

Supporting innovation and innovators

How the insurance market is helping to realise the true value of creativity.



Motivation

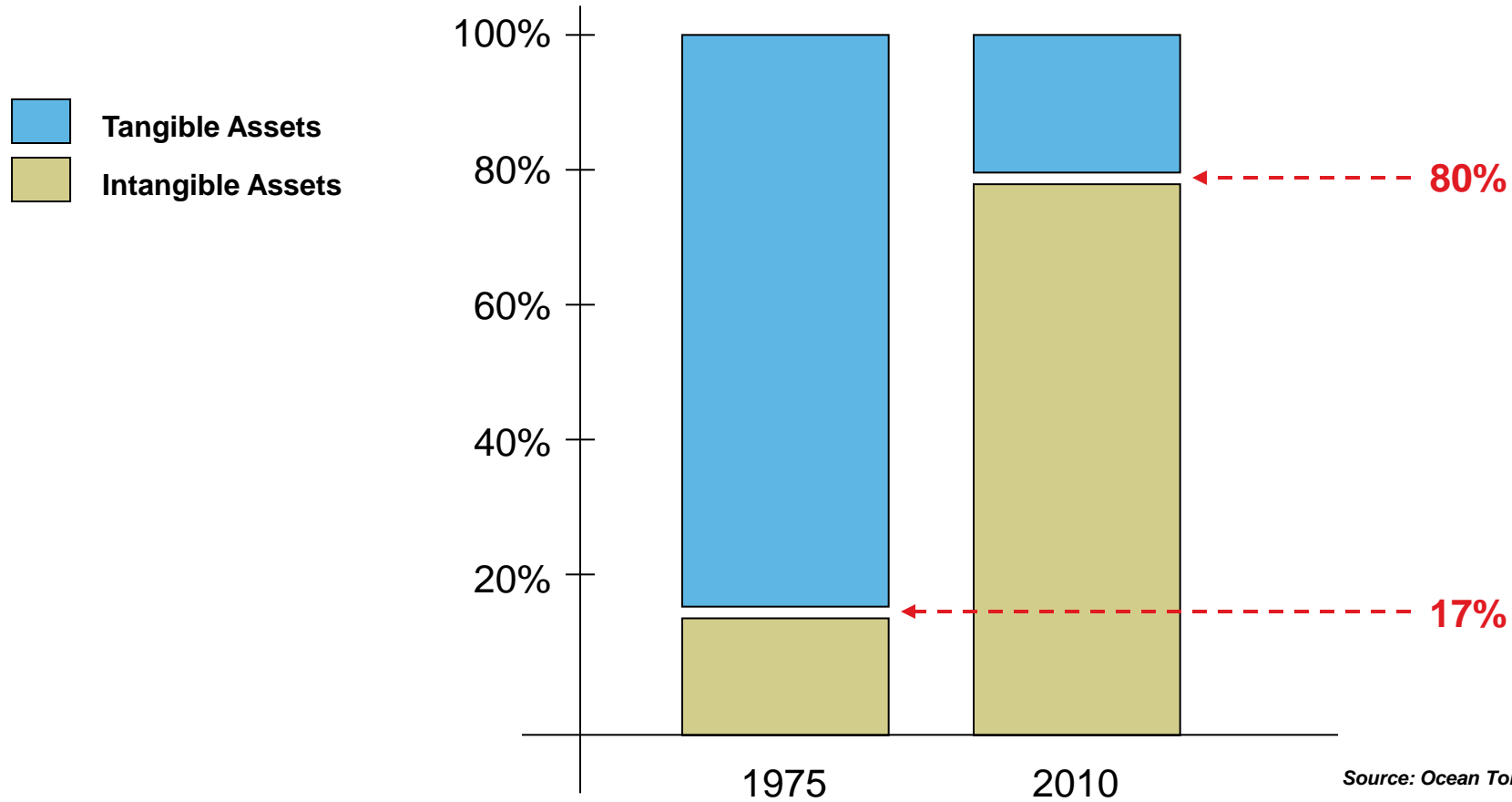
- Why are we here?
- Is it all about money?



