MARKET UPDATE

COMMERCIAL INSURANCE

A quarterly look at the state of the industry.

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FIRST QUARTER

The welcome signs of the market changing have begun to appear as we enter 2022. With prices moderating and competition increasing, carriers are utilizing factors beyond rate increases in the execution of their growth strategies.

Those companies that have continuously prioritized risk control and risk management will be the first to benefit from these changing market conditions.

To learn more about the market dynamics in each area of coverage, please enjoy our first quarter report of 2022.

SHERRY GONZALEZ
President,
Property & Casualty

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PROPERTY

U.S. MARKET PRICING & TRENDS

- In Q4, the property insurance market continued to stabilize.
- While the property market continued to see moderate rate increases, the pace was at less than those of the prior quarters.
  - Renewal rate increases have been averaging in the single digits.
  - CAT exposed accounts and loss impacted accounts saw rates increase between 10-30%.
- 2021 continued to be a challenging year for the property losses.
  - Various natural disasters in the first half of 2021 reached $42B.
  - Tornadoes in the second half year expected loss estimates over $3B.
  - Attributional losses set a record high in 2021, thus continuing the pressure on deductibles.
- Reinsurance remains a key factor affecting renewal results.
  - Some insurers, in attempts to overhaul their book's exposure, are making greater use of reinsurance capacity.
  - For some renewals, the costs and availability of that reinsurance exacerbates renewal volatility.
  - Reinsurance cost increases were seen ranging from flat to +10% for clean accounts, and up to 30% for accounts impacted by losses.
- Insurance conditions remain challenging, but ample capacity continues to exist for most accounts.

ISSUES & CONSIDERATIONS

- Rising cost of construction, tight supply chains and general economic inflation is giving rise to the largest increases in property damage and business interruption values in recent memory.
- According to leading valuation firms, construction cost increases are in 5-12% range for property damage replacement cost.
  - Many insureds are more interested in third-party appraisals to ensure accurate valuations.
  - The rise in construction costs affects programs in many direct and indirect ways.
  - Program limits, chosen based on insurable values, may now be inappropriate or insufficient.
  - Valuation clauses, like co-insurance or margin clauses, have a much more dramatic effect.
  - Rising values lead directly to increased premiums.
  - On average, claims are becoming more costly, leading to increased loss ratios.

- Tough occupancy classes (such as food industry, frame habitational, and heavy manufacturing) are finding a decrease in appetite for their business.
- There remains strong desire to limit exposures to tornado and hail risks by increasing deductible for convective storms.
- Contingent time element continues to be a focus as underwriters review global supply chains.
  - Underwriters are reducing sub-limits within the coverage extensions and may change policy language to restrict or reduce coverage.
- Executing on risk improvement plans are critical for all insureds to maintain strong underwriting capacity.

OUTLOOK

- The property insurance market remains well-capitalized and will see rate increases slow in 2022.
  - Catastrophe-prone and loss-impacted accounts will face challenges in securing capacity and cost.
- Recent catastrophe losses and ongoing challenges from the supply chain disruption, pandemic and inflation will continue to place pressure on rates for the near future.
- Policy terms and conditions remain a focus by the insurance carriers.
  - Communicable disease and cyber exclusions.
  - Contingent time element exposure and limits.
  - Supply chain.
  - Property valuations.

"Insureds with documented business continuity and backup plans for the current supply chain concerns will fare better than those without it."

BESS RUMMAN
SVP, Senior Risk Advisor, Property and Marine

Directors & Officers Liability

MARKET PRICING & TRENDS

- The public company D&O market is continuing the stabilization trend that began in the third and fourth quarters of 2021.
  - Primary and lower-layer insurers are still seeing increases, but they are now generally in the lower single digits.
    - *Primary rates are increasing in the 0%-5% range with the high end in the 8%-12% range.*
    - *This is significantly less than the 35%-50% or higher rates we saw through 2020 and the 25%-35% increases delivered in the first two quarters of 2021.*
  - Mid- to higher-layer pricing is providing decreases over expiring, which allows the tower pricing to become more stable.
    - *We expect this trend to continue as competition increases.*
  - Insureds with strong financials and stable industries can expect this trend to accelerate through 2022.
    - *For most insureds, minimum retentions are still $2.5M.*
- IPO companies continue to find less primary capacity available and at significantly higher (30-50%) premiums.
  - Minimum retentions for IPOs are in the $5-$15M range including coinsurance for some insureds.
  - IPO premiums and retentions for certain segments such as Special Purpose Acquisition Corporations (SPACs) are very limited with most insurers offering no more than $2.5M-$5M in capacity with minimum retentions of $2.5M-$5M.
    - *For De-SPACs, most retentions are $10M-$15M.*
    - *2020 was called the "year of the SPAC" and saw 248 SPAC IPOs. However, 2021 saw 613 SPACs. With so many SPACs seeking de-SPAC targets, D&O underwriters are expecting to see a significant increase in SPAC-related claims over the 31 class actions filed in 2021.*
- The private company/non-profit D&O market has continued to stabilize throughout the fourth quarter. Primary increases are now in the 5%-10% range.
  - Companies with financial challenges, unfavorable loss history and/or in certain industries (e.g., technology and life science) are seeing higher increases in the 25%-50% range.
  - For large private companies with assets over $1B, elimination or reduction of coverage for entity (Side C) coverage may still be imposed.
  - Antitrust coverage continues to be strictly underwritten with coverage either being sub-limited or excluded altogether.
  - The Increased Limit Factor (ILF) pricing for excess placements has stabilized at 70% for the first layer and between 65%-70% for subsequent layers.
    - *Industry classes such as life sciences or financially distressed companies may see higher ILFs.*
- The mutual fund D&O/E&O market remains favorable with nominal to flat increases on risks that are loss free; those with a history of claims will see increases over 10%.
- The investment advisor D&O/E&O market remains favorable and steady with increases between 15%-20%.
- Minimum retentions for smaller asset managers are starting at $150K, with larger asset managers seeing retentions at $250K and above.
- Underwriters continue to scrutinize financial institution coverages related to regulatory investigations and cost of corrections; and, for certain risks, limiting coverage for these items.
  - Underwriters are sub-limiting cost of corrections coverage and adding more stringent reporting requirements.
    - *Underwriters in excess towers are at times hesitant to follow form over cost of corrections coverage.*
  - Insureds who currently have informal investigation coverage are seeing increased underwriting.
    - *In some instances, this is being changed back to pre-claim look-back coverage.*
- Private equity D&O/E&O insurers continue to suffer losses resulting in 25%-50% rate increases for renewals.
  - Certain underwriters are hesitant to offer primary terms in this sector.
  - D&O/E&O retentions for middle market and mega funds continue to trend upward; and for most middle market funds, the retentions are at a minimum of $250K.
- With increased infections and hospitalizations due to the Omicron variant, D&O underwriting for healthcare systems continues to focus on COVID-19 related issues such as:
  - Business continuity plans.
  - Financial issues including liquidity.
  - Revenues.
  - Expenses.
  - Preservation of capital.
  - Supply chains.
  - Board oversight.

