

Directors & Officers (D&O) Liability Insurance Claims Trends

August 2025

Introduction

In today's rapidly changing business landscape, the roles and responsibilities of directors and officers are under increasing scrutiny. From regulatory/ official body investigations to cybersecurity breaches, to allegations of insider trading, the scope and complexity of risks facing corporate leaders continue to grow.

This report aims to highlight key trends observed over the past four years, including:

- The shifting nature of liability claims targeting senior leadership
- Variations in claim types and volumes across different industries
- The steady rise in legal expenses across jurisdictions, and
- The expanding impact of Artificial Intelligence in enhancing board-level accountability

We also examine common claims scenarios and settlement challenges in D&O insurance, drawing on Marsh's experience in helping clients navigate these issues successfully.

As regulatory pressures mount and shareholder activism intensifies, understanding these developments is essential for organizations looking to strengthen governance and manage risk effectively. This report is designed to educate organizations, directors and officers on the critical developments shaping the D&O liability landscape.



Key takeaways*



We have seen an overall rise of D&O claim notifications by 32% in 2024-25, as compared to 2023-24; with a significant rise of claims reported by manufacturing, pharmaceutical and IT companies.



Over all 50% of the D&O claims reported in the last 4 years were in the BFSI sector. These claims included investigations by law enforcement agencies & civil proceedings initiated against bank officials by borrowers etc.



The largest claim payout that we have seen is \$8Mn* approx. which was paid in an employment practice class action filed in USA by one of our client's ex-employees.



We are witnessing a significant increase in legal fees rising steadily across jurisdictions, especially the US and the UK.



Workforce, government and regulatory authority, marketplace/ vendor and customer, creditors and investor related risks are some of the top risks that directors & officers are facing globally and will continue to face in near future.



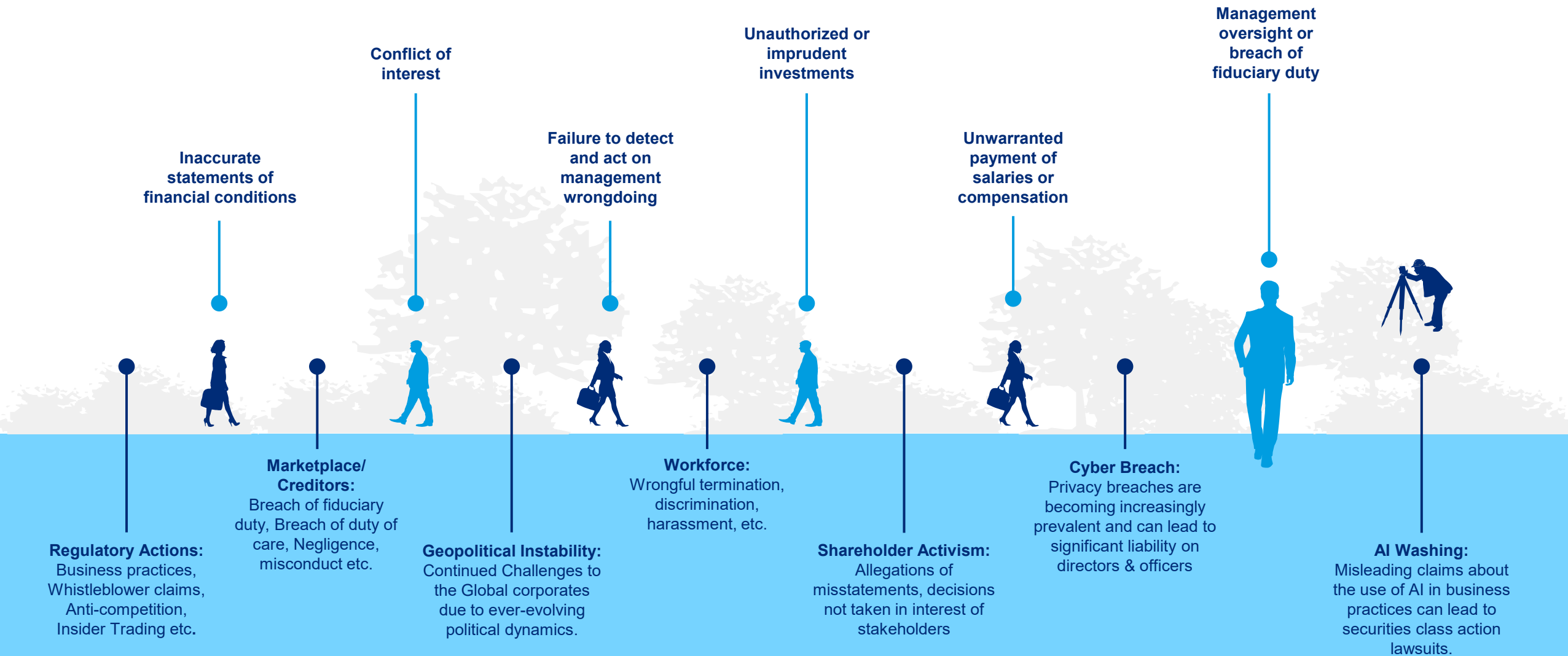
Civil actions constituted majority of the D&O claims reported in the past 4 years.