IP is valuable.

- The great reversal!

The S&P 500



Source: Ocean Tomo

IP is everywhere

- A typical UK public limited company:

Will have:	Likely have:	Often have:
Domain names Trademarks Goodwill Copyright Confidential information	Registered trademarks Database rights	Patents Registered designs Unregistered designs

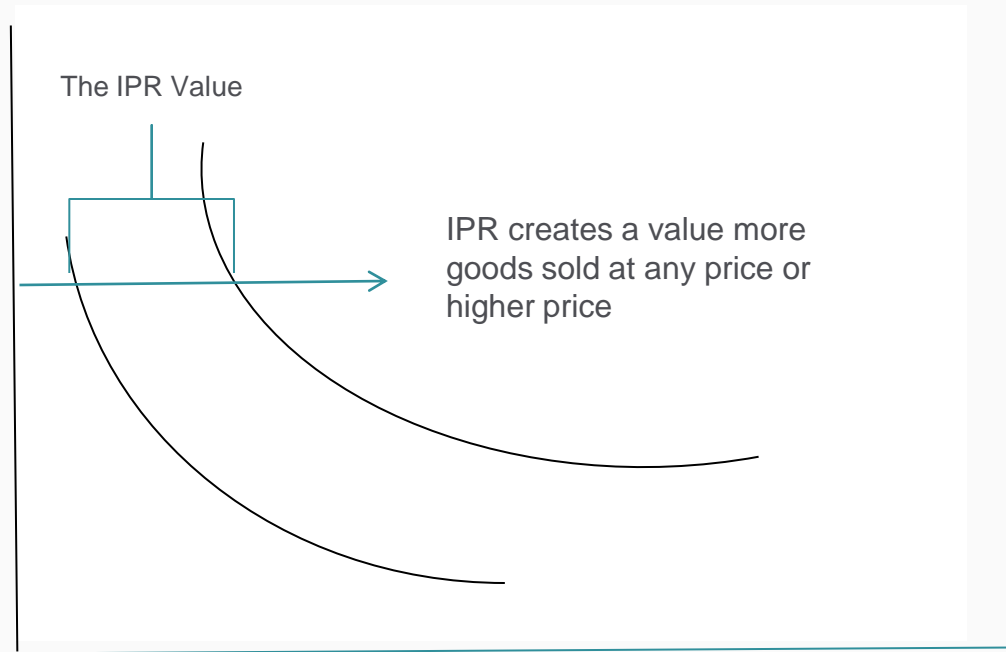
- Insurance market must respond to the need to protect these valuable intangible assets.

Completing the circle

- “The best insurance policy is a well drafted patent”
 - But it doesn't pay claims!
- Completing the circle
 - You provide the right and the basis upon which to sue
 - We provide the financial means to do so
- Includes patents, trademarks, designs, copyright, circuit layout rights, plant breeders rights, trade secrets and confidentiality, idea protection, image rights, database rights, inventions and discoveries.
- Doesn't insure intellectual property!

Intellectual property rights shift the demand curve to the right.

Price



Quantity

Insurance facilitates realisation of the IPR value...

WHAT ARE THE EXPOSURES?

- Infringement Liability (Defence)
- Pursuit of infringers
- IP Validity/Ownership
- Injunctions/Recall
- (IP Value)

WHERE ARE THE EXPOSURES?