ISSUES & CONSIDERATIONS

- According to the Stanford Securities Class Action Clearinghouse and Cornerstone, there were 210 federal securities class actions filed, down from 324 in 2020. Of those, 192 (vs. 222 in 2020) were traditional class actions cases and 18 (vs. 102 in 2020) were merger objection claims.
  - The 192 federal filings in 2021 are more in line with historical filing numbers.
    - *It is too early to tell if this trend will continue and may reflect the strong performance most companies have seen in the stock market.*
  - While certainly a positive trend, the significant drop is driven by the reduction of merger objection cases, which are predominantly filed in state court.
  - SPAC litigation continues to increase with 31 filings in 2021 compared to just 10 filings prior to 2021.
    - *The SEC continues to give enhanced scrutiny to this sector.*
  - There were 24 COVID-19 federal class actions filed in 2021 and 18 in 2020 along with 16 shareholder derivative actions and 20 SEC enforcement actions. According to the D&O Diary, companies fall into the following categories:
    - *Companies that have experienced outbreaks in their facilities.*
    - *Companies that claimed to be positioned to profit from COVID-19.*
    - *Companies whose finances/operations were disrupted by the outbreak.*
    - *A newly emerging category of companies that profited at the outset of the pandemic but later slumped.*
- Other trends:
  - Board diversity issues:
    - *California's recently passed legislation (A.B. 979 -- which is currently being challenged) will require companies to have at least one board member from an underrepresented community by the end of 2021 and at least two or three, depending on the board's size, by the end of 2022. California's Senate Bill 826 from 2018 required at least two female board members by 12/31/21. Both are being challenged.*
    - *Nasdaq's board diversity guidelines were approved by the SEC in August and require at least two diverse board members. This is also being challenged.*
  - Macroeconomic issues:
    - *Disruptions to supply chains, labor shortages and inflation are resulting in class action claims for alleged misrepresentations.*
  - Derivative actions:
    - *Breaches of fiduciary duty cases continue to show that courts expect boards to oversee mission-critical issues as evidenced by several derivative cases.*
    - *Appetite for Side A coverage remains abundant.*
- Cybersecurity continues to represent a significant risk and has resulted in securities class actions and derivative actions.
  - Such claims have largely been unsuccessful, e.g., Fed Ex and Marriott suits were dismissed. The Alphabet/ Google+ dismissal was reversed by the Ninth Circuit.
  - Plaintiffs face difficult challenges in proving intent to mislead and showing the breach caused plaintiff's loss.

OUTLOOK

- We anticipate that the market will continue to soften through 2022 as carriers look for growth.
- The entrance of new D&O facilities continues, which over time should result in greater competition.

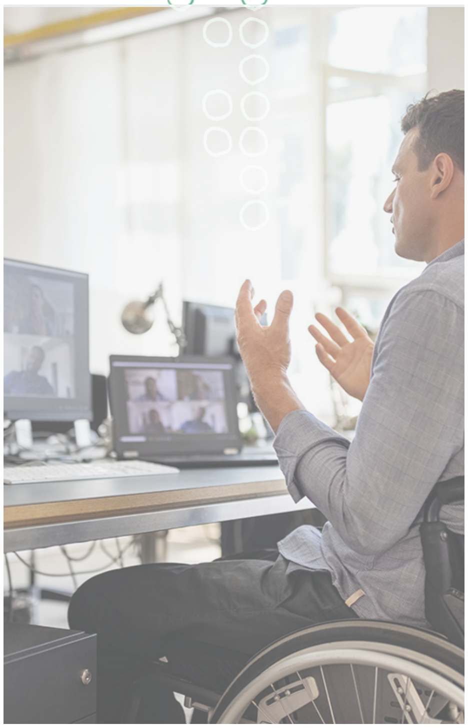
Employment Practices Liability

MARKET PRICING & TRENDS

- The market remains challenging with profitability issues being addressed with rate and retention increases and capacity management.
- Most carriers are seeking 10% - 25% increases depending on business classification, locations, and loss history.
- Healthcare, hospitality, and retail are seeing premium increases on the higher end of this range due to struggles with managing COVID-19 complexities.
- Single plaintiff retention increases are common across the board, with more attention being given to difficult high wage earners.
  - Minimum six-figure class action retentions are now the norm.
- Insureds with exposures in difficult jurisdictions (CA, NY, NJ, IL and others) will likely see increased state-specific retentions.
- New buyers of this coverage will find limited capacity, as most carriers are attempting to improve profitability of existing business without any focus on growth goals.
- COVID-19 continues to impose risk and uncertainty with moving targets for return to work, mask and vaccination requirements and political views.
- According to the Littler Law firm, there have been nearly 5,000 COVID 19-related lawsuits since March 2020, including an increase in religious discrimination suits related to vaccination.
- Some insurers are attempting to add COVID 19-related exclusions with a "buyback" for additional premium. This has yet to become mainstream but is certainly a potential.
  - Insurers routinely either sub-limit privacy and Biometric Information Privacy Act (BIPA) claims or exclude this exposure entirely.
- Wage and Hour claims are rampant due to the patchwork of state specific minimum wage changes, remote work, and other factors.
- Middle market companies that enjoyed defense sub-limits for this coverage may see this eliminated at renewal.
- Stand-alone policies are still available but are very expensive with high attachment points.

ISSUES & CONSIDERATIONS

- Vaccination mandates on both a federal and state level are currently being contested in the courts and this unsettled situation is contributing to chaos in the workplace.
- The expansion of discrimination exposure under Title VII is increasing EEOC complaints and frequency of private litigation.
- Social activism (Black Lives Matter, #MeToo, Diversity, Equity and Inclusion) and other heightened sensitivities continue to fuel the flames of workplace discord.
- Website accessibility claims (third-party discrimination) remain prevalent due to heavy reliance upon online access to services during the pandemic.



OUTLOOK

- We expect a continued hard market with respect to underwriting, pricing, and retentions for this coverage at least through the first half of 2022.
- Underwriting information requirements will continue to be very stringent, specifically related to COVID, diversity and inclusion, BIPA, and other HR policies to address the heightened sensitivity/scrutiny to discrimination and harassment in the workplace.

Fiduciary Liability

MARKET PRICING & TRENDS

- The fiduciary liability market started shifting dramatically in late 2020 and continues trending higher as we enter 2022 due to continued losses driven by excessive fee litigation.
  - Premiums for public companies are increasing by 20%-40% or more depending on plan asset size.
  - Private company rates have also increased to 10%-20%.
  - Rate increases range from 10%-40% or more depending on the size of plans and information provided in excessive fee questionnaires.
  - For 2021, there were less than 70 excessive fees class actions filed, an improvement over 2020 and a hopeful sign for 2022.

ISSUES & CONSIDERATIONS

- While litigation is trending down, it is still significantly higher than historical trends. This, coupled with historically low premiums and retentions, has led to continued market corrections.
  - Limits are being reduced for companies with significant defined contribution plan (e.g., 401(k)) assets.
  - Insurers with limits of more than $10M are reducing deployed capacity and, in some instances, imposing sub-limits for excessive fee claims.
  - Insurers are also imposing split higher retentions for either excessive fee claims or for all class action or multi-plaintiff claims.
    - *These higher split retentions vary by plan asset size, with large plan asset sizes seeing retentions range from $2.5M to $15M.*
    - *Excessive fee litigation deductibles for middle market companies are now being added to many policies.*
    - *Minimum retention levels, much higher than previous years, allow admitted fiduciary insurers to protect themselves due to state rate filings.*
    - *Coinsurance has also been reintroduced to large public company and poorly funded or financially distressed risks.*
  - Exclusionary wording for fee and expense claims has also been used by many insurers.
- The 2021 Setting Every Community Up for Retirement (SECURE) Act allows small and mid-sized companies to pool their assets to provide more investment options and lower costs, thereby mitigating the risk to insurance carriers.
  - The newly proposed Department of Labor rules on Environmental, Social and Governance (ESG) investments should clear the way to more ESG investing in pension plans.
  - These new clarifications of the 2020 rules take back earlier communications discouraging ESG investments that could sacrifice investment returns in the pursuit of social or collateral goals and which could negatively impact employees' future financial security.
- Underwriters are closely watching how companies monitor fees.
  - Most carriers are no longer satisfied with just reviewing applications and form 5500s.
  - They are now routinely asking for ERISA fee disclosures and are very interested in plan governance, investment strategies, management in charge and the investment review process.
- Plaintiffs' firms continue to target plans with the following deficiencies:
  - Investments that perform worse than an index or benchmark.
  - No due diligence process to assess vendor fees.
  - Fees based on assets as opposed to a per-person fixed rate.
  - Lack of index funds as opposed to other investment options.
  - Plans offering risky or aggressive investment strategies.
  - Too few or too many investment options.
  - Diminished employer stock values for those plans with employer stock.
  - Diminished 401 (k) company contributions.
  - COBRA notice misinformation or deficiencies.
  - Failure to seek outside fiduciary specialist legal advice and relying solely on in-house counsel.
  - Failure to make all disclosures available to all plan participants on a regular schedule and documenting the process.
- Plaintiffs' firms are now also targeting smaller plans below $50M for excessive fees litigation.
  - The increase in litigation for smaller plans has increased premium rates and pushed retentions even higher.
  - Insurers are increasingly limiting capacity for small, higher risk organizations such as professional service firms.