**This data is derived from claims notified by Marsh India clients*

**\$=USD*

The Evolving Landscape of D&O Insurance

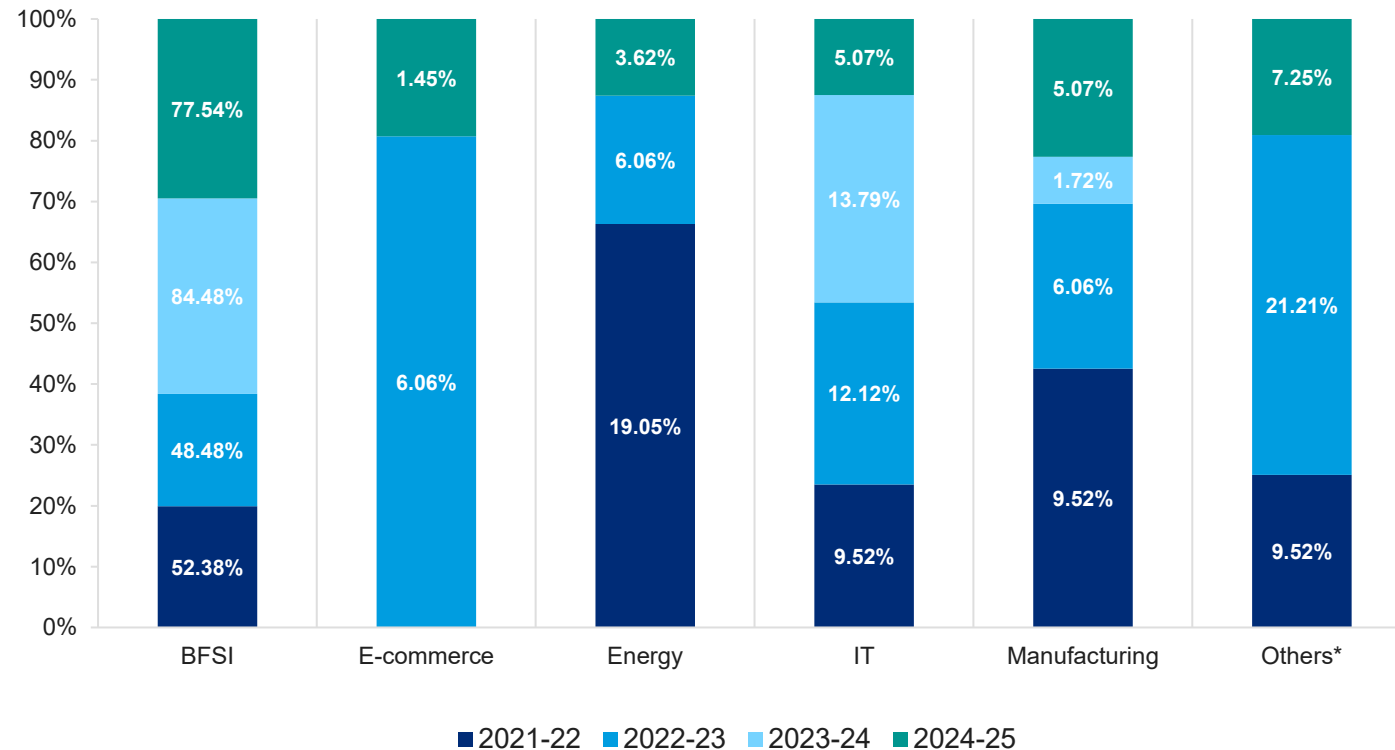
D&O Insurance shields directors & officers of a Company from any legal liability due to claims/ lawsuits filed against them alleging wrongful act committed by them while acting in their capacity of a director & officer of the company.