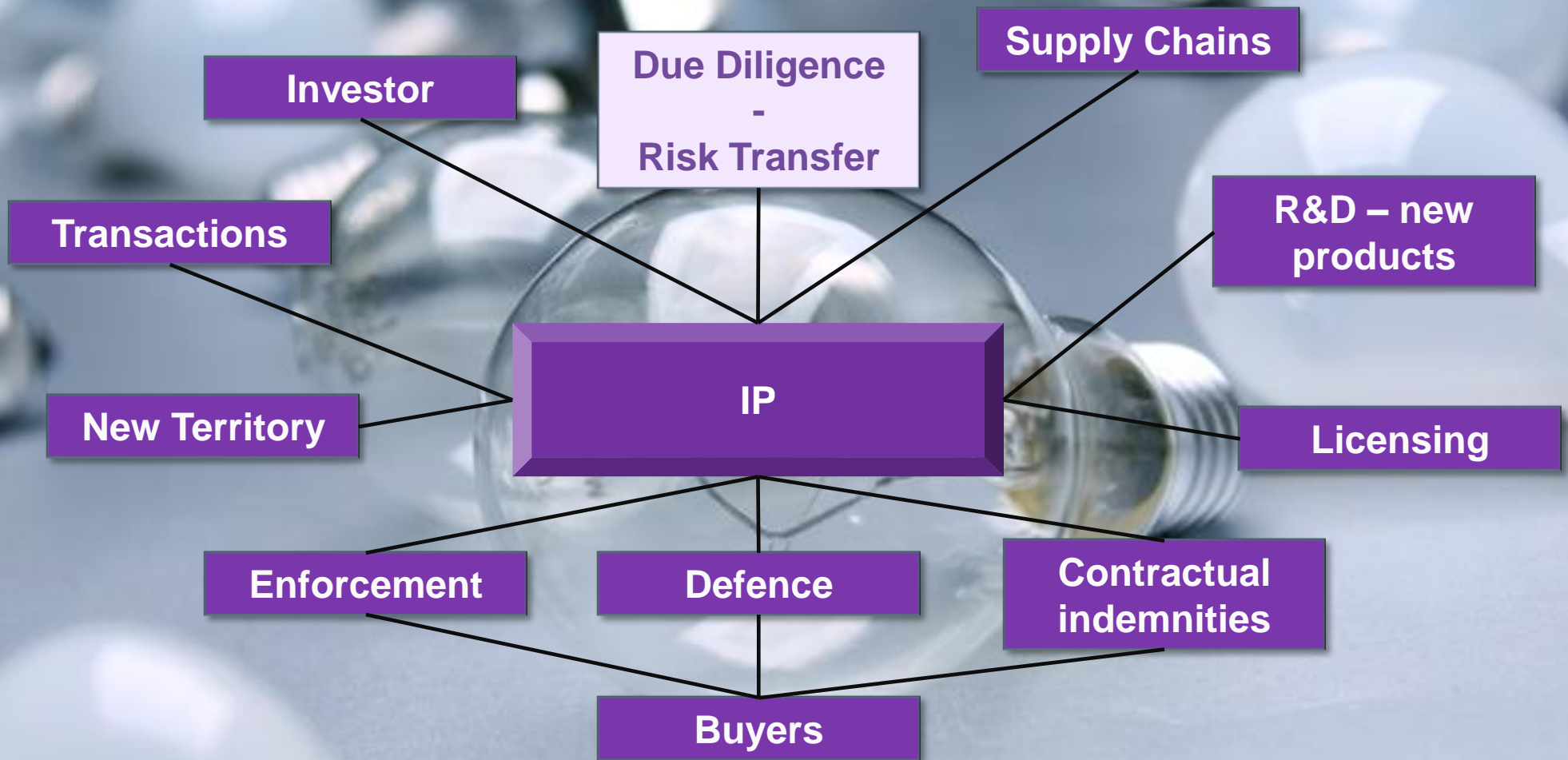
- Fast moving and/or High value
- Disruptive products
- 'Unknown' future
- Core products (yours and competitors)
- FRAND* licensing
- Patent thickets

*Fair, reasonable and non-discriminatory



Infringement of patents

ture of _____ which are alleged to be infrin
without loss by reason of purchasing and selling
persons purchasing and using



Why insure? “Inside the dispute” reasons:

