



# Corporate Governance – the Claims Perspective

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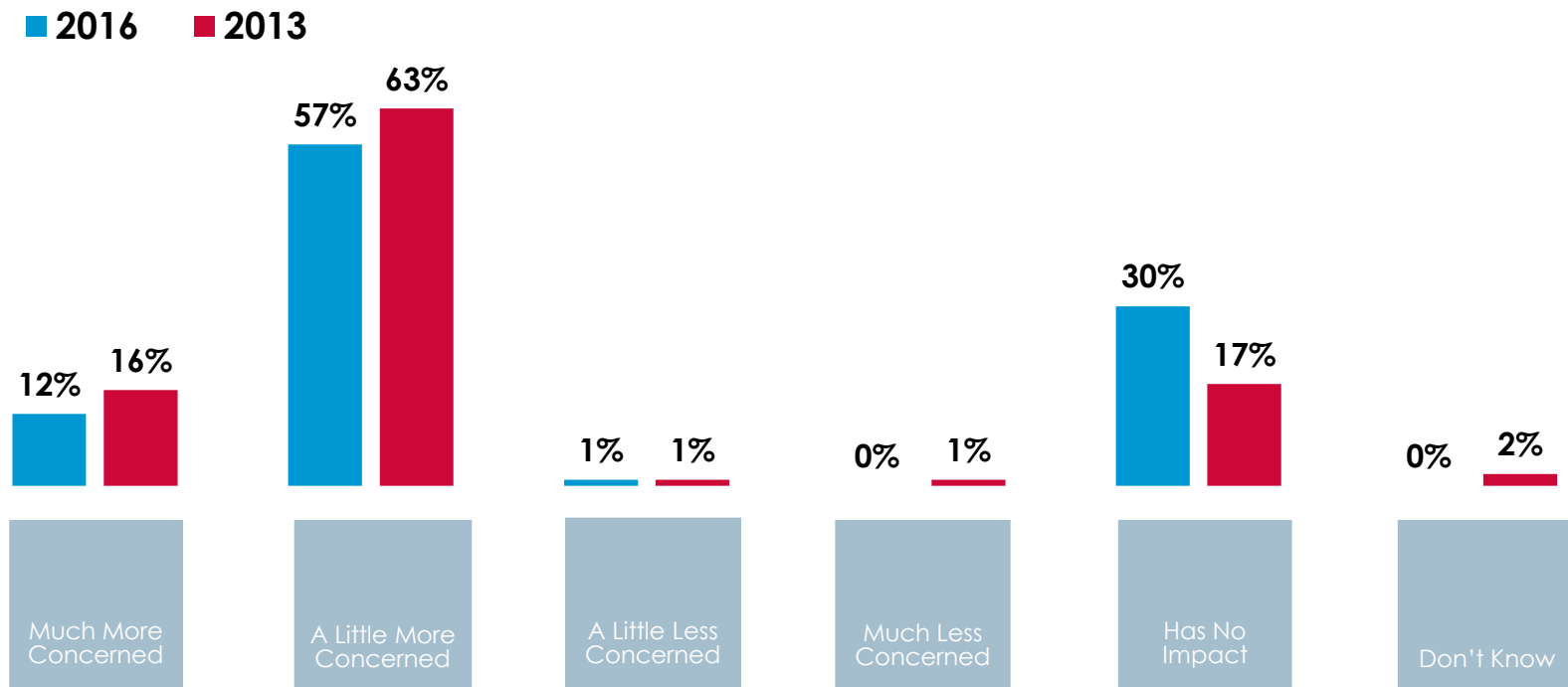
Head of Liabilities & Financial Lines Claims, AIG Europe Ltd

# Agenda

- 2016 – UK/European D&O Activity
- Cyber Claims
- How to Get the Most from Your Insurance Policy
- Claims Examples
- Crystal Ball Gazing