Rise in D&O claims across Industries: Key Trends

D&O claims have evolved with time, in addition to the existing risks, directors & officers are now seeing event-based liabilities including cyber breach related risks, securities claims, shareholder activism etc.

Figure 1: Industry wise D&O claims witnessed by marsh India clients from 2021-25



*Others include aviation, construction, education, FMCG, pharmaceutical & textile



In the past 4 years, over 50% of D&O claims notified by our clients have come from our Banking, Financial Services & Insurance (BFSI) clients. These largely arose out of proceedings initiated by the borrowers, of our banking clients, due to their accounts being declared as Non-Performing Assets (NPAs). Borrowers have contested enforcement of loan securities, leading to legal scrutiny of bank official's actions. We have also seen considerable rise in regulatory investigations being initiated against directors & officers of banks.



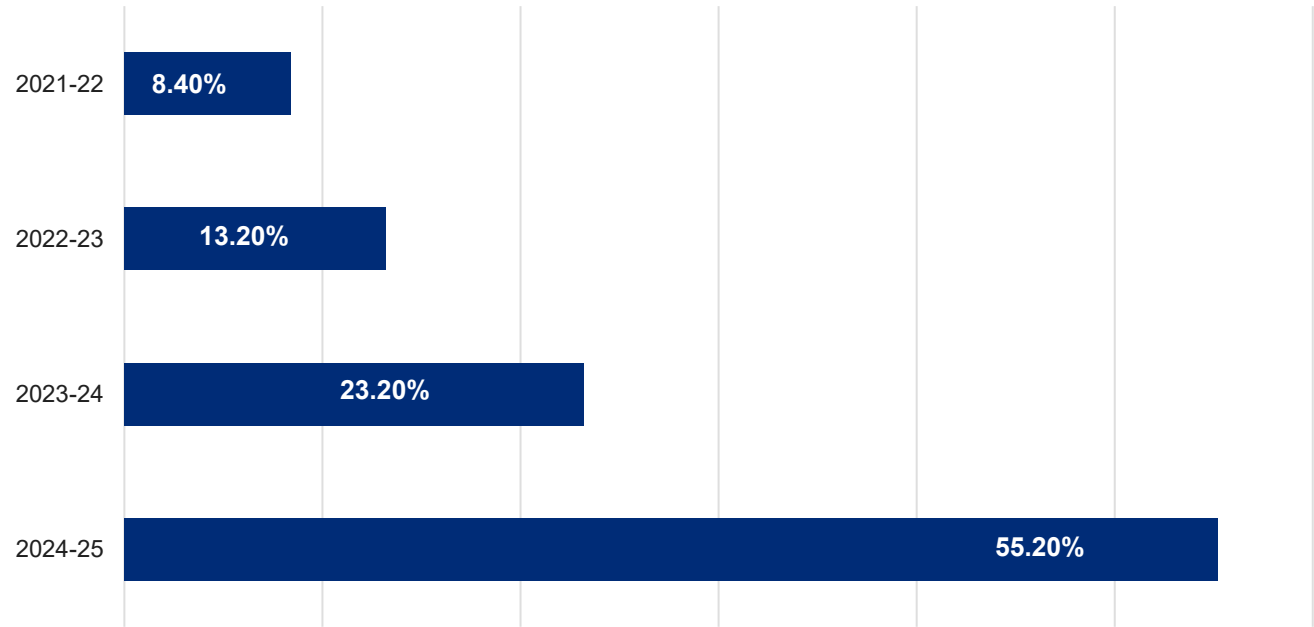
While BFSI claims are frequent, our IT, manufacturing and pharmaceutical clients witnessed large and complex claims relating to allegations of breach of fiduciary duty, breach of regulatory provisions and unfair employment practices. Claims with respect to investigations initiated by regulators or criminal proceedings commenced to probe into alleged malpractices of insured organisation have also been reported.

This is a clear indication that directors and officers are facing greater risks, across sectors.

Types of D&O Claims: A closer look

In today’s age, corporate accountability is synonymous with accountability of key managerial personnels. Stringent regulations, tightening scrutiny and rising business complexities have exposed directors & officers to a multitude of risks.

