

MARKET CONDITIONS

In the last Willis Index we reported that the previously soft professional lines market place for financial institutions was levelling off and in some cases hardening. As we approach the end of 2008 this trend shows no signs of abating as the ramifications of the credit crunch continue to be felt in the insurance market.

However contrary to previous difficult markets we have yet to observe a severe constriction in the amount of capacity available or a widespread hardening of market conditions, apart from the most difficult of risks. Undoubtedly the current marketplace is a more challenging environment compared to previous years but we are very much in the middle of a two tier market between financial institutions that can demonstrate insulation from the credit crunch/sub-prime and those that cannot.

Financial services companies that are perceived as 'good risks' should be able to negotiate flat premiums at renewal, and in some cases it may be possible to generate a small discount. Additionally for the vast majority of renewals, underwriters are still open to considering improvements to the policy wording.

Regrettably the environment for the less favoured financial institutions is not so attractive. Those that have substantial growth, U.S. exposures, large sums insured, claims or those that cannot show a robust business model in light of the credit crunch can be faced with more difficult renewals. In these cases underwriters will push for premium and possibly retention increases.

They are likely to resist any wording improvements and in some more severe cases try and impose restrictions.

In both cases there are measures that can be taken to achieve the most favourable renewal:

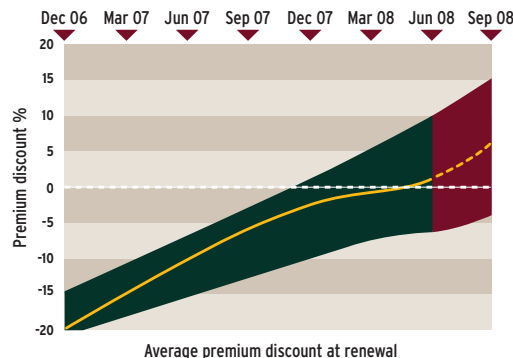
- A proactive approach to the renewal process i.e. An early start and within reason anticipating underwriters issues before they are raised.
- Intelligent use of alternative markets to generate competition as a foil against unfavourable renewal terms from incumbent insurers.
- Differentiation of risk profile.

It could be argued that the above points have always assisted in generating successful renewals however in the current market environment they assume even more importance to ensure a reasonable renewal.

Recent developments at AIG (see Page 4) have caused further uncertainty in the financial institutions insurance market, due to the level of involvement AIG has in the arena. Some competitors and co-insurers may see this as an opportunity to force a widespread hardening of the market. We are monitoring the situation very closely and will provide you with an update in the near future.

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'good risks' should be able to negotiate flat premiums at renewal

EMPLOYMENT LAW HEALTHCHECK

Save your business time and money

The Healthcheck involves a detailed review of a Company's Employment Practices, policies, procedures and documentation.

Last year, the employment relations service, ACAS, saw an increase of nearly 25% in the number of employment tribunals and potential employment tribunal claims.

While employees might be a company's greatest asset, from an employment liability standpoint, they occasionally become its greatest headache.

Employment Law is a growing concern for all businesses and a minefield for Directors and managers. Each year, new legislation is introduced with the knock-on effect that there has been an increase in the number of claims from employees. The simple act of employing someone can easily turn into an expensive exercise. As employment claims become more aggressive and costly, it becomes more essential than ever for companies to remain up to date and compliant.

Last year, the employment relations service, ACAS, saw an increase of nearly 25% in the number of employment tribunals and potential employment tribunal claims that were passed to them for conciliation. The latest initiative launched by the Government is the Vulnerable Workers Enforcement Forum which includes a telephone helpline and an information campaign to raise awareness of employment rights. This is designed to encourage workers to report abuses and enforce their rights but the inevitable result is that the number of employment tribunal claims increases.

Any Company, no matter how large or small, is at risk of facing employment-related disputes or claims, such as unfair dismissal, discrimination and breach of contract. Financial institutions are more likely to be exposed to higher-value claims including bonus and other contractual and tribunal claims arising from high earning executives.

The Employment Law Healthcheck is designed to improve the prospects of defending such claims by identifying weaknesses and recommending areas for improvement. It also supports strategic planning by helping to manage the risk of claims within a business.

The Healthcheck involves a detailed review of a Company's employment practices, policies, procedures and documentation.

It identifies those areas that fail to comply with current law and those areas where best practice improvements can be applied so that the business can save time, reduce costs and increase its ability to successfully defend and avoid potential Employment Law claims.

The process involves a review of all employment related documentation, which a Company would be asked to produce or disclose in the event of a claim. This is carried out by a qualified Solicitor with extensive experience in Employment Law. A comprehensive report is produced identifying areas of risk with recommendations for improvement. The report will also offer practical suggestions that will fit with business objectives.

A wide range of areas are covered, including:

- Recruitment procedures
- Terms and conditions of employment
- Handbook/Policies and Procedures
- Flexible working
- Compromise agreements
- Discrimination (sex, race, age, disability etc.)
- Stress, harassment and bullying
- Disciplinary procedures
- Dealing with grievances and complaints
- Mergers & Acquisitions (TUPE)
- Confidential information and restrictive covenants
- Absence & performance management
- Dismissal
- Redundancy
- Retirement

Subsequent to an Employment Law Healthcheck, Willis may be able to negotiate discounts from Employment Practices Liability insurance cover with several leading underwriters. The underwriters take comfort that an independent audit of your HR process has taken place, demonstrating good systems and controls.