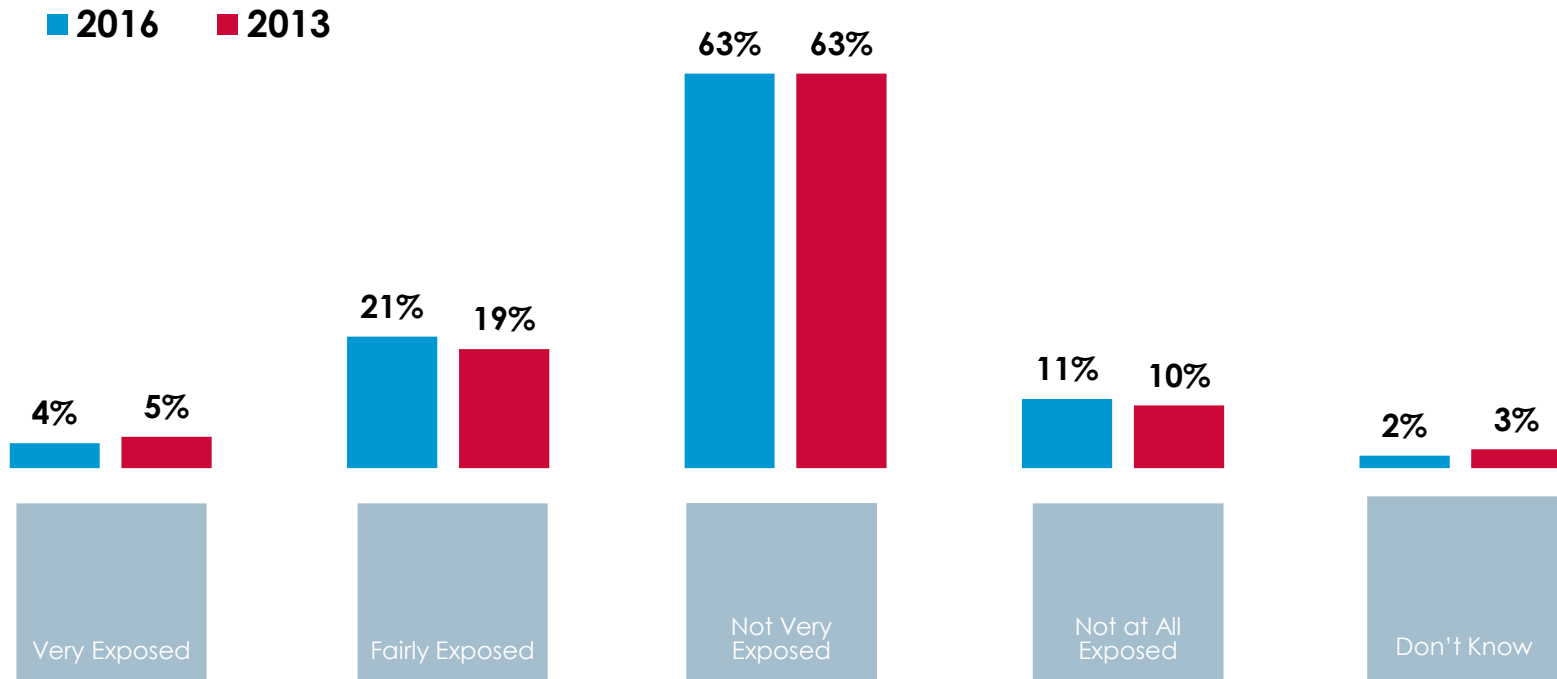
## Overall level of concern about potential liabilities as a D&O has decreased slightly since 2013

**AIG 1. To what extent does the current business and regulatory environment make you more or less concerned about your potential liabilities as a D&O compared to 12 months ago?**