Figure 2: Volume of D&O claims notified by Marsh India clients between 2021-25



Number of D&O notifications reported in past 4 years increased substantially. 2024-25 saw highest volume of D&O notifications driven by a surge in notifications by our BFSI clients. These claims involved low monetary exposure but contributed significantly to overall claim volume.

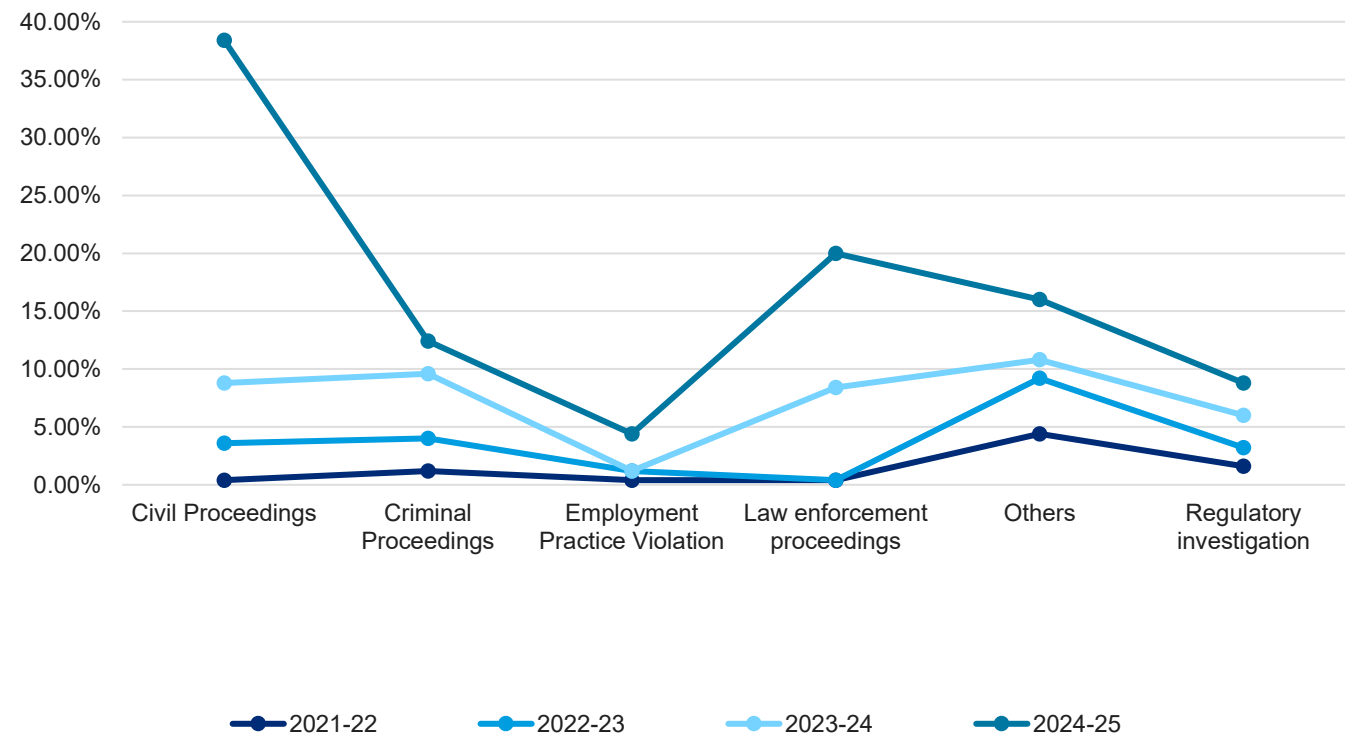


We also witnessed a spike in claim notifications from our pharmaceutical and FMCG clients involving investigations relating to business practices and employment practices violations.

Types of D&O Claims: A closer look

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Figure 3: Types of D&O claims faced by Marsh India clients between 2021-25



In 2024, civil proceedings continued to be the most dominant type of D&O claims. We also saw notifications where our clients were subjected to police investigation owing to complaints filed against directors & officers by various stakeholders. Claims concerning regulatory enquiry/ investigations from Securities and Exchange Board of India, Registrar of Companies, Competition Commission of India as well as agencies like Enforcement Directorate, Economic Offences Wing, Criminal Investigation Department initiating regulatory inquiries against the directors & Officers have also increased with time.