- Unpredictable legal costs are a serious risk to the business
- Patents, trade marks designs and know-how are not worth a great deal if you can't afford to enforce them (Pursuit)
- Claims don't need to be justified to break the business (Defence)
- Injunctions are not available if the claimant cannot secure the cross undertaking (Pursuit)
- After the event finance is brutally expensive
- Spending investment funds on litigation takes away from research development and working capital



Why insure? “Outside the dispute” reasons:

The importance of IP (to you **and your competitors**)

Control of own destiny

Strategic litigation v Actual infringement

Contractual Indemnities

Cash Flow

Reputation

Survival

Insurance is a **Business Enabler** in the contact with all stakeholders

Assuring the freedom to operate:

The event is foreseeable but unlikely and the costs of remedy could not be borne by the individual business without threatening the future viability of that business, its freedom to operate or the continued investment in working capital or development.

Insurance facilitates continued freedom to operate.

Tangible Assets

If your building burns down you need a builder and a pot of money

If your car is stolen you need a garage and a pot of money

Intangible Assets

If your IPR is stolen or threatened you need a lawyer and a pot of money

The Defence Risk:

Alleged or actual infringement of third party IP causes:

Years of litigation

Loss or settlement

Court Injunction

The Insurance:

Annual claims made, covering particularly legal costs and damages.

SME business: Standard wordings with capacity to €20million.

Corporate business: The market is cautious, but capacity can reach >€100million for bespoke solutions.

Start-ups or growing: volume solutions at low cost?

The Pursuit Risk:

Actual or anticipated infringement of YOUR IP causes:

Years of litigation and substantial cost

Loss of income

Uncertainty with stakeholders

The Insurance:

Annual claims made, covering particularly legal costs and cross-undertaking.

SME business: Standard wordings with capacity to €10million.

Corporate business: No.

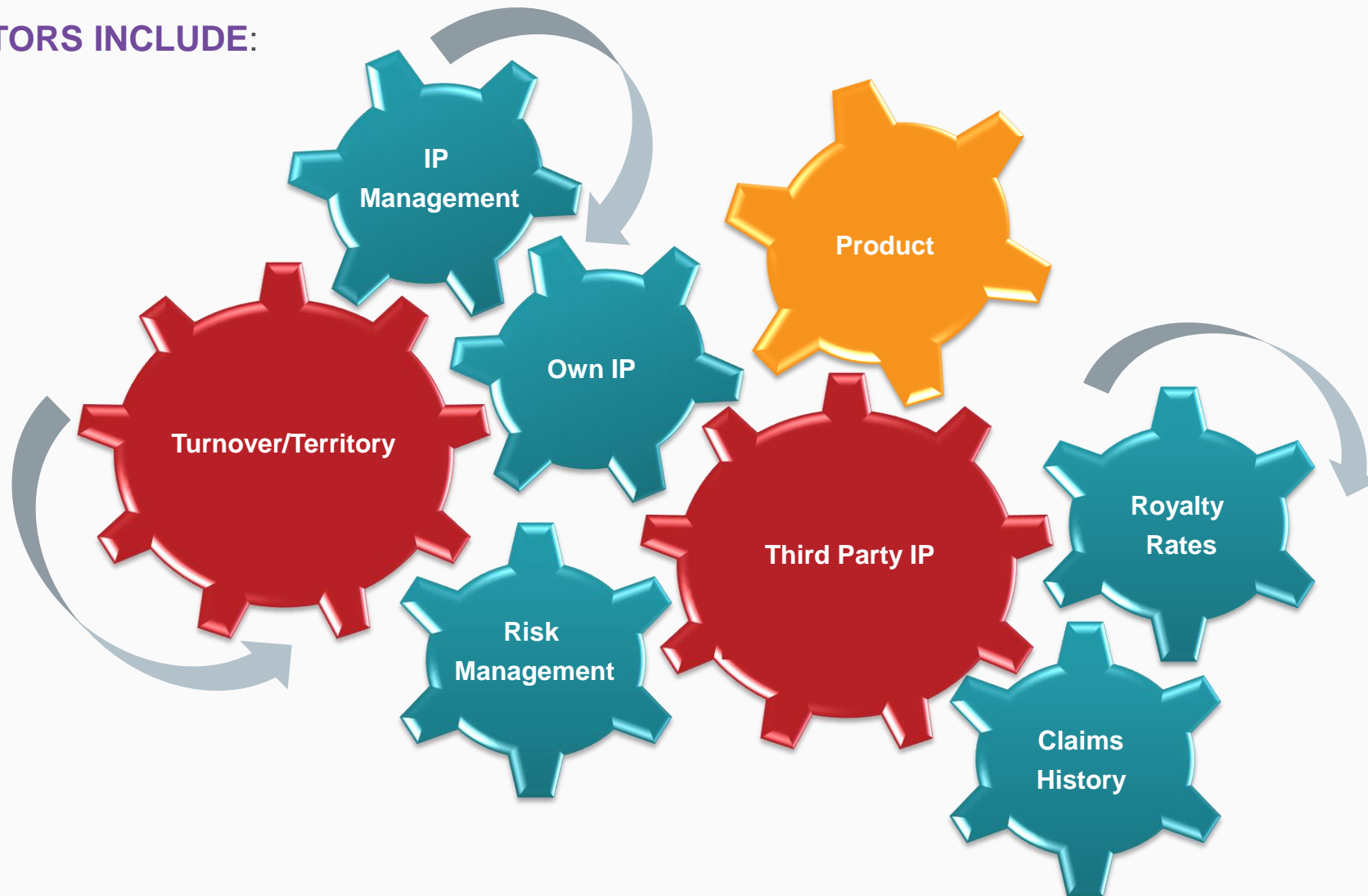
Start-ups or growing: volume solutions at low cost?