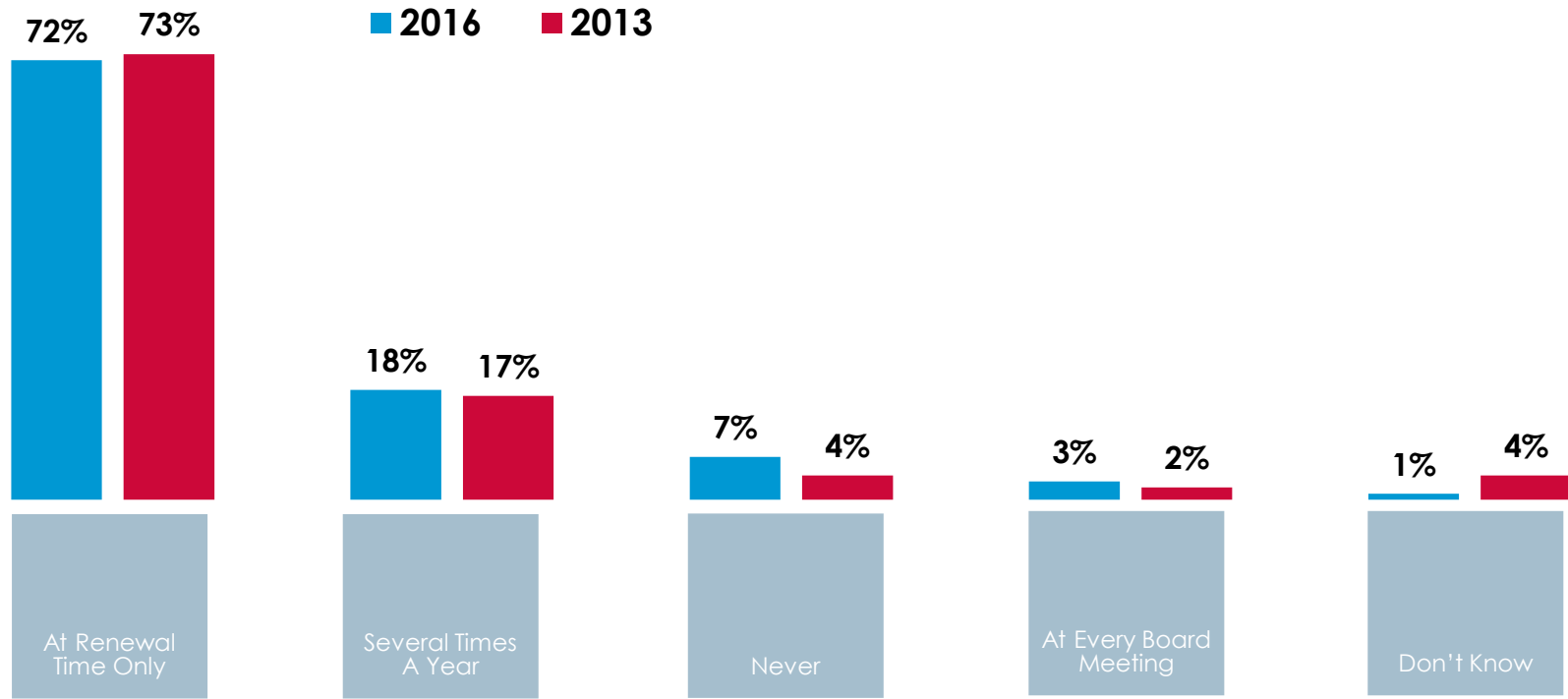
## A quarter of Captains feel their personal assets are exposed to management liability actions

CHAR3. How exposed do you feel your personal assets are to management liability actions?



## Almost three-quarters of Captains only discuss Directors & Officers insurance at renewal time

CHAR1. How often is Directors & Officers insurance discussed by your board?