OUTLOOK

- Although there was a decline in excessive fee class action cases, we expect rate and retention increases along with limit management to continue as these issues remain.
- For larger public and private companies with plan asset size above $1B, we expect rate increases in the 10%-40% range and increased retentions with a split retention for excessive fees and/or class/mass action claims of $2.5M to $15M.
  - To impact profitability, capacity reductions are expected.
- For smaller companies with plan asset size less than $1B, we expect rate increases in the 10%- 20% range and more modest retention increases but higher excessive fee and class action retentions.
- Continued underwriting scrutiny can be attributed to:
  - New or proposed changes in fiduciary duty compliance rules under the Biden administration.
  - Uncertainties related to the pandemic.
  - Increases in excessive fee litigation.

Cyber Insurance

MARKET PRICING & TRENDS

- 2021 – The Year of Ransomware
- Due to the increase of claim activity in the cyber marketplace, increases have now moved to 40%-60% for clients in all revenue bands.
  - Industries experiencing higher than average increases:
    - *Municipalities (of all sizes).*
    - *Public entity (utilities and infrastructure).*
    - *Manufacturing.*
    - *Education (K-12 and post-secondary).*
    - *Healthcare.*
    - *Finance and banking.*
    - *Tech firms (especially managed services providers).*
    - *Law firms.*
    - *Retail & Hospitality.*
- Clients with open or recently closed claims are subject to reduced coverages and lack of markets.
- Highlighting the following areas can help maintain coverage and limits:
  - Overview of claim (origin, was there a ransom, was the ransom paid, total loss).
  - A list of post-breach remediations (additional controls) that were put in place as a result of the claim, along with a list of lessons learned.
  - Third parties that were utilized throughout the claim process (total costs, detailed information into what work was completed).
- Insurance carriers are focused on optimal controls associated with:
  - Multi-factor authentication for remote access, privileged and administrative accounts, and email accounts.
  - Backup procedures.
  - Employee training and awareness.
  - Endpoint Detection & Response (EDR) tools, percentage of endpoints that are being monitored.
  - End of Life Technology – Is it being used and how is it protected or segmented from the rest of the network?
  - Patch management (seven days to apply critical patches, 30 days for all patches).
- There is significant upward pressure on retentions across all industry classes.
  - Clients with >$100M annual sales can expect $100K+ retentions.
  - Clients with >$1B annual sales are being pushed to consider $1M+ retentions.
- Excess pricing in cyber is now moving toward 90+% of the underlying premium, due to continued contraction.
  - Excess underwriters are growing in their comfort with proposing inverted towers (100+% of underlying), especially in higher layers of excess where pricing gets exceedingly thin.

COVERAGE TRENDS

- Some markets have begun to restrict coverage around ransomware, including the use of coinsurance or sub-limits.
  - Previously this was used as a limitation of the ransom demand itself.
  - Carriers have begun to use coinsurance or sub-limits surrounding the trigger of ransomware, causing a limitation in coverage on business interruption and incident response.
- The underwriting community is continuing to grow in its concern around aggregation risk relative to dependent business interruption, especially after supply chain attacks like SolarWinds Orion, Microsoft Exchange, Kaysea VSA, and Log4J breaches.
  - We are seeing far more reluctance to offer full-limit options on new business quotes.
    - *The introduction of "widespread" language is being introduced which limits coverage involving the exploitation of software.*
    - *Policy wording may be limited in coverage due to exclusionary wording surrounding widespread supply chain attacks.*

"Evaluating, quantifying, transferring, preparing and testing for known and unknown vulnerabilities are the cornerstone of a well-rounded cyber security program, that creates more underwriting capacity and competition."

ALEX CLARK
Vice President, Cyber Solutions Leader

- Within the submission process, highlighting third parties that are being utilized (managed service provider, backups, cloud, software) and which vendors are being used for controls such as MFA, end point detection, employee training, etc.

- We are continuing to find the following coverage enhancements available:
  - Reputational harm: up to full limits.
  - Bricking: up to full limits.
  - Contingent BI/PD: sub-limited, still looking to property, general liability, and products to respond first if triggered.
  - Crypto jacking: sub-limited, but direct loss may be difficult to identify.

ISSUES & CONSIDERATIONS

- Ransomware continues to be a significant area of focus for underwriters.
  - More carriers are requiring additional information around:
    - *Access management.*
    - *Patching.*
    - *Backup structure and segmentation.*
    - *Segmentation of networks.*
    - *Downtime recovery.*
- Double Extortion Trend:
  - Previously, bad actors would delete files if victim failed to pay ransom.
  - The improvement of backup and restoration process has greatly improved and thus victims were more prepared and less concerned with the deletion of data.
  - Now, the bad actors will threaten to publicly post confidential data of company-related matters and client private information that was exfiltrated if the ransom is not paid.
- Ransomware as a Service (RaaS) is a pay-for-use malware. It enables attackers to use a platform that provides the necessary ransomware code and operational infrastructure to launch and maintain a ransomware campaign.
  - Gone are the days when every attacker had to write his own ransomware code and run a unique set of activities.
- The FBI's Internet Crime Complaint Center reported 2,084 ransomware complaints from January to July 31, 2021 (62% increase).
- The average ransom fee requested increased from $5,000 in 2018 to around $200,000 in 2020, with continued increases expected for 2021 and 2022.
- Compromised credentials led to compromised data as stolen user credentials were the most common root cause of breaches.
- Privacy legislation to be aware of:
  - Colorado – SB21-190 Protect Personal Data Privacy (effective July 1, 2023).
  - Virginia – SB 1392 Consumer Data Protection Act (effective January 1, 2023).
  - China – "Personal Information Protection Law, PIPL" (effective November 1, 2021).
- 2021 Supply Chain Attacks on open-source software grew 650% in 2021.
  - The most impactful attacks were the following:
    - *SolarWinds impacted 800 to 1,100 separate companies.*
    - *Kaseya brought downtime for more than 1,000 companies.*
    - *Microsoft Exchange impacted up to 250,000 servers.*
    - *Log4J is one of the most serious vulnerabilities on the internet in recent years; the potential fallout is still being reviewed.*
- Notable 2021 ransomware attacks consisted of the following:
  - CNA (Insurance/Financial Services) - $40M demand.
  - JBS Foods (Ag/Meat Processing) - $11M demand.
  - Colonial Pipeline (Oil & Gas) - $4.4M demand.
  - Brenntag (Industrial/Chemical) - $7.5M demand.
  - Acer (Technology) - $50M demand.
  - ExaGrid (Technology) - $2.6M demand.
  - Kaysea - $70M demand.
  - Judson Independent School District (TX) $547k paid.
  - Broward County School District (FL) - $40M demand.
  - City of Joplin (MO) - $320k paid.
  - Schreiber Foods - $2.5M demand.

OUTLOOK

- Capacity is actively shrinking in the cyber insurance market. Individual carriers are managing deployment of capacity more stringently than ever before.
  - Many primary $10M limit policies are being split into smaller layers of $5M or $2.5M, increasing the number of insurers on any one tower.
  - Due to continued losses, expect pressure on rates and retentions across all industries for the first half of 2022.
- Underwriting appetites and requirements are rapidly changing, especially in higher exposure classes.