Section of Coverage	per Claim in respect of Covered Expense	per Claim in respect of Covered Loss other than Covered Expense
1.1 Defence of Infringement claims	10,000,000	10,000,000
1.2 Licensing and contractual obligations	10,000,000	10,000,000
1.3 Directors and Officers	10,000,000	10,000,000
1.4 Business continuity and Recall Compliance Expenses	per Claim and in the aggregate in respect of Covered Expense	per Claim and in the aggregate in respect of Covered Loss other than Covered Expense
	1,000,000	1,000,000
1.5 Pursuit Action against a third party	per Claim and in the aggregate in respect of Covered Expense	per Claim and in the aggregate in respect of Cross Undertaking
	5,000,000	5,000,000

Subject to annual aggregate limit

FACTORS INCLUDE:





IP
Ownership

IP
Management

IP
Contract
Management

IP
Risk Transfer

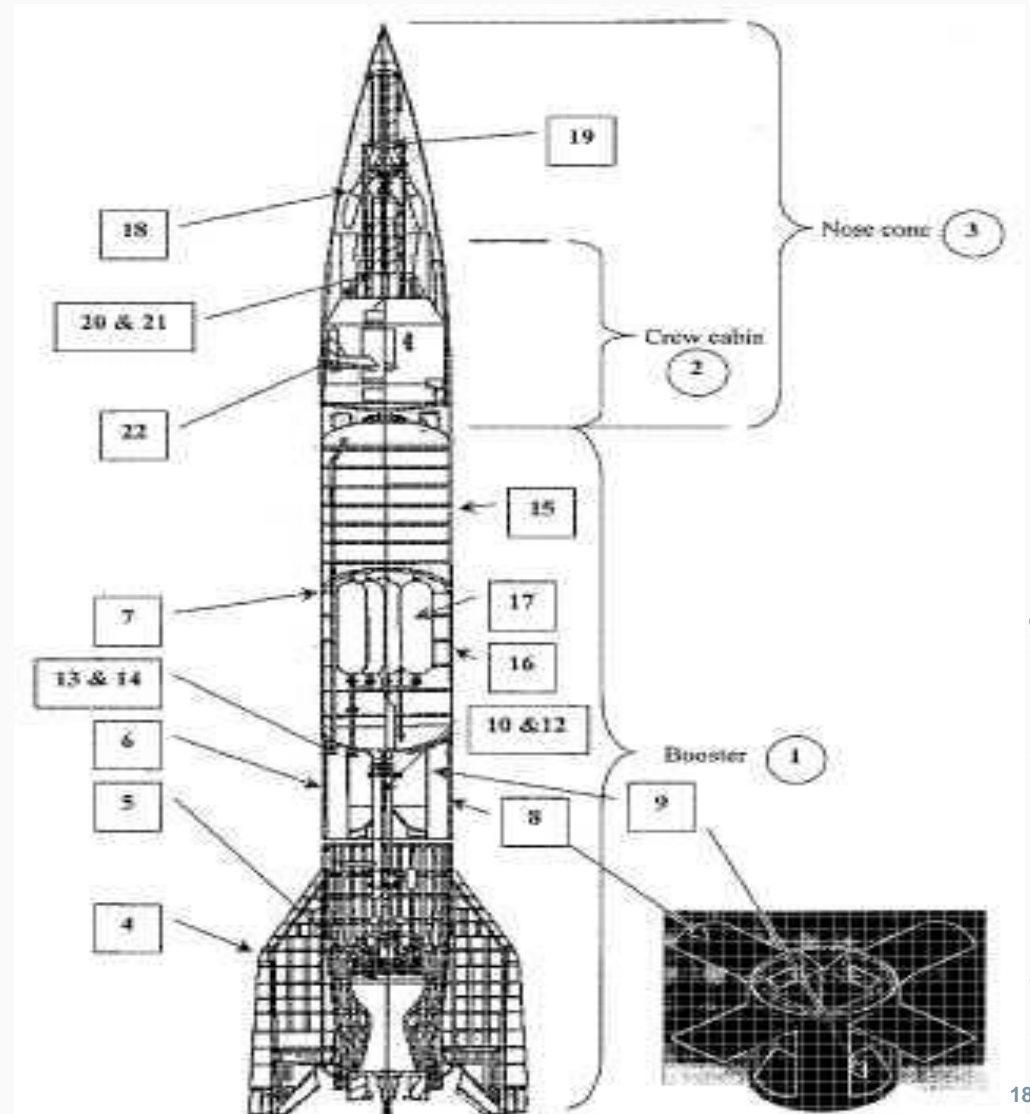
IP risk management

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By sector, size, countries etc....:

- Frequency of litigation;
- Who and how many are the defendants;
- Average costs;
- Average outcome;

Individual client:

- Products
- Risk management;
- Contract management;
- IP Rights;
- Claims history; ETC



Information requirements from client:

- Full details of the product (if third parties involved is ownership and confidentiality agreed?)
- Top 3 competitors and how the product differs from the competition
- Full list of IP to be covered
- Copies of agreement where contractual obligations are to be insured
- Internal/external IP (risk) management procedures.
 - If client does not undertake freedom to operate/clearance searches, ask why
 - Competitor watches?
 - Product development process?
- Details of all claims, whether as defendant or claimant, in respect of intellectual property infringement, validity or ownership.
 - This must include subject matter of claim, parties involved and costs to date

Specifically for the Pursuit cover:

- Have any of the patents been subject to ex-parte re-examination or collateralisation?
- Have any patents been transferred from third parties, if yes please advise which ones.

Example enquiries: **Client 'FGB'**

Turnover: £10,000,000
Insurance limit: £5,000,000 annual aggregate for defence costs and damages
Profile: Medium risk sector but with good risk management and a strong IP portfolio.

Claims history: None.

Policy: Self-insured retention: £50,000 any one claim.
Premium: £40,000
Option: A £1,000,000 limit could cost £10,000.