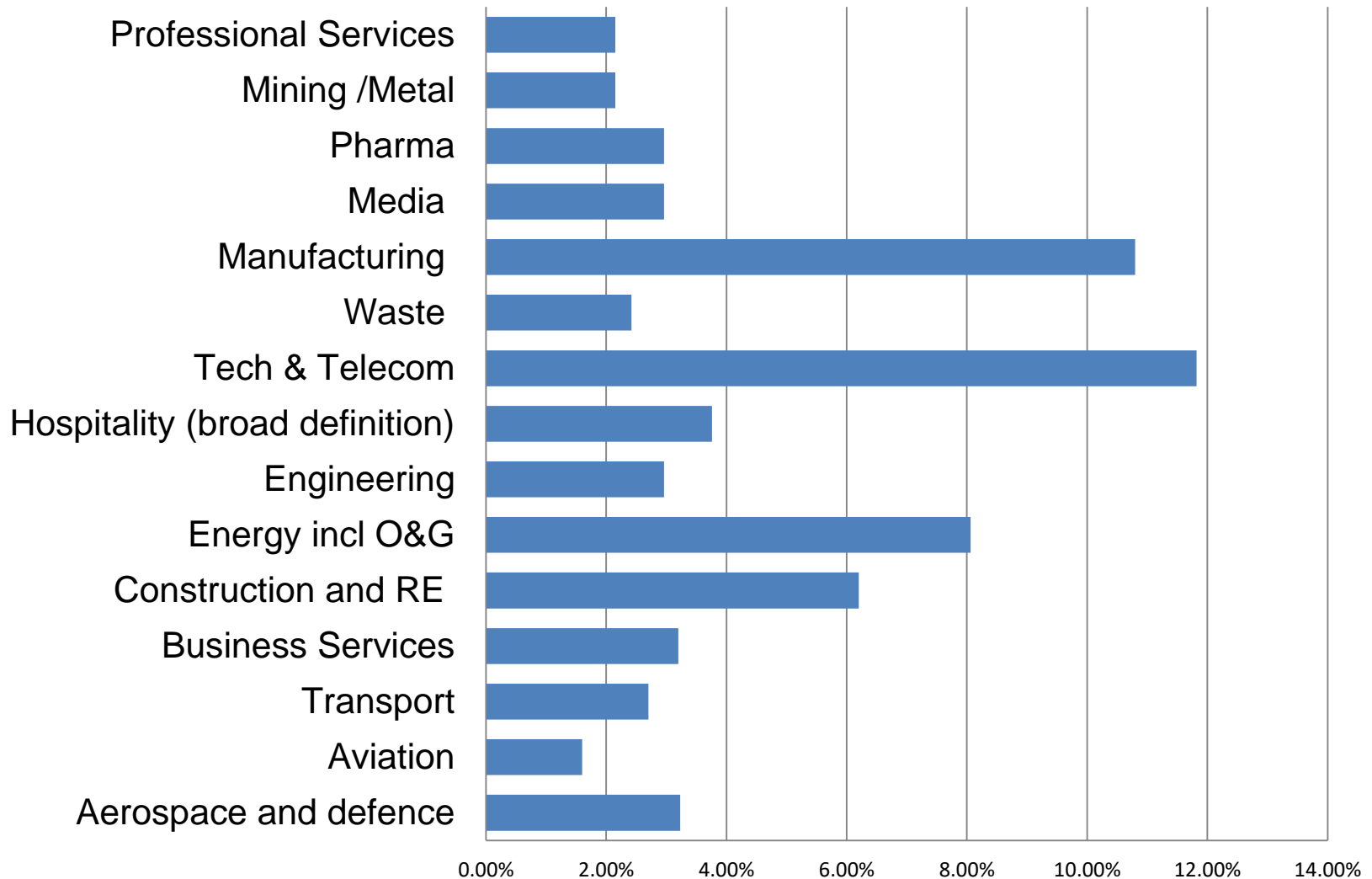
## Directors & Officers Insurance – European large losses

Claim Type	Europe % of claims
Bankruptcy	23.60%
Insured v Insured	16.66%
Regulatory/Govt Investigation	11.76%
Investor Action	11.02%
Corruption & Bribery	05.38%

## Directors & Officers Insurance – UK vs Europe large losses

Claim Type	UK % of claims	Europe % of claims
Bankruptcy	11.00%	28.68%
Insured v Insured	10.00%	19.12%
Regulatory	24.00%	11.76%
Investor Action	19.00%	8.10%
Criminal	10.00%	16.18%

# D&O - Large Losses by Industry





# D&O Claims - Market Activity

- Collective Actions
  - US & Europe
- Litigation Funding
- Changing Regulation

# D&O Claims – Collective Actions

- Increase in European activity
  - 60% of claims entirely outside US
- Changing Environment
  - Morrison
  - Increased regulatory activity
  - Corporate scandals

# D&O Claims – Litigation Funding

- **Increased Frequency** - opportunity for those who would otherwise be unable to pursue proceedings
- **Increased Severity** – large commercial cases with high damages to recoverability ratios
- **Increased Opportunity** – growth industry and arbitration now biggest growth area

# D&O Claims – Changing Regulation?

- US –

- Changes to Dodd Frank?