Crime Insurance

MARKET PRICING & TRENDS

- Overall pricing is flat to 10% on most risks not including exposure changes and loss history.
  - Rates continue to soften from 2020 and 2021 market conditions.
- Cannabis and cryptocurrency exposures are subject to heightened scrutiny relating to internal controls and procedures.
- For cryptocurrency, underwriters' focus is on security verifications, trading activities, and total stored values/amounts.
- Market capacity is increasing for cannabis risks; however, compared to other risks, expect to see reduced limits and higher deductibles.
- The most frequent claims continue to come from embezzlement schemes including:
  - Over billing customers.
  - Fake vendor payments.
  - Theft of customer credit card information.
  - Skimming cash.
  - False expense reporting.
  - Check tampering.
- Social engineering fraud (SEF) limits continue to constrict along with increasing deductibles.
- Supplemental applications and additional questions regarding authentication procedures are still required.
- Insurers continue to experience losses from foreign subsidiaries of U.S. domiciled entities, resulting in more careful underwriting reviews of inventory controls.
  - Higher deductibles for foreign exposures may apply.

ISSUES & CONSIDERATIONS

- Coverage for cyber-related losses such as ransomware-related losses are now commonly excluded in crime policies.
  - Insurers consider this exposure is best insured by cyber liability policies.
  - Insureds should carefully review coverage provided by and/or changes to the computer crime sections of the crime policy including computer fraud and funds transfer fraud, as cyber insurers exclude these coverages.
  - Carriers require additional underwriting information regarding employee phishing mitigation training, employee fraud awareness training, and multi-factor authentication policies.
- For social engineering fraud, carriers may require:
  - Increased deductibles.
  - Callback verification.
  - Multi-factor authentication.
- Review these coverages in conjunction with your cyber policy to avoid potential gaps, or work with your insurers to potentially stack limits.
- Coverage concerns include:
  - Ransomware or cyber extortion from malicious viruses.
  - SEF.
  - Precious metals exposures.
  - Cryptocurrency.
  - International exposures.
  - Cannabis.

OUTLOOK

- Expect flat to 10% rate increases for most risks at renewal and possible increases in retentions; especially those related to SEF, cannabis, cryptocurrency, precious metals and international exposures.

General Liability

MARKET PRICING & TRENDS

- The current rate increases continue between 4% - 12.5%.
  - Rates will continue to rise modestly, kept in line by competitive pressure.
  - Individual results will vary based upon exposure, class, and loss history.
- Carriers are beginning to show better results in general liability which should be expected given the positive rate environment and shorter deployed limits.
- Trends forcing rates up continue in the marketplace such as social inflation, nuclear verdicts, a highly organized plaintiff's bar and continuing liberal class action certifications.
  - Even with these trends, expect rate increases to moderate during 2022.

ISSUES & CONSIDERATIONS

- Specialty general liability insurers have been increasing their market share because of their ability to offer a supported umbrella excess of the primary casualty.
- Carriers are questioning and reevaluating reserve capacity.
- Most markets are no longer considering uncapped per-location aggregates.
- Liability exposure arising from failure to adequately follow and communicate public health guidelines, such as the responsibility to provide personal protective equipment (PPE), is being closely followed.
  - COVID-19 liability litigation continues to evolve.
  - Without any meaningful liability protections by Congress, these actions are likely to be around for years.
  - With the long-term effects of the disease being unknown, insurance carriers maintain a cautious approach toward the severity potential.
- Insurers will continue to craft policy language to clarify how policies address evolving risks, including:
  - COVID-19 and other virus exclusions are now appearing as underwriters continue to deal with the pandemic.
  - Retail, hospitality, healthcare, and public entity exposures now see mandatory COVID-19 or communicable disease exclusions.
  - Wildfire exclusions have become commonplace and wildfire capacity is extremely limited.
  - Drones, self-driving cars, genetically modified organisms (GMOs), traumatic brain injuries, Glyphosate/Round-Up, sexual abuse and molestation, opioid, PFAS and CBD exclusions are common.
- Industries that continue to see challenges include:
  - Public entity liability markets are limiting coverage and increasing retentions for law enforcement liability coverage, particularly for larger municipalities.
  - Habitational marketplace is seeing shrinking capacity in primary and excess markets due to high medical costs associated with slip/fall injuries.
  - The legalized marijuana industry is still a surplus lines placement due to the federal approach to this substance.

OUTLOOK

- Restrictive terms and disciplined underwriting will continue in 2022, especially for insureds with high hazard premises and/or products exposures.
- Rates have increased but the increases tend to be less severe than the umbrella/excess marketplace.
  - Underwriters still have concerns about defense since it is traditionally offered in addition to policy limits.
- Buyers have continued to increase retentions to offset pricing increases.
  - More companies are moving from guaranteed cost to self-insured retentions to increase market competition, reduce fixed costs and improve claim handling experience.
- Many companies are transitioning from a revenue-rating basis to a volume basis due to inflation-spiked revenue increases.
- Renewal pricing can be stressed when umbrella underwriters push up the general liability attachment point.
  - Solutions include fronted programs, buffer policies, facultative reinsurance, and other risk finance options.
  - Facultative reinsurance support is becoming increasingly difficult for underwriters to obtain, forcing pricing increases as carriers hold larger net lines.

Automobile

MARKET PRICING & TRENDS

- Auto rates have increased for 42 consecutive quarters as tracked by the Council of Insurance Agents and Brokers.
- While rates continue to increase between 5% - 20%, this trend has begun to flatten. .
  - Due to the litigation environment, large fleets >200 power units have seen increases of 20% - 30% or higher with poor loss history and/or poor risk control.
  - Well-controlled, smaller fleets with good loss history can expect low to moderate single- digit rate increases.
- Analysis of loss costs, trucking and non-trucking sectors, indicates an increase in every state.
  - Notably, many states experienced an increase in auto liability loss costs of 10% or more.
  - Severity of losses has increased significantly for non-trucking exposures.
- Physical damage coverage is much more likely to be self-insured to help reduce fixed costs, even by traditional guaranteed cost buyers with smaller fleets.
- Programs with a minimum $5M Combined Single Limit have increased by a significant percentage during the past few years due to umbrella attachment requirements.

ISSUES & CONSIDERATIONS

- In 2020 the commercial auto insurance segment posted its best underwriting result in a decade; a result of continued rate increases and a large drop in driving due to the coronavirus pandemic. However, the upward pressure on price remains.
- The driver shortage for commercial trucking fleets continues, causing insurance carriers to be more diligent when reviewing driver quality.
  - According to one study, 57% of today's experienced drivers are over age 45, while 23% are over age 55.
  - Younger drivers are not entering the workforce in numbers sufficient to meet demand.
    - *Companies will be faced with the duality of either dramatically increasing pay rates to outbid competitors or hiring younger, less experienced drivers.*
- Recently available data illustrates sources of this upward rate pressure:
  - The National Safety Council estimate of total motor vehicle deaths for the first six months of 2021 is 21,450, up 16% from 18,480 in 2020 and up 17% from 18,384 in 2019.
  - Mileage in the first six months of 2021 rebounded 13% from pandemic lows in 2020 but still lags 2019 mileage by nearly 6%.
  - NSC's current 2021 estimated rate of death on the roads is 1.43 per 100 million vehicle miles traveled, up 3% from 1.39 in 2020 and up 24% from 1.15 in 2019.
  - Estimated cost of motor vehicle deaths, injuries and property damage is $241.9B the first half of 2021.
- Risks demonstrating robust driver safety programs (owned and non-owned), safety technology and other risk control initiatives receive better terms and conditions.
  - Drivers who text while operating a vehicle are 23 times more likely to suffer a car accident, according to NHTSA statistics.
  - NHTSA data shows that more than 1,000 people are injured daily in accidents in which at least one driver was distracted.
- Advances in technology and the growth of telematics in all types of vehicles will continue to reduce accidents over the next several years and are compulsory for large fleets. However, these benefits are being offset by:
  - Medical inflation trends.
  - Rising repair costs due to technology and the higher cost of vehicles.
  - Poor public road infrastructure.
  - Distracted driving.
  - Increased survival of high-speed accidents.
  - Plaintiffs' attorneys specializing in auto-related accidents and the overall negative trend of litigation.
- Increasing loss costs are causing insureds to seek higher deductibles or consider corridor deductibles to manage increasing premiums.
  - The stand-alone auto buffer market continues to be challenging and uncompetitive.
    - *Pricing for limits above $2M is extremely expensive and in many instances inverted compared to limits below buffer attachments.*
    - *Underwriters with authority to price higher auto limits above $2M, either with treaty or facultative reinsurance support, generally achieve more competitive pricing compared to buffer markets.*

OUTLOOK

- Expect rates to continue upward as carriers are concerned with profitability associated with this line of coverage.
- Underwriters are increasingly dependent on facultative reinsurance pricing to support higher combined single limit requirements.
- While the decline in the economy had fewer vehicles on the road, the catastrophic losses offset that impact.
  - Capacity continues to exit from the auto line with some industry experts showing close to a 50% reduction in total limits available.
- The market for large/heavy fleets continues to be challenging for both primary automobile liability and umbrella/excess liability with no end in sight.
- Demand for buffer layers continues to increase as umbrella attachments force higher primary limits.
  - Large fleets with 1,000 power units or more can expect a minimum umbrella attachment of $5M.
  - Carriers will allow large insureds to quota share to offset significant premiums for auto buffers.