Example enquiries: **Client X**

Turnover: £100,000,000
Insurance limit: £5,000,000 annual aggregate for defence costs and damages
Profile: High risk sector but with good risk management and a strong IP portfolio.

Claims history: 1. 2002: defence costs £85,000, closed.

Policy: Self-insured retention: £100,000 any one claim.
Premium: £90,000
Option: if client accepts higher deductible, premium is reduced.

Example enquiries: **Client Y**

Turnover: **£100,000,000**
Insurance limit: **£5,000,000** annual aggregate for defence costs and damages
Profile: High risk sector but with good risk management and a strong IP portfolio.

Claims history:

1. 2002: defence costs £85,000, closed.
2. 2006: defence costs £900,000, closed.
3. 2009: defence costs £1,050,000, settlement £850,000, closed
4. 2009: defence costs £40,000, settlement £150,000, closed.
5. 2010: defence costs £1,400,000, open.
6. 2011: defence costs £50,000, open.
7. 2012: defence costs £80,000, open.

Policy: Self-insured retention: **minimum £1,500,000** any one claim.
Premium: **£250,000**
Option: Decline...

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The Rating of Defence and Pursuit are NOT linked. It is not suitable to add pursuit 'as a percentage' to the defence premium.

Pursuit rating factors and process include:

- Sector
- Identification of 'value' patents (valid and relevant) in portfolio;
- Claims history;
- Company profile and approach to litigation;

Claims History:

Many companies send warning letters with some frequency. This does not make it a 'bad' pursuit risk but it has to be expected that the deductible is set at a level where insurer does not pay attrition losses.

Size is not important from a Pursuit perspective BUT larger entities will have to share the risk (deductible and increased co-insurance)

Risk transfer in Tangible Assets made trade possible and assisted in the development of the Industrial Revolution (MK I)

Risk Transfer in Intangible Assets can have the same effect on the Industrial Revolution (MK II)

What's the problem?

- Cover not as expensive as you might think, but could it be cheaper?
 - Market is small and immature
 - Selection causes 'claims/cost' spiral

3. Insurers find that premium income is insufficient to pay losses and cover costs/profit

2. More policies experience claims as a result

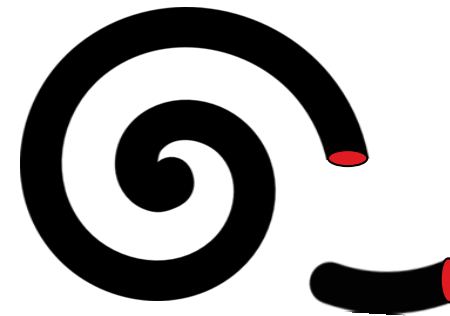


4. Insurers respond by increasing premiums to recoup losses

1. Relative high cost of a policy means only those anticipating a claim effect cover

Stopping the spiral

- Build volume into the market
- Work with IP professionals to raise awareness of benefits
- Raise the profile of IP and stress it's role in the modern economy
- Encourage the insurance market to be innovative in the approach to IP protection



Offsetting pension scheme deficits

- According to the Pension Protection Fund
 - Of the 6,432 schemes eligible for membership of the PPF, 5,189 are in deficit
 - Total value of the deficit to the end of March 2012 - £206.2 billion
- IP has become the perfect vehicle:
 - Mainstream
 - Valuable
 - Ubiquitous
 - Diverse
 - Expanding
 - Long-lasting
 - Transaction friendly

