **43%** of the claims portfolio. These notifications reflect the cautious approach companies take to mitigate potential gaps in coverage.
- **Emerging Trends in Professional Misconduct:** A notable portion of claims involves misconduct such as fraudulent schemes, abuse of corporate assets, and breaches of fiduciary duty. These cases underline the growing complexity of D&O liability risks in evolving regulatory and economic landscapes.

Introduction:

Understanding D&O Liability Claims: Key Insights from Alta Signa



Since its inception in 2019, Alta Signa has been committed to offering tailored Directors' and Officers' (D&O) liability insurance solutions, designed to protect corporate leaders across Europe from the financial repercussions of claims related to their fiduciary duties. Over the past five years, Alta Signa has observed distinct trends in D&O liability claims, shaped by an evolving legal and regulatory landscape.

This market bulletin sheds light on these emerging patterns, offering practical insights and real-world examples to help companies and directors better understand the potential risks they face. From regulatory proceedings and bankruptcy litigation to shareholder actions and broader business disputes, Alta Signa's data reveals not only the diverse triggers of D&O claims but also their financial and reputational implications for directors.

Through detailed claims examples and analysis, this bulletin aims to equip companies, brokers, and other stakeholders with valuable knowledge to manage these risks effectively and responsibly.

About Alta Signa



Alta Signa is a Managing General Agent active within the EEA region. We have been operational since 2019 and our European headquarters are located in Brussels, Belgium. We have offices in: DACH, France, Spain, Italy, Benelux. As a Managing Underwriting Agency, Alta Signa is mandated by a panel of A-rated insurers to accept, on their behalf, specialty insurance risks for policyholders domiciled within the European Economic Area, Monaco and Switzerland. Find out more.

Spotlight On: D&O Liability Claims Trends

After five years of growing underwriting activities, some relevant claims trends are emerging. Alta Signa's claims portfolio indicates that three types of professional misconduct trigger the majority of the D&O liability insurance claims:

1. Regulatory proceedings regarding the failure by the company's directors to comply with laws and regulations that:

- Ensure a safe and healthy working environment for employees;
- Preserve the environment and enforce sustainability;
- Protect the personal data of customers;
- Prevent companies dealing with sanctioned entities and/or persons;
- Guarantee a fair and transparent customer outcome;
- Prevent tax evasion;
- Forbid the directors from realising illegal gains such as personal abuse of corporate assets, trading on privileged company information and benefiting financially from a personal conflict of interest.

2. Bankruptcy litigation for alleged mismanagement initiated by the company's court-appointed liquidators, to recover any unpaid liabilities, or directly by the company's creditors to recover any outstanding receivables or corporate loans. The pandemic crisis and the recent interest rate hikes have been significant contributors to this trend.

3. Litigation initiated by the company's shareholders:

- a.** To recover directly their personal investment losses resulting from materially false and misleading public statements made by the company's directors, or their non-disclosure of material information regarding the company's financial health;
- b.** To recover derivatively substantial financial losses suffered by the company itself, resulting from large financial settlements that emanate from substantial product liability and pollution cases, or alleged regulatory breaches such as theft of personal data, price-fixing, bribery & corruption and money-laundering.

For the past five years regulatory proceedings represented 34% of all notified claims to Alta Signa. Bankruptcy litigation was a distant number two with a 12% claims portfolio share, closely followed by shareholders' litigation with a 11% share. The remaining 43% are claims representing general business litigation, often precautionary notifications with no actual investigation of litigation filed against the company's directors. D&O liability insurance policies only cover claims that arise from events that are actually unknown to the company directors at the inception date of the insurance policy. It is prudent to disclose any known events to the insurers as soon as practicable, to avoid any gap in cover if in the future this notified event would lead to an actual proceeding against the company's directors.



Examples of Claims



Regulatory proceedings:

Alleged Price Fixing: A European company is investigated by various market competition authorities for alleged price fixing. It is expected that the various regulators may issue fines. Whilst none of the company directors have been named so far, insurers reckon that, if convicted, civil actions to seek monetary compensation will start shortly thereafter. These civil actions are likely to name the company directors. Similar anti-trust investigations have been launched in the past against various telecom companies allegedly abusing their dominant market position.

Anti-Competition Breaches: A European company and their directors find themselves regularly named in legal actions for alleged breaches of anti-competition laws, abusive market pricing regulations, sanction provisions, excise duties obligations, and health & safety protections. Insurers make regular financial contributions to the defence of the company's directors.

Construction Site Accident: A fatal accident of a sub-contractor employee occurred at a construction site. Two directors of the company managing the builders' consortium have been notified in a criminal investigation. Insurers are paying their legal representation costs.