** Civil proceedings include legal notices from customers, employees, shareholders and subsequent court proceedings*

Rising Exposures = Rising Costs

D&O claims are often multi-faceted - They involve defense costs, settlements & in certain scenarios liabilities in the form of civil fines & penalties. This has led to an exponential surge in exposures associated with a D&O claim.

Total quantum of costs incurred by our clients have grown substantially over the years owing to increased costs of legal fees.



Our clients' directors & officers saw significant exposure in employment practices related claims in US & UK. These allegations included unfair dismissal, discrimination on basis of race, gender as well as some instances of harassment. We saw claimant's demands as standard as \$50,000 to as high as \$1.6Mn



In India, the claims arose largely out of regulatory actions, police investigations as well as proceedings initiated by stakeholders. We saw claims ranging between \$10,000 to \$350,000.



A significant portion of exposure comes out of the defense costs incurred by our clients. In our experience of managing D&O claims for our clients over the years, defence costs incurred by directors and officers in India remained in the range of \$50,000 to \$250,000 whereas for claims in US/ UK , the defence costs were in the range of \$80,000 to \$5Mn. This clearly highlights the direct correlation between rising intricacies and rising defence costs in D&O claims.

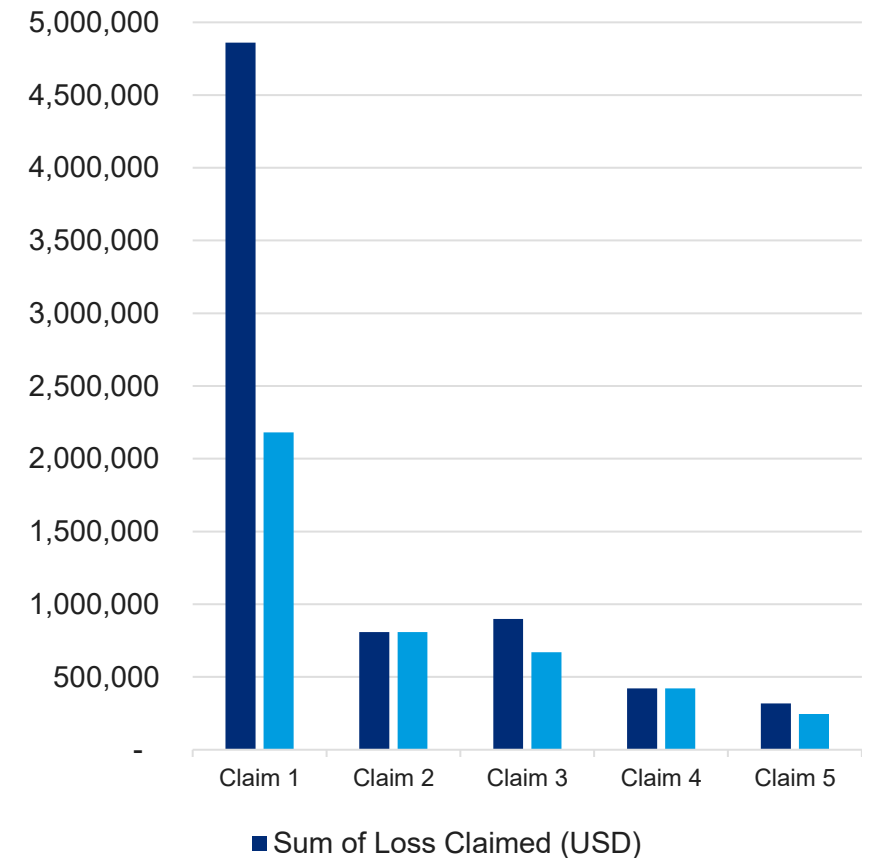


Our five largest D&O claim payouts covered expenses such as legal counsel fees, settlement payments to claimants, and, in one instance, a legally insurable civil fine*. The amounts ranged from \$250,000 to \$5Mn.