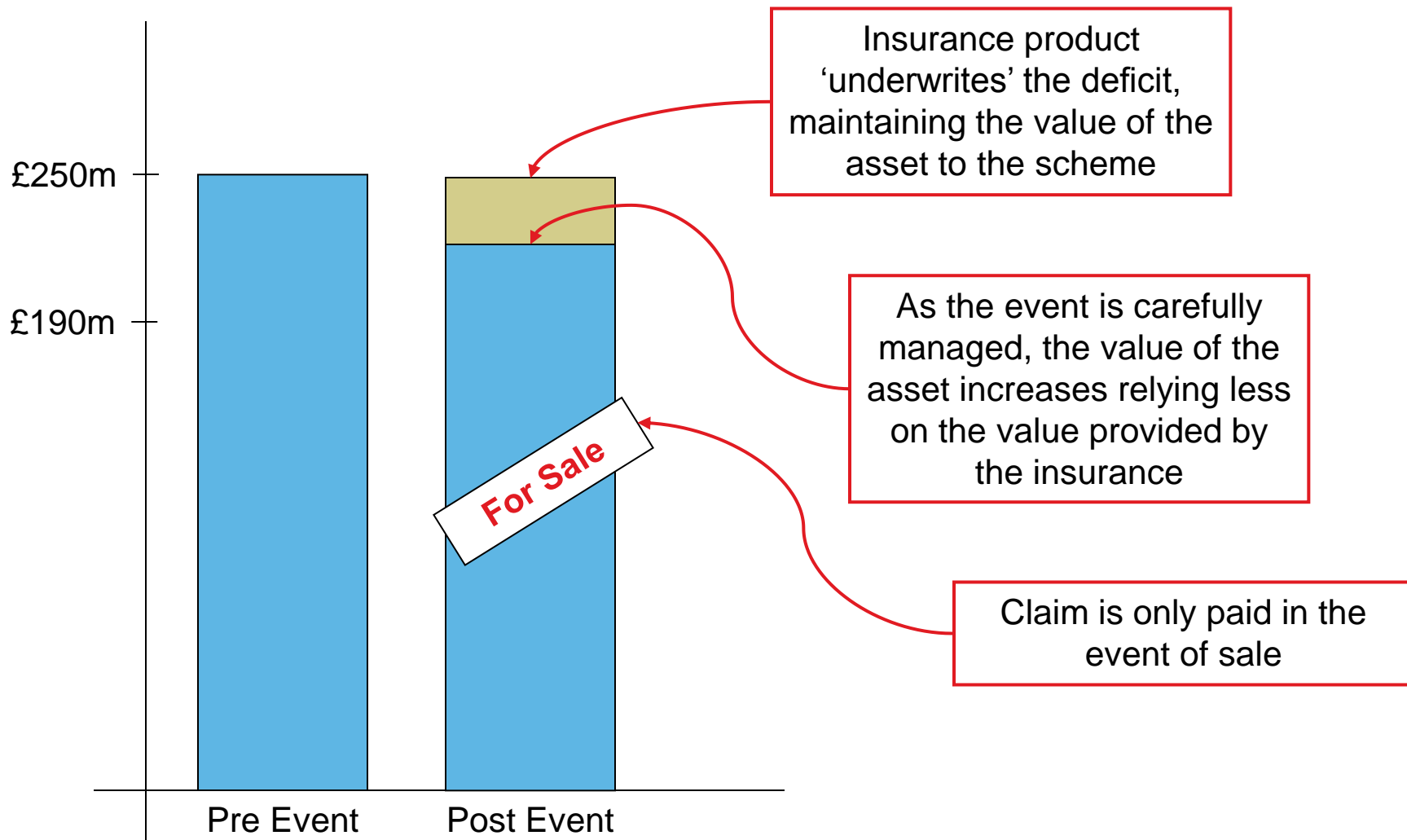


Offsetting pension scheme deficits

- What are we doing to help?:
 - Proposing to underwrite the value of the IP
 - Provide ‘peace of mind’ to the trustees
 - Speed up the process
 - Reduce cost

- Example:
 - JK Spring Water has its trademark “Dribbly” valued at £250m
 - Assigned to pension scheme to offset deficit
 - Contamination scare causes loss of value of £60m
 - PR company and management employed to minimise impact of event

Offsetting pension scheme deficits



Thank you

Questions?