Corruption Allegations: A director of an emerging European company is criminally investigated for securing concessions and state subsidies for new projects. The allegations include active and passive corruption of public office holders, embezzlement, and abuse of power. Insurers are incurring defence expenses.



Employment Termination: A loss-making company terminated a number of employment contracts for economic reasons. A parliamentary investigation was commenced with the company CEO being summoned. Insurers are paying expenses.



Employment: A company director is under criminal investigation for having offered his former girlfriend employment. Minority shareholders may file a derivative civil action on behalf of the company if the director is held liable for abuse of corporate assets.

Improper Safety Proceedings: A working accident occurred when a vehicle collapsed. One of the employees working on the construction site suffered a severe bodily injury. Police and firefighters had to intervene and concluded that there may have been improper safety procedures in place. An official criminal investigation was launched, ending in the filing of criminal charges for gross negligence against some of the company's directors. The D&O insurer incurred defence expenses.

Manipulation of Financial Information: A criminal prosecutor started investigating a European company. The suspicion exists that the executive directors committed a possible crime by manipulating the financial information in a securities' offering prospectus issued for a capital increase. To date, no directors have been summoned for examination.

Negligent Pollution: A European company and its directors were served a legal notice with charges for the reckless and negligent discharge of a polluting chemical substance in the air. The company and its directors are seeking legal representation for which the D&O insurers will be held liable and it is unknown at this stage if this alleged pollution may lead to a large fine and civil payments for which the company and its directors might be held liable.

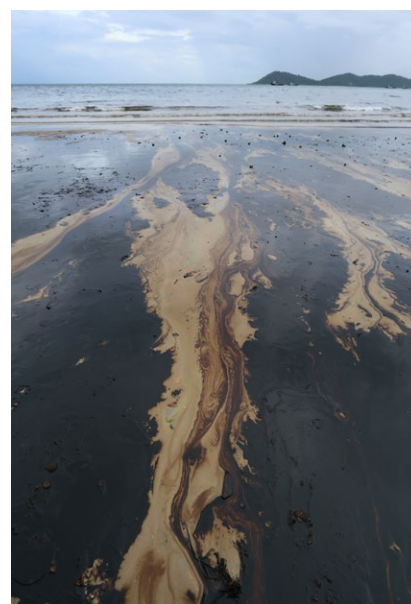
Price Manipulation: The managing director of a European defence procurement company is sued by the local tax authorities for artificially deflating the prices of their imported manufacturing parts, leading to a loss of custom duties. Other than defence expenses, the managing director's alleged misconduct could lead to a significant fine that could initiate civil actions for compensatory damages by the company's shareholders.

Pricing Collusion: A collective civil action was filed by the customers of a European group and their (former) directors. The request for compensatory damages follows a pending multi-jurisdictional investigation against a number of industry peers for market pricing collusion. Some directors have received court orders to testify. Insurers are incurring representation costs.

Tax Evasion: The tax representative and also a director of the company, was named in a criminal proceeding for possible wilful tax evasion. The tax authorities are investigating the voluntary omission of some of their foreign subsidiaries' income. Their revenues are missing from the company's income tax declaration.

Unlawful Email Access: The firm shared emails from a dismissed former employee with a criminal prosecutor, who then launched a criminal proceeding against the former employee based on the information received. The former employee countersued and named its executive directors for unlawfully accessing and redirecting her emails that were part of a confidential and privileged communication between herself and her trade union. This illegal access and disclosure of her emails had allegedly damaged her defence. Insurers are incurring defence expenses.

Water Pollution: A European company suffered a chemical leak in one of its storage units, resulting in high pH levels in a nearby river. The accident allegedly caused subsequent fish mortalities. A criminal complaint was filed, involving various directors and officers, citing possible violations of the penal code related to water pollution. Insurers are paying the legal costs of the named directors.



Bankruptcy Proceedings:

Debt Recovery Action: A Financial firm involved with medical services. Due to the pandemic crisis, and alleged mismanagement, the company ran into financial difficulties and filed for insolvency. The court appointed liquidator filed a multi-million recovery action against the directors. The legal action was brought to cover the shortfall



in the company's assets and the liquidator is seeking to use the company's D&O insurance policy as an asset for the company under liquidation. The case is pending with insurers incurring defence expenses.

Debt Recovery Action: A large privately held European company failed to refinance its mature debt obligations and was forced to file for bankruptcy. Various creditors and bondholders have commenced debt recovery proceedings against the company and its directors. They allege that various unauthorised transactions took place. Some directors are being sued for fraud having not invested, allegedly, the funds in the development of various promised projects. Insurers are incurring defence expenses.