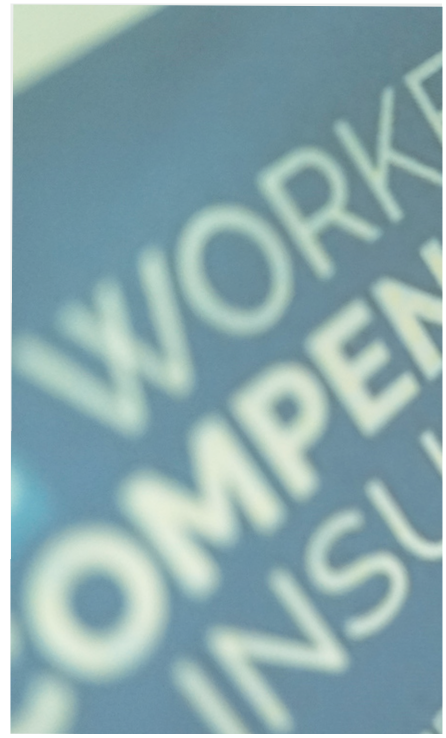
Workers' Compensation

MARKET PRICING & TRENDS

- Current rates are maintaining stability at -4% to 4% for loss sensitive and guaranteed cost programs.
  - This will have some variability by state and COVID-19 exposure.
- Loss costs do not appear to have been materially affected by COVID-19 despite initial fears around presumptive compensability and delays in medical treatment.
  - Rates for 2021 were largely flat for both guaranteed cost and loss sensitive programs, with many carriers backing down from an early push for rate increases during the renewal process.
- In some situations, workers' compensation has been used as a bargaining chip in umbrella liability negotiations.
  - Some companies have moved their workers' compensation programs to help maintain umbrella capacity, attachment points and/or pricing.
- Regardless of program structure, insureds with favorable loss experience and robust safety programs continue to enjoy competitive market conditions.
- Workers' compensation renewals tend to be steady and uneventful.
  - The competitive environment remains strong, and clients continue to enjoy consistent, predictable pricing.
  - The marketplace for large, self-insured excess WC placements can be extremely competitive after several years of market consolidation.

ISSUES & CONSIDERATIONS

- Monoline workers' compensation markets are losing business to markets that can offer solutions on general liability, automobile liability, umbrella, and property.
  - This is driving these markets to be increasingly competitive in an effort to combat the challenging landscape.
- Carriers have concerns about increasing WC exposures due to:
  - Hazardous energy control and machine guarding problems are becoming more commonplace with shorthanded employers and high production demands. These pressures can result in shortcuts. Employers should consider an audit of their controls that face these challenging conditions.
  - Staffing shortages resulting in diminished use of safety observation programs.
  - Employee fatigue from increased workloads.
- For private insurers, the workers' compensation combined ratios were 87% in 2020, marking the seventh consecutive year with an underwriting profit according to NCCI.
- Steady increase in exceptionally large losses, typically totaling $3M or more.
  - These claims usually arise from complex, life-altering injuries such as motor vehicle accidents and traumatic brain injuries.
  - New medical technology alone can inflate loss costs by 40% to 50% and is a key driver in mega WC claims.
  - Insurers are monitoring this phenomenon closely and paying special attention to industry sectors most likely to produce such losses (e.g., construction and mining).
  - While opioid use is declining, the problematic painkillers still account for close to 25% of workers' compensation prescription dollars.



OUTLOOK

- Expect rates to remain flat or slightly decrease during 2022 for most insureds unless specific account problems warrant underwriting corrections.
- Expect the competitive WC market to continue as carrier results are very profitable.
  - Workers' compensation continues to behave as the most stable coverage.
- Many companies are choosing to move to loss sensitive programs to offset fixed cost increases from other lines of coverage.

Umbrella

MARKET PRICING & TRENDS

- While rates continue to increase, new capacity is helping to stabilize the volatility.
  - Lead
    - *Low/moderate hazard lead umbrella rates continue to increase up to 20%.*
    - *High hazard lead umbrella rates may still increase 30% or more.*
  - Excess
    - *High hazard excess layer rates still have volatility with significant rate increases of 15% - 30% or more.*
    - *Low/moderate hazard excess layers are following increases similar to the lead up to +15%.*
- A two-tiered marketplace continues where challenged classes and/or insureds with lower attachment points see larger increases.
- Larger accounts are seeing the biggest increases in:
  - Habitational.
  - Retail.
  - Building products.
  - Transportation.
- For high-limit umbrella towers, virtually all renewals will require more carriers to secure the desired capacity.
  - The relativity of the price per million between layers will continue to compress, driving up cost.
  - "Look up" clauses are increasingly common as underwriters seek to ensure that their capacity is fairly priced relative to the layers above them.

ISSUES & CONSIDERATIONS

- Available capacity is improving in the excess liability market.
  - Total available/advertised capacity had declined from $2.2B in 2018 to $1.4B in 2021.
  - Actual deployed capacity increased to $950M, up from $690 M in early/mid 2021.
  - Jumbo $50M to $75M layers of the past are still uncommon. However, some carriers are beginning to deploy capacity throughout a tower with appropriate ventilation.
- With the new capacity entering the U.S. marketplace, mostly in towers above $25M limits, competition is increasing in excess layers since pricing levels are at all-time highs.
- The North American marketplace continues to be impacted by significant catastrophic liability losses. Main sources include auto accidents, sexual abuse/molestation, wildfires, opioid claims, active shooter and TBI (traumatic brain injury).
  - Combined ratios continue to exceed well over 100%.
  - Loss severity is also increasing. The average value of the top 50 U.S. verdicts in 2019 is estimated to be $88M, which is a 62% increase from 2018's average value of $54.33M.
  - Along with nuclear verdicts and social inflation, third-party litigation financing is now becoming more common. This allows plaintiffs to pursue expensive litigation they may have avoided in the past.
- For accounts with significant auto exposure, large trucking fleets or high hazard product exposures, loss sensitive, multi-year umbrella programs are available.
  - Minimum premiums for these programs are $500K-$1M.
  - An online rate of at least 10%-15% is another factor that warrants consideration.
  - These programs tend to run three years with return premiums available for favorable loss history.
    - *Return premiums include a commutation clause which should be closely reviewed for risks with difficult and/or long tail products exposure.*
    - *A variety of premium funding options are available including LOCs.*
- Exclusionary language is still being pursued by carriers regarding:
  - COVID-19.
  - PFAS and CBD.
  - Traumatic brain injury.
  - Sexual abuse and molestation.
  - Glyphosate risks involved with pesticide/herbicide application and distribution.
  - Odor exclusions now appearing on food processing and agricultural risks.
  - Opioids on accounts with retail exposure to opioid sales or healthcare-related exposures.