**Civil fines & penalties- wherever insurable by law – subject to policy T&C*

**All values are approximate figure
\$=USD*

Figure 4: Top 5 D&O claim settlements for Marsh India clients between 2021-25



Challenges in D&O claims settlements*

				
Company and directors and officers, both named in proceedings Problem: Notice / proceedings which include both directors and officers, and company as named parties Solution D&O insurance only covers costs incurred for directors and officers and not the company. Hence it is important that there is clear bifurcation available for costs incurred towards directors and officers and company.	Non-disclosures/ misrepresentation in the proposal forms. Problem: Denial of coverage, owing to matters not disclosed in the proposal forms such as prior knowledge. Solution Insureds must fill the proposal forms diligently, giving comprehensive and full disclosures about prior events and business procedures.	Willful misconduct / deliberate violation Problem: Where an adjudicating body has passed an order holding director and officer liable for willful misconduct, costs associated with such a matter are disallowed by insurer Solution This exclusion applies only when the order for willful misconduct has been a final, non-appealable adjudication	Defense costs incurred Problem: Reduced pay-outs towards costs incurred, without obtaining their consent or which they feel are more than reasonable market rates. Solution Insureds must inform the insurer of their intent to appoint a defense counsel and take insurer's consent. Furthermore, insureds must also assess the reasonability and value of counsel's rates. It is advisable to use counsels on insurer's panel	Settlement without insurer's consent Problem: Insurers disallow any settlement entered into without their express consent. Solution Allow insurers the opportunity to associate themselves with the defense of the claim and give consent to the settlement before negotiating or finalizing a settlement.


**These challenges are highlighted basis Marsh India's experience of handling D&O claims*


Impact of Artificial Intelligence on D&O claims


Artificial Intelligence (AI) is no longer a buzzword. Globally, rapid adoption of AI to drive efficiency, innovation, customer engagement, key decision-making etc. can have some risks for directors and officers.


Companies have been warned against AI-related misrepresentations, where US is already seeing AI-related litigation where allegations involved relate to misrepresentation of AI capabilities / AI Washing or AI prospects.


While potential AI-related D&O liabilities are not entirely known, across industries challenges can be seen:

 **Algorithmic Bias & Discrimination-** Deployment of AI in hiring, lending, or customer profiling may lead to unintended bias leading to allegations of discrimination.

 **Data Privacy & AI Misuse-** AI models often process large volumes of personal data. A privacy breach or violation of applicable privacy laws could lead to regulatory or class action claims naming directors personally.

 **Misstatements to Stakeholders-** Misrepresentation of AI capabilities or failure to disclose AI-related risks in investor communications securities/ derivative actions.

 **Cybersecurity Oversight Failures-** AI tools can increase exposure to cyber attacks or data manipulation. Directors may be held liable for failure to implement adequate cybersecurity governance.

 **Ethical AI Use & Board Accountability-** Investors and boards are increasingly focused on responsible AI governance. Failure to establish oversight mechanisms may be seen as a lapse in duty of care.



Marsh India D&O claims success stories

Marsh India has a dedicated claims advocacy team with great industry expertise and experience in managing high value and complex claims. The team is dedicated and has strong industry relationships which has resulted in numerous successful claim outcomes for our clients.

1

Class Action Suit

Engineering Services and R&D Company

Civil class action lawsuits were filed against insured's **US subsidiary** alleging an **antitrust/unlawful agreement** to restrict hiring of engineers. Plaintiffs alleged that the conspiracy was a '**no poach agreement**' which sought to **restrict competition** for workers' services at reduced salaries, benefits and opportunities

Loss: \$7Mn

Challenges: Prior knowledge

Marsh Engagement: Expedited advancement of defence cost, explained why claim could not have been notified under previous policy defying prior knowledge challenges

Outcome: Paid \$6.2Mn

2

Class Action filed by Ex- employees

Indian Global IT Company

2 ex-employees filed class action litigation in the US alleging discriminatory employment practices - **Likely to compromise** all Non South Asians/ Non Indians/ Non Visa holders who had applied but not hired/ hired but not promoted/ contractual by terminated

Loss: Before class action certified **\$4Mn**, Defense Cost **\$5Mn**

Challenges: Indian insurer (excess) not informed, lawyer rates considered on the higher side.

Outcome: **Reasonable costs** covered, Both primary and excess paid

3

CBI enquiry against D&O

Indian Pharmaceutical Company

A CBI inquiry was initiated against D&Os of the Insured u/s 120B, 420, 468, 471 IPC and Sec 7, 7A, 8 of Prevention of Corruption Act, 1988. It was alleged that a bribe was paid to waive Phase III Clinical Trial of product under development. Consequently, this led to the arrest of insured's D&Os.

Loss (Approx): **\$300,000** Defence Cost

Challenges: No prior approval on defence counsel engagement, multiple counsels involved, retainer agreements on lumpsum basis

Marsh Engagement: Express urgency on engagement and get on account payment on the bills. Remaining under discussion

Outcome: Paid **\$200,000**

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