Shareholder Litigation: A company majority owned by a multi-generational family, bought a controlling equity stake in a publicly-listed company. Shortly after its acquisition, the subsidiary issued a large amount of debt instruments. The pandemic crisis forced the subsidiary to file for bankruptcy protection. A shareholders' litigation was commenced against the parent company's directors for reckless behaviour. New management was brought in and decided to settle all pending shareholders' litigation. Insurers paid for the defence expenses.

Voluntary Liquidation: At the instruction of their parent company, the company directors decided to put their firm into voluntary liquidation. The creditors of this firm decided to bring a legal action against the directors for breach of fiduciary duties, alleging that it was not in the interest of the firm to file for voluntary liquidation. Insurers are incurring defence expenses.

Shareholders Actions:

Compensation for Investment Losses: A pioneering publicly-listed company entered into a distribution partnership with a well-established company to market a new product. Whilst the product was still awaiting regulatory approval, the company made positive public statements about the product's relevance and its in-demand pull factor, pushing up its share price. In the end, it turned out that the product was not very successful. Shareholders filed an action to seek compensation for their investment losses resulting from allegedly false and misleading statements made by the company directors. Insurers are incurring expenses for the defence of the company directors.

Minority Shareholder Action: The board of directors of a European services company agreed to sell one of their privately held, majority-owned subsidiaries, deemed non-core to the future of their company operations. Afterwards, the subsidiary's minority shareholders launch a civil action against their directors for not having sold the company to the highest bidder. They allege a conflict of interest. Insurers paid for the defence expenses, although the civil action by the minority shareholders ended up being unsuccessful. This case highlights the potential dangers of related party transactions. Shareholders often challenge merger and acquisition transactions for not selling the company to the highest bidder with the best financial terms, but to the company that offers the best long-term deal for management and employees. This natural conflict of interest is unavoidable.



General Business Litigation:

Whilst difficult to summarise by a common denominator, Alta Signa received a multitude of other claim notifications.

Some involve directors committing insurance fraud by being actively involved in fraudulent schemes aimed at stealing valuable product parts or final goods' inventories from their own companies. These schemes are often run in collusion with their suppliers and customers. They try to cover up their fraudulent behaviour by reclaiming the company's losses under their property and marine cargo insurance policies.

Directors being named in contract failures is common too. One former director found himself being investigated in connection with a failed IT project that cost the company several millions of investment. Insurers covered his legal costs. Another director was sued for apparent negligence, or possible conflict of interest, in connection with the signing of a large prestigious investment at the detriment of the company he represented.



A Russian party is suing a European company and their directors for not fulfilling a Russian contract. The European company's decision to withdraw from its contractual obligations was entirely based on their compliance with the EU sanctions regime.

Deception in contractual commitments is another cause for D&O litigation. A European company and their directors found themselves in front of a US court having sold products as being Europe-made while in fact they were not.

Five Key Takeaways



1. Partner with Experts in Local Markets

Collaborating with trusted partners who have expert local knowledge is critical for navigating Europe's diverse regulatory landscape. Insurers and brokers should prioritise working with partners who:

- Speak the local languages to facilitate seamless communication.
- Possess in-depth knowledge of local regulations and compliance.
- Have a strong presence on the ground for quicker response times and localised support.

2. Leverage In-House Claims Management Expertise

In-house claims handling offers significant advantages, including the ability to:

- Track emerging claims trends effectively.
- Identify exposure risks early and implement strategies to mitigate them.
- Provide prompt and tailored responses to complex D&O liability issues, ensuring directors and officers are protected.

3. Adopt Proactive Risk Management Practices

- Regularly review policies to ensure they align with evolving risks, such as regulatory breaches, shareholder actions, and bankruptcy litigation.
- Make precautionary alerts to avoid coverage gaps.
- Engage in comprehensive data collection and analysis to foresee emerging liability risks.

4. Embrace Specialised Coverage Solutions

The growing complexity of D&O liability claims underscores the need for tailored insurance products. Specialised coverage ensures policyholders are protected against nuanced risks such as professional misconduct, regulatory proceedings, and shareholder litigation.

5. Educate Clients on Compliance and Reporting Obligations

Given the prevalence of regulatory claims (**34%**) and the risks of underreporting known circumstances, brokers must educate directors and companies on:

- The importance of transparent and timely disclosures to insurers.
- How to stay ahead of compliance obligations to reduce legal exposure and associated costs.



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