For further details about the Employment Law Healthcheck service please contact your Willis contact or Derek Reeves on +44 20 3124 6944 or reevesd@willis.com.

STRESS AND LIABILITY IN THE CITY - WHAT ABOUT THE EMPLOYERS?

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The claims against financial institutions being anticipated and discussed by commentators in the current economic climate originally focused on the liability of directors and officers in the event of corporate collapse and PI claims for breach of mandate, mis-selling or misrepresentation.

Given the current economic conditions we expect more litigation across the board and anticipate that employment practices (and employers' liability) claims will also increase in number and quantum. As legislation removed caps on liability and qualifying periods, financial institutions became more exposed to large employment-related claims for wrongful or unfair dismissal, discrimination or breach of the underlying employment contract.

Costly and high-profile cases in the City cover not only unfair dismissal and sex discrimination but a wider array of allegations. Last year Dresdner Kleinwort successfully defended allegations that it failed to promote a senior manager because he was not German. The law firm Freshfields Bruckhaus Deringer successfully defended an age discrimination claim in which it was alleged that an overhaul of their pension plan was a clandestine means to force out older partners.

Wholesale uncertainty, job losses and redundancy programmes will increase the number of claims issued. As it becomes more difficult for bankers not only to reach targets and bonus expectations but to move jobs when they are dissatisfied, there will be more motivation to issue proceedings. Claims are likely to arise for both loss of bonus and out of redundancy processes. The redundancy selection processes being run by institutions will be carefully scrutinised by lawyers.

It is also increasingly likely in these circumstances that employees will include in claims, damages for stress.

There are a number of ways a stress claim can manifest itself. Liability for stress-related psychiatric injury is, in general, no different from liability for physical injury. This means that an employer will be liable for foreseeable injury flowing from a breach of duty: each case will depend on its facts but the courts will consider the actual knowledge of the manager and the reasonableness of any response, or conversely any failure to take precautions. It has been noted by the Court of Appeal that the provision of counselling for staff helps the employer discharge its responsibility (*Hartman v South East Essex Mental Health & Community Care NHS Trust*), and many institutions provide this service.

Institutions are appointing counsellors with a view to assisting those employees struggling to deal with the uncertainty of their position in the light of the current economic crisis. However, it has also been held that the provision of such a service per se does not always help an employer defend his claim. In *D v Intel Corporation (U.K.) Ltd*, (on different facts) it was held that the service only addressed short-term issues and could not have reduced the risk of a heavy work load.

A number of other developments illustrate the various ways in which stress-related element of claims can arise. For example stress can (in some circumstances) fall under the definition of disability, placing an obligation on employers to make reasonable adjustments, not dismiss the employee or subject him/her to detriment due to the disability. It is also possible for employees to rely on the provisions of Protection from Harassment Act 1997, which is so widely drafted that it provides a civil claim for damages in the case of bullying at work and is not restricted by the shorter limitation periods applying in the tribunal.

We suggest reviewing the level and terms of cover at renewal against this increasing trend.

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STOP PRESS

AIG: Latest update

No Market Conditions report this quarter would be complete without mention of AIG. If the U.S. Federal Reserve had not reached agreement to support AIG, the rating agencies may have reduced AIG's financial strength ratings and outlook to the extent that AIG could have ceased to be a Willis-approved insurer. Removing one of the leading underwriters of financial lines policies would have impacted on the insurance market by reducing capacity and driving a significant increase in pricing.

Willis Market Security produced a series of Special Report Market Updates on the AIG situation throughout mid September. If you have not already seen the latest version and have an interest in understanding the current position, please speak to your usual Willis contact or email Derek Reeves (reevesd@willis.com) for more information. Willis Market Security continues to monitor closely the position of AIG group and its core insurance operating entities. The insurer financial strength ratings of these core entities remain rated above our minimum rating guidelines from all the major rating agencies.

A key feature of Willis' client service commitment is to ensure, as far as we are reasonably able, that our clients' risks are placed with secure and solvent carriers, which will meet valid claims as and when they fall due.

- Willis Market Security monitors all carriers in use by the Willis Group worldwide at least annually, covering carriers in 85 countries.
- Comprehensive reports are prepared on carriers providing a detailed financial assessment. Written factual analysis, including consideration of the opinions of rating agencies and market commentaries, are prepared on a wide range of carriers.
- Security guidelines are based on minimum rating and financial size, dependent on the territory, class and type of business placed for our clients.
- Willis additionally monitors different types of intermediaries, including underwriting agencies, pools and third party sub-brokers.
- Decision making is the responsibility of the Market Security Committee, including members of the Partners Executive, our most senior management committee.



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MEET THE TEAM



Claire Nightingale

Claire began her career at Travers Smith where she qualified as a litigation solicitor in 1993, working on a wide range of commercial litigation, including aspects of the Lloyds and Maxwell litigation. In 1996 Claire was seconded to the investment bank Lazard Brothers and joined them the following year as legal counsel with particular responsibility for contentious matters. Claire was appointed General Counsel for Lazard's U.K. investment bank in 2006, having worked with a wide range of divisions including asset management, debt trading and capital markets, as well as the corporate finance teams. Her remit included the acquisition and management of global professional indemnity, bankers' blanket bond and directors & officers insurance policies.

Claire joins Willis from Dresdner Kleinwort where she was U.K. head of global banking compliance. She will be working as claims advocate within FINEX, supporting clients and account executives in the handling and resolution of claims.

Claire has two children whom she is teaching to sail. When time allows she also enjoys swimming and yoga.

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