- Europe –

- European Shareholder Rights Directive

- UK

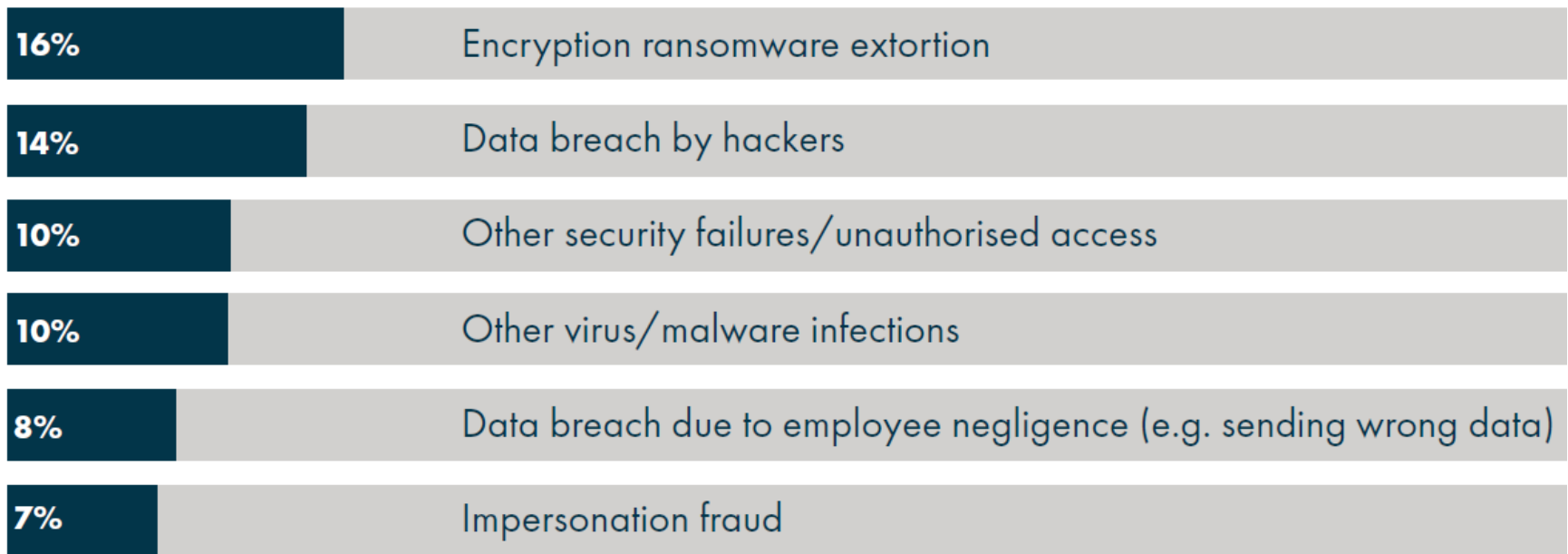
- Parliamentary Committee Report

# Cyber Claims – European Notifications



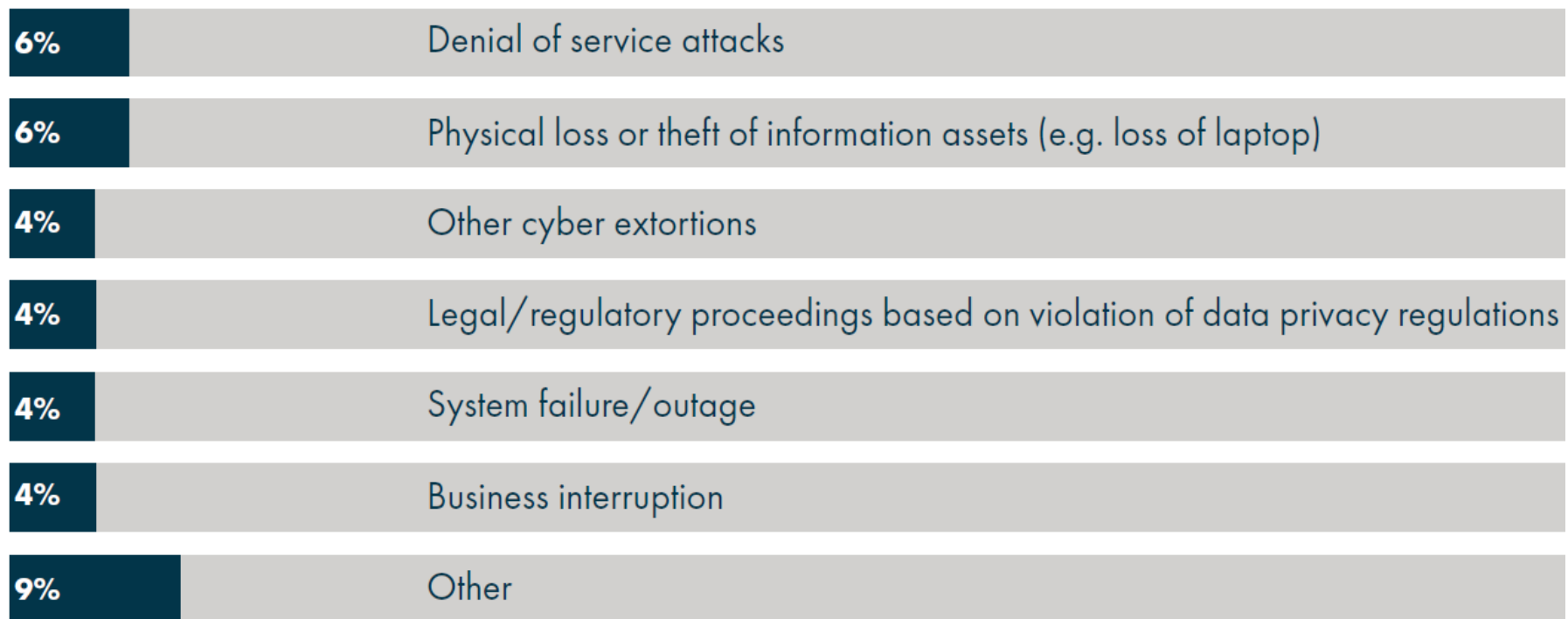
# Cyber Claims – Types (1)