OUTLOOK

- Expect the challenging umbrella/excess marketplace to continue through 2022.
  - Underwriters now consider the working layers to be $100M or higher.
- Premium increases should decelerate as we move through 2022 into 2023.
- The trend toward supported lead umbrella capacity continues.
  - A strong unsupported lead umbrella market from the traditional umbrella market remains.
- Buyers continue to reduce their costs by purchasing fewer limits and increasing their retentions in primary programs.
  - This includes the use of a captive in program structure.
- The lead umbrella marketplace has corrected itself over the last few renewal cycles with respect to pricing and attachment points.
  - Most programs have now been exposed to the hard umbrella market for multiple renewal cycles and, while buyers still face increases, pressure to completely overhaul structure has diminished, and triple digit increases have greatly subsided.
- New capacity is evolving from London and Bermuda with most of these markets offering capacity higher up in excess towers.
- The Bermuda and London markets remain flexible in their appetites and will consider most classes of business at the right price and attachment point.
- True follow form excess is becoming increasingly difficult as carriers will insist on using their own verbiage for emerging risks.

INTERNATIONAL CASUALTY

MARKET PRICING & TRENDS

- The foreign casualty marketplace continues to experience flat renewal rates, although there is pressure to increase pricing on those with poor claim experience and/or weak underwriting information.
- Global carriers remain open to writing foreign casualty on tougher risks than their domestic counterparts.
  - The marketplace is currently very competitive for new client opportunities.
- Coverage written on a local level is stabilizing, although carriers are looking closely at underwriting information and results are often much more favorable to those insureds able to provide robust information.
- By region perspective:
  - Europe/Middle East/Africa
    - *The market is stable and competition is growing, resulting in carriers aggressively pursuing profitable coverage lines.*
    - *Underwriters are applying coverage limitations more aggressively, especially for poor performing risk types and/or risks without robust underwriting information.*
    - *To avoid price reductions, underwriters are instead offering other value-added alternatives such as changes to limits and deductibles.*
  - Latin America
    - *Market conditions have generally stabilized, but still vary widely based upon line of business, location, and risk profile.*
    - *Organizations with favorable risk quality, robust exposure detail and strong risk management practices are generally experiencing favorable conditions while poor performing risks are experiencing few options and a reduction in capacity.*
    - *Local authority is notably diminished as local market is requiring more extensive information.*
    - *Claim delays and negative responses remain a key concern.*
  - Asia
    - *The local market's focus is on cautious growth, which has stabilized rates.*
    - *Insurers are renewing existing capacity, but very little new capacity is entering the market to allow for expansion.*
    - *There is also a limited appetite for more difficult risks and those that require higher limits.*
    - *Underwriting scrutiny has materially increased as authority continues to transition to central teams.*
    - *Long lead times are key to successful program design and renewal pricing, with underwriters pushing to increase retentions.*
- For more difficult product classes, coverage may be available in local markets or through the global carrier's counterparts in foreign locations when it is not available in the U.S.
- Due to the continued unknown of COVID-19's impact on exposures, carriers are often requiring insureds to provide documentation related to their COVID-19 mitigation strategy.
- While carriers are examining risks with more thoroughness than ever before, they are also moving to more centralized underwriting teams, who in many cases now have the decision-making authority over the displaced local teams.

ISSUES & CONSIDERATIONS

- With material increases in rates and reduced capacity within the umbrella and excess markets on a global and now local level, insureds should consider partnering excess placements into a unified structure.
- Local policy placement, either through a controlled master program or stand-alone, has materially increased as both insureds and insurers intensify scrutiny on regulatory, tax, and compliance.
- In Germany, the industrial liability market has seen signs of hardening, although the impact remains low.
  - Recall obligations, new technologies, extended warranty/guarantee periods, increased testing and sorting costs following delivery of faulty products, among others, have resulted in significant damages over recent years and could impact pricing in coming years.
- Some recent legislative changes in India could have a material impact on the local insurance market.
  - The General Insurance Business (Nationalisation) Act 1972 has been amended to remove the requirement that at least 51% of the shares in the public sector insurance companies must be owned by the government.
  - This paves the way for privatization of one of the public insurers, with United India widely expected to be selected.
  - The government has approved a significant injection of capital into the state-owned ECGC (previously known as the Export Credit Guarantee Corporation) and a listing through an IPO, which is expected to take place during the 2022/23 financial year.
- Within the EU, there has been an increased focus from carriers on initiatives designed to optimize auto claim capabilities.
  - Aided by the dramatic decrease in auto claims during the pandemic resulting from fewer drivers on the road, insureds have looked to bolster their capabilities as communities and economies reopen and claims begin to rebound.
  - These strategic initiatives include transforming claim processes to improve customer experience, building digital capabilities, leveraging advanced analytics to improve decision-making, and reducing long-standing sources of leakage.
- Inflation and supply chain disruptions will affect claim costs and could result in rising rates, especially related to auto liability and physical damage, with anticipated increased pressure on claim costs from multiple sources.
  - Labor rates, margins on replacement products, and scarcity of materials will likely result in payouts higher than carriers had anticipated and may never return to pre-COVID levels.

OUTLOOK

- Market rates should remain stable with renewals on accounts with low claim experience to remain flat. Those with losses will see increases, but increased competition can offset the impact.
  - Expect renewal rates to increase from 0%-5%.
- Accurate and comprehensive underwriting information will play a pivotal role in determining the rates, retentions, and available limits for insureds, as carriers take a renewed and focused look at risks, often from a new team of centralized underwriters.

MARINE

MARKET PRICING & TRENDS

- Rate increases are dependent on loss history, risk exposure and loss prevention programs.
  - The domestic market rates for cargo continue to increase; however, not as severely as the prior 18-24 months.
    - *The marine market is stabilizing with the addition of capacity.*
    - *Minimum earned premiums have increased.*
      - *This has resulted in 50%-60% premium increases on good, loss-free, long-standing accounts.*
      - *Underwriters are unwilling to negotiate this item.*
    - *The domestic market prefers the quota-share policy design when policy limits exceed $10M.*
  - The London cargo market continues to look for increases with loss-free accounts of single to low double digits as it continues to improve portfolio profitability.
  - Stock throughput programs:
    - *Pricing in the London market has stabilized with some rate increases, but not as severely as the prior 24 months.*
    - *The domestic market is underwriting the risk with a property perspective and on a quota-share basis.*
    - *There continues to be limited appetite from the markets in writing stock throughput programs for certain commodities, such as pharmaceuticals, electronics, automobile, and cold storage.*
    - *Limits in excess of $10M will force a quota share as well.*
- Underwriting capacity varies between the domestic and London markets.
  - Domestically, the market is stable; however, strict structural guidelines have been implemented which include:
    - *Domestic markets have undergone restructuring and will no longer write certain marine liability risks.*
    - *Deductible levels remain steady except in high loss frequency accounts.*
    - *Annual adjustments are no longer waived.*
      - *Carriers have an ability to calculate the annual adjustment when clients are unable to provide data.*
  - The London market has seen a return of confidence and stability.
    - *The London market's capacity restrictions are easing due to the expected growth opportunities.*
    - *Carriers are bolstering their marine expertise through the hiring of experienced underwriters/teams.*
      - *Movement in terms of people has given some the opportunity to write/renew good profitable risks on an "as before" basis.*
    - *London continues to be able to offer "Full Limit Cat" coverage on placements for appropriate premium.*
    - *Deductibles remain steady with the exception in smaller risks where increases were required to reduce attrition.*
    - *Misappropriation coverage is becoming difficult to secure.*
  - Excess capacity remains challenging due to changes in the underwriters' risk appetite, loss history or the perspective that the lead market quoted premiums are too low.