## 2013-2016

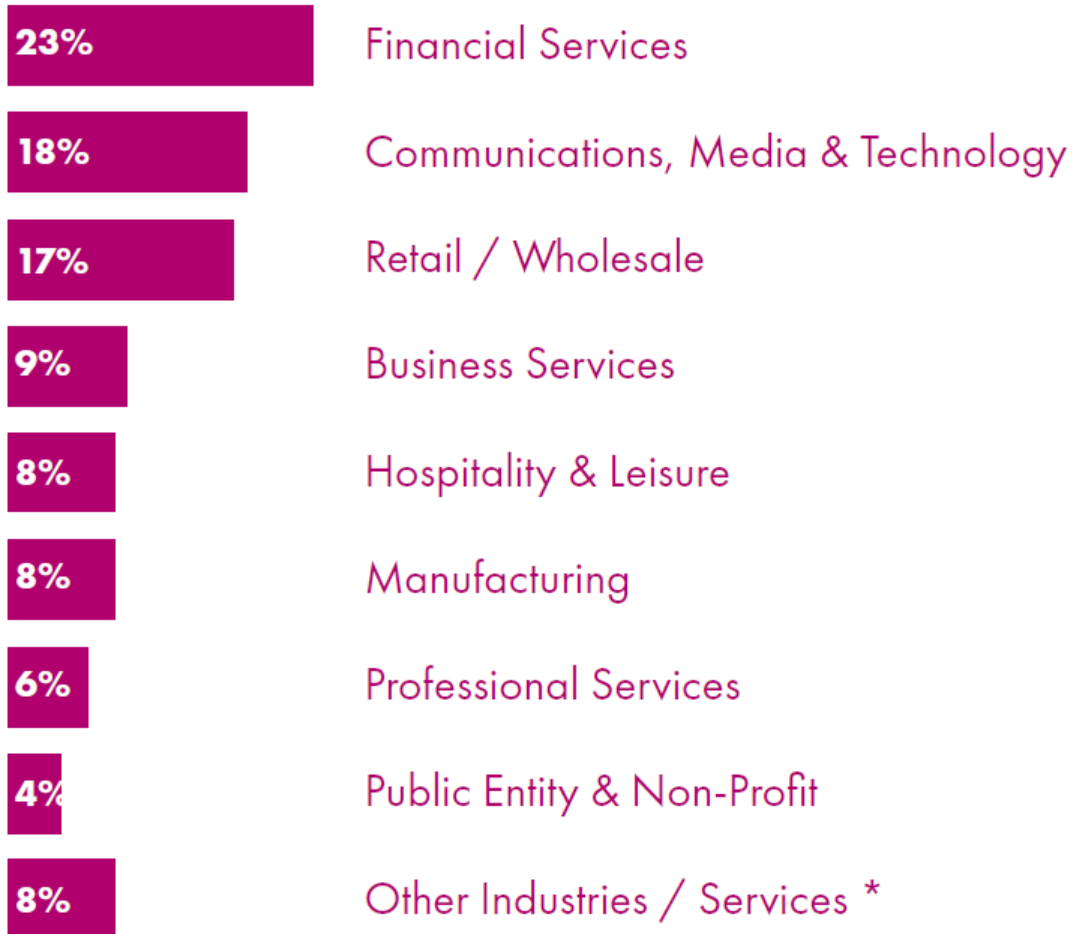


# Cyber Claims – Types (2)

## 2013-2016



# Cyber Claims – by Industry





# Getting the Most from your Policy

- Get to know claims department before you have a claim
  - Claims protocol
  - Scenario testing
- Notify, Notify, Notify
- Manage Defence Costs

# Getting the Most from your Policy

- Non-disclosure/confidentiality agreements
- Be aware of your obligations
  - Reporting
  - Consent for retention of defence counsel
  - No settlement without consent
  - No admission of liability

# Claims Example:

## D&O – Regulatory Investigation

- Allegations arising from product liability
  - South Korean Fair Trade Commission
  - South Korean Prosecutor's office
  - Civil claim and potential criminal liability
- £10m primary exhausted in defence costs

# Claims Example:

## Management Liability – HSE

- Insured Contractor
- Building collapse with fatalities
- Manslaughter prosecution and HSE offenses
- Defence costs preliminary estimate - £5m++

# Claims Example:

## Management Liability – EPL

- Defendant dressed up, imitating Claimant 1
- Claimant 1 sued, saying claim not dealt with properly
- Claimant 2 resigned and sued, alleging public mockery of senior female was “last straw”
- Settlement – USD 1.5m

# PrivateEdge

## Claims scenarios

These scenarios are based on actual claims to show the potential scope of Management Liability, Corporate Liability, Employment practices Liability and Fraud claims. Note that we have changed details to ensure confidentiality and that the examples are illustrative only and not to be relied on to justify coverage in any particular situation.

### Fraud by a lone employee

An employee who processes invoices also has access to the supplier creation system. The employee sees that when invoices are approved for payment, the financial controller examines the largest payment in detail and then signs the rest. The employee creates a false supplier and makes many small payments totalling thousands of pounds over several months.

### Unfair dismissal

An employee is dismissed for non-attendance even though her employer knows she is pregnant. Her employers claim that the manager who dismissed her was not aware of her pregnancy – although the company fails to reverse its decision when the employee produces confirmation from her G.P.

### Discrimination

An employee complains of being asked to form an unacceptably close relationship with a client. The employee claims that once they refused, they were dismissed.

### Defence to public enquiry

A company is concerned about a forthcoming public enquiry, which it fears could have a major impact on its business. We fund the professional costs of preparing directors for attending the investigation for questioning and succeed in defending the company's position.

### Fraud by collusion with supplier

An employee colludes with an external party and provides security details/access codes. With this information, a gang is able to access the stock warehouse and remove significant quantities of expensive materials. A thorough investigation found the employee had been paid for his inside information.

### Breach of contract

A company is sued by its former agents after it terminates their contracts in order to replace them with full-time staff. The agents sue for non-payment of commission.

### Fire Safety regulations

Directors are prosecuted by a local authority after persistently failing to comply with fire regulations. They claimed that the work required to their premises by the local authority was unnecessary. We defended the directors and eventually an acceptable solution was reached.

### Unfair treatment of shareholders

A Shareholder employed by the company claims he was dismissed in order to allow the company to purchase shares at an unfair price.

### Environmental prosecution

Under the Environmental Protection Act, directors are liable for prosecution if their business is suspected of pollution damage. In one case, charges against a director went ahead – even though the company had confirmed their tanks did not even hold the contaminant identified in an adjacent stream.

For more information, please visit the [PrivateEdge website](#) or the Policy Document for a full list of conditions, including policy benefits, limitations and exclusions.

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# Crystal Ball Gazing

- Cyber D&O claims
- Environmental/Climate Change Claims
- Executive Pay
- Brexit