ISSUES & CONSIDERATIONS

- Underwriting terms are greatly affected by:
  - Geographic territories of operations.
  - Products being shipped, as there is limited appetite for:
    - *Retail.*
    - *Electronics.*
    - *Perishables.*
    - *Pharmaceuticals.*
    - *Agricultural items.*
    - *Automobiles.*
  - Documented loss control procedures and recommendation completion.
  - Historical loss performance with five-year loss history is preferred.
  - New ventures and/or projects are not within market appetites.
- Major loss events affecting underwriting performance:
  - Wildfires in the western part of the country.
    - *Rail cars have been halted due to damages sustained to tracks, which has created a bottleneck of exports and delay of imports.*
  - National flooding, tornado, and winter storm events.
  - Congestion at U.S. and other international ports due to:
    - *COVID-19 pandemic.*
    - *Shortage of stevedores and truck drivers.*
    - *Loss events causing freight delays.*
  - China's strict COVID-19 lock-downs and coal shortage impacts electrical production in manufacturing facilities and has caused manufacturing sites to close, resulting in product delays.
  - Tornado losses throughout the southern U.S. (Kentucky) impacting stock throughput market.
  - Madrid Bridge container collapse incident - a loss of 60 containers overboard and 80 containers damaged – January 7, 2022.
- Lack of rail and truck capacity, warehouse space, ocean containers and port congestions are causing disruptions in the supply chain.
- Cyber exclusions and the amended process clause are being enforced with attention on pandemic (communicable disease) exclusion clauses.
- Tornado coverage is being aggregated as stand-alone or as part of the Windstorm with occurrence wordings replacing one-location limits.
- Trade restrictions and country sanctions will affect the supply chain/just-in-time transit exposures.

OUTLOOK

- Due to the appetite and capacity changes in both the domestic and London markets, pricing is experiencing a slowdown, but a large catastrophic event.
  - Most renewals will see moderate rate increases, with the variance based upon risk quality.
    - *Accounts underwritten in London will see increases below the double-digit rate increases of 2021.*
    - *Risks with challenging exposures and loss histories will receive increases above 25%.*
    - *Reinsurance treaties will continue to impact underwriting decisions for 2022.*
- The expected rise in insurance demands and rate handling for 2022 could break premium records.
- Global catastrophes will have an impact on all renewals going into 2022.
- Insurance carriers and syndicates will continue to be selective in their deployment of capacity as they look to manage loss ratios and revenue objectives.

ENVIRONMENTAL

MARKET PRICING & TRENDS

- Site pollution is under slight pressure; expect renewal pricing in the range of 3%-5%.
- Contractor pollution coverage pricing remains flat, between -2% to +2%.
- Due to the general liability component, combined forms may see rate increases averaging about 5% in the primary layer.
- Underground Storage Tank (UST) coverage for aged tanks (>25 years) is seeing significant increases in rate with 15%-30% increases in premium depending upon the number of aged tanks.
  - Clients with USTs > 40 years may be unable to secure competitive stand-alone commercial UST coverage.
- Excess coverage continues to see significant pressure, with increases in rate at 5%-10%.
  - Significant auto exposure and/or higher limits may result in increases of 15%.
  - Excess capacity is tightening – clients may require multiple carrier layers to achieve capacities over $10M.
- Areas where we see continued narrowing of coverage and/or increasing cost:
  - Healthcare and commercial habitational (hotels, resorts) are prohibited classes of business for some carriers due to continued poor loss performance (legionella and mold).
  - Programs with substantial mold risk and water treatment-related exposures.
    - *Recent claims related to construction defects may also affect contractor pollution coverage for relevant trade classes.*
  - Five- and 10-year programs for former industrial sites with planned redevelopment.

ISSUES & CONSIDERATIONS

- Federal Administration:
  - At the federal level, there is continued regulatory pressure and focused attention on climate change initiatives and environmental social justice concerns.
  - PFOAs (PFOS, PFAS):
    - *On October 18, 2021, U.S. EPA Administrator Michael Regan launched EPA's PFAS Roadmap.*
      - *This comprehensive strategy outlines concrete actions over the next three years.*
      - *This includes steps to control PFAS at its sources, hold polluters accountable, ensure science-based decision-making and address the impacts on disadvantaged communities.*
  - On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA) that specifically allocates $10 billion for emerging contaminants, including PFAS contamination in drinking water.
  - In late December 2021, California formally listed PFOS and PFNA and its salts as reproductive toxins under the Safe Drinking Water and Toxic Enforcement Act, commonly known as Proposition 65.
    - *Companies now have one year to determine whether to add or modify Prop 65 warnings for any products that contain any of the compounds covered by the listings.*
  - On January 10, 2022, the U.S. Environmental Protection Agency (EPA) initiated rule making activities to regulate two Per- and Polyfluoroalkyl Substances (PFAS) as "hazardous substances" under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund.
- Insurance/PFAS
  - PFAS are an excluded contaminate for broad categories of manufacturing, landfills, and water treatment facilities.
  - Increased claims related to PFAS ("re-opener" triggers) at contaminated sites and potential third-party claims at non-owned disposal sites.
- Insurance/ESG Corporate Policy
  - Market sensitivity to fossil fuels exposure is leading to reduced capacity.
  - Many major insurers may non-renew clients that are significantly involved in fossil fuel related use or production.
  - Carrier goals vary, but expect reduction in capacity in 2022 and 2023.
- Pollution insurance related to lending, finance, and Mergers & Acquisitions:
  - ASTM International approved an updated version of ASTM E1527, the standard governing Phase I environmental site assessments (ESAs).
    - *ASTM E1527-21 became the effective standard of practice November 16, 2021.*
    - *EPA has up to a year to adopt the new E1527 references; however, from a practical perspective, this update is effective immediately and should be considered by your environmental consultant.*
  - Key changes and items to consider in ASTM E1527-21.
    - *Clarifies existing language and strengthens the deliverable.*
    - *Prior Phase I Reports are valid for up to 180 days, with day one beginning at first inquiry, not the date the report was issued.*
    - *Those relying on an earlier Phase I report for their real estate closing must stay aware of the effective date as new definitions under the new standard could change conclusions.*
- Expect explicit exclusions or limiting language for viruses for all accounts.
  - Disinfection costs are being managed with some combination of sub-limits, increased retentions, and strict language limiting coverage to "facility borne" viruses and bacteria.
  - COVID-19 specific exclusions are attached to many renewals.
    - *Carriers are also attaching broad exclusions for communicable diseases if not contained within the policy form.*
- Shorter policy terms and increasing use of third-party restricted coverage for aged petroleum or chemical operations with pre-existing conditions coverage or old retroactive dates.

OUTLOOK

- Expect sustained rate and/or coverage pressure in the following sectors:
  - Indoor air quality (mold, legionella); especially related to healthcare, extended care, public entities, and habitational-related properties.
  - Redevelopment of former industrial sites.
  - Water treatment and supply.
- There is adequate capacity and robust competition for most lines of coverage.
  - Site pollution premiums and coverage will vary based on class.
  - Continued pressure on habitational risks, medical facilities, and sites or operations with potential PFAS exposure.
  - Combined products will be largely driven by rate increases to the GL component.
  - Clients with good loss histories can probably mitigate increases by competing their renewal programs.
  - Excess coverage is under additional pressure, resulting in potential rate increases of 7%-10% on combined forms.

SURETY

MARKET PRICING & TRENDS

- According to the Surety and Fidelity Association of America quarterly report, underwriting results deteriorated slightly between the second quarter of 2021 and the third quarter of 2021, as the top 100 writers of surety had a direct loss ratio of 17.2% for the year, as compared to 15.5% through the second quarter.
- Despite the use of PPP funds only the quality companies will be left standing, with expected stress on the commercial building and real estate markets because of reduced need for office space.
- Many surety companies have become increasingly uncomfortable with the impact of COVID-19 on clients' financial plans, bank relationships, and potential business interruption.
  - Skilled labor continues to be a significant challenge for contractors.
    - *Contractors also report a moderate to high level of concern meeting the compensation of skilled labor costs due to the high demand.*
  - Manufacturers are increasingly under pressure to meet deadlines which is causing adverse impact on project completion dates and is now triggering the surety bond obligation and guarantee.

ISSUES & CONSIDERATIONS

- While bank letter-of-credit rates continue to decrease causing direct competition with commercial surety bonds, some clients are facing reduced access to LOC facilities.
  - In response, products such as bank-fronted surety have emerged in the United States.
  - In this structure a bank issues a guarantee on behalf of the client, in the form of a letter of credit, typically for obligations where a bond is not traditionally an accepted form of financial assurance or security.
  - If the client fails to meet its obligations, the beneficiary will draw on the client's letter of credit and the bank would subsequently turn to the surety company to be made whole.
- Consequential damages are becoming increasingly more visible in the underwriting process, particularly with contract surety. These are damages which flow indirectly from a breach of a contract and cannot be quantified until the nature of the default is known.
  - Navigating this contractual language is essential, using provisions such as waiver of claims for consequential damages, determining the definition and/or capping the liability with a dollar value or percentage.
- Surety companies are taking a harder look at liquidity, working capital, and bank relationships for these clients.
  - Regardless of the state of the nation, surety underwriting fundamentals remain a constant.
  - Sureties are seeking opportunities to support firms with long-term game plans which include built-for-success business plans.
- Consideration for Force Majeure bond riders specific to pandemics, including time extensions and equitable adjustments to contract pricing, is recommended for contract surety bonds.
  - This must be incorporated into the contract to be enforceable.
  - When Force Majeure is not incorporated, consideration should be given to the common-law legal doctrine of Frustration of Purpose.
  - This is generally invoked where neither party to the contract is at fault for an unexpected event.
- Choice of Law & Venue language in a construction agreement can have significant impact.
  - This allows your legal firm to represent you in a familiar location governed by a chosen state or federal law region.
- Warranty & Maintenance contract provisions are cropping up again among various public entities which fall under The Little Miller Act.
  - Some of the language is targeting product or work defects, mixing insurance matters into contract bond obligations, including long-term warranties up to 10 years.
  - These warranties pose significant issues for surety and in most cases cannot be undertaken.
- Contract surety underwriting consideration for contractors who rely heavily on working capital bank line support for funding operations is influencing and impacting the willingness to provide surety credit based on bank on-demand contractual language.
- Contract surety emphasis heightened regarding joint venture partnerships, subcontractor qualifications, project scheduling and price escalation provisions.

OUTLOOK

- The overall valuation of the surety market is expected to grow at a CAGR of 6.4% by 2027 due to the failing infrastructure of utilities in need of retrofit.
- Despite the considerations at stake with material and labor shortages, construction contractors are optimistic about increased construction revenue through 2022.
- Electronic bonding has been gradually transitioning over the years with obligees and contractors implementing the various programs which are most advantageous for expediency. The unexpected advent of COVID-19 changed the urgency, particularly with the remote workforce.
  - Most, if not all, jurisdictions have adopted laws that make electronic signatures legally valid.
  - This methodology should eliminate the issue of unauthorized bonds and cut down on forgery.

MERGER & ACQUISITION | TRANSACTION SOLUTIONS

MARKET PRICING & TRENDS

- 2021 was a record year for M&A activity and Representations and Warranties/Tax indemnity insurance placements.
- Many of the underlying issues that triggered the increase in activity in 2021 have carried over into 2022.
- RWI continues to be an integral part of how deals will get done more efficiently.
- Pricing remains in the vicinity of 3.0 – 4.25% of the RWI policy limit.
  - The average base Rate On Line (ROL) increased by 50% during 2021.
- Pricing continues to be influenced by:
  - Financial condition of the target.
  - The quality of due diligence.
  - The industry/target's nature of operation.
- The underwriting appetite and pricing for target companies with an Enterprise Value (EV) of less than $50M continues to suffer due to inadequate due diligence.
- Policy limits will continue to structure at 10% of the deal's EV and can increase depending on the deal's characteristics.
- Retentions remain 1% of the EV.

ISSUES & CONSIDERATIONS

- Underwriters remain resilient and consistent, and we expect this will continue to be a sharp focus:
  - The experience of the transaction team and their selected third-party diligence partners.
  - The target's financials.
  - COVID 19 and related variant impact.
  - Regulatory matters.
  - Supply chain exposures.
  - Perpetuation of material customer contracts.
  - Cyber/privacy.
  - Intellectual property.
  - Property/casualty insurance protection.
  - Environmental exposures.
  - Employment practices including wage and hour exposures,
  - Pension withdrawal liability,
- Underwriters will be monitoring the types of claim notifications in relation to the record-setting transaction year and coronavirus environment.
- The window of claim reporting continues to remain in the range of 6 to 18 months post-closing.
- The top five areas of claims are expected to continue to trend around historical norms:
  - Financial statements.
  - Material contracts.
  - Tax-related matters.
  - Regulatory matters.
  - Employee-related.
- Uncertainty relating to pending/proposed changes to federal and state tax laws is expected to have an impact on M&A activity in 2022.

OUTLOOK

- In Q1 2022 the RWI rates are projected to remain stable after a year of record highs in 2021.
  - We project limited movement in Q1 rates due in part to transaction closing extensions.
  - As in the case of traditional lines of risk transfer insurance, the 2022 standard rates may be adjusted based on the quality of the diligence (underwriting) and loss experience.
- The claim activity for 2022 is expected to remain at approximately 20% (one out of five RWI placements).
- In anticipation of another active year of M&A activity, RWI underwriters have expanded their underwriting teams in order to respond to the anticipated deal activity and to be better prepared to avoid bandwidth and capacity restraints experienced in 2021.
- The RWI market continues to evolve to meet buyers' and sellers' expectations.
- Sufficient insurance capital will be deployed to meet the anticipated demand for RWI in 2022.
- There are over 20 domestic markets committed to RWI/ transactional risk insurance solutions.
- We anticipate a significant portion of M&A activity will be influenced by the emerging relevance of ESG.
- Despite the uncertainty related to the continued impact/concern of the COVID-19 pandemic, 2022 digital transformation will drive deal selection.
  - Strategic buyers and PE sponsors will place emphasis and demand for technology-enabling businesses.
- Industry sectors that are expected to see significant activity are:
  - Technology.
  - Biotech.
  - Media.
  - Telecommunications.
  - Pharmaceutical.
  - Healthcare.

ABOUT HYLANT

WHAT WE STAND FOR

Through hard work, honesty, respect, empathy and a focus on family, we have built a culture that allows people not only to work, but thrive, and created an environment where ideas can bloom and success can flourish.

HONESTY

Being honest with ourselves and others builds trust. It allows people the assurance to work with us and strengthens our relationships, which is key to our success and the success of our clients.

EMPATHY

Putting yourself in someone else's shoes promotes a positive, optimistic and productive environment. Walking together allows you to walk further.

FAMILY

We are a family-owned business, and as such we treat our employees, clients and members of our community like family. And that means having your back, no matter what.

RESPECT

We embrace each individual's unique talents and honor diverse backgrounds, experiences and approaches to ideas. We treat people the way we'd like to be treated, showing them respect and earning it back along the way.

HARD WORK

Being passionate and working hard produce character in ourselves, excellence in our products and peace of mind for those who depend on our services.

MEET YOUR HYLANT RISK & INDUSTRY ADVISORS

KIP IRLE
Alternative Risk/Private Equity

LISA HAWKER
Employee Benefits

MIKE UGLJESA
Hylant Administrative Services

ANNE MARIE TOWLE
Global Captive Solutions

MARK HOLLOWAY
Small Business/Personal Insurance/ Private Client

JONATHAN BAIR
Casualty

BESS RUMMAN
Property & Marine

DON BRYANT
Environmental Risk

SANDRA CARROLL
Executive Risk

ALEX CLARK
Cyber Risk

WILL WALKER
M&A | Transaction Solutions

NICK MILANICH
Professional Liability/Cyber Risk

TOM KELSEY
Global

KATHY ZACK
Surety

MATT MORRISON
Surety

CRAIG MARKOS
Claims

STEVE GROOS
Property Risk Control

SEAN MAJEWSKI
Casualty Loss Control

LARRY PIERCE
RMIS Analytics

STEVE HYLANT
Real Estate

KENT BROWN
Transportation

JEANNIE HYLANT
Hospitality & Franchise

MICHAEL CREMEANS
Life Sciences

BILL WOLFF
Construction

TODD HUGO
Japan

JESSICA XIE
China

SHERRY GONZALES
President, Property & Casualty

PAT MCDANIEL
Chief Executive Officer, Specialty Services

JOE WIELIGMAN
Chief Operating Officer, Property & Casualty

TODD SCHRECK
Strategic Growth Leader, Property & Casualty

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