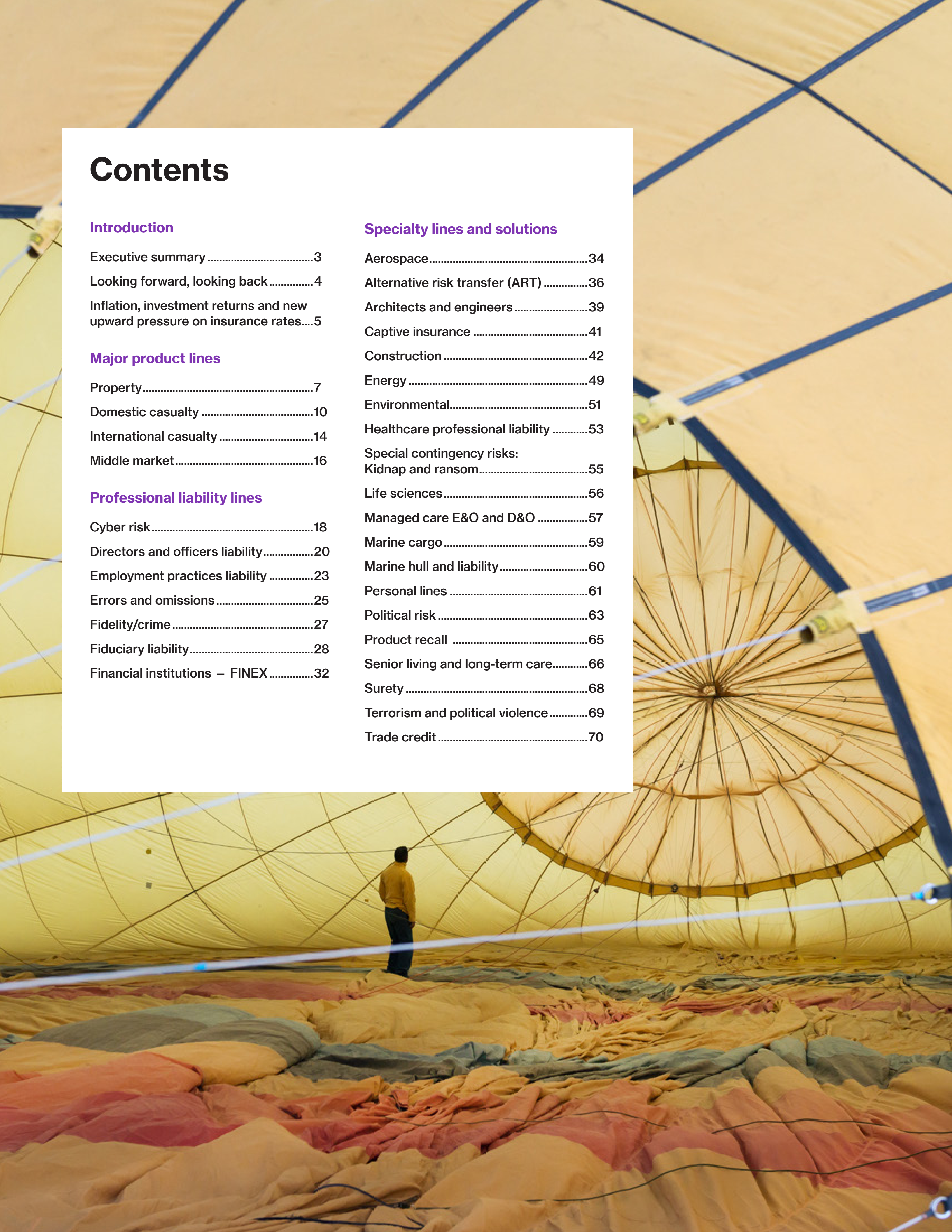
Insurance Marketplace Realities

2022 Spring update



Contents

Introduction

Executive summary 3

Looking forward, looking back 4

Inflation, investment returns and new upward pressure on insurance rates 5

Major product lines

Property 7

Domestic casualty 10

International casualty 14

Middle market 16

Professional liability lines

Cyber risk 18

Directors and officers liability 20

Employment practices liability 23

Errors and omissions 25

Fidelity/crime 27

Fiduciary liability 28

Financial institutions – FINEX 32

Specialty lines and solutions

Aerospace 34

Alternative risk transfer (ART) 36

Architects and engineers 39

Captive insurance 41

Construction 42

Energy 49

Environmental 51

Healthcare professional liability 53

Special contingency risks: Kidnap and ransom 55

Life sciences 56

Managed care E&O and D&O 57

Marine cargo 59

Marine hull and liability 60

Personal lines 61

Political risk 63

Product recall 65

Senior living and long-term care 66

Surety 68

Terrorism and political violence 69

Trade credit 70

Executive summary

Resilience amid disruption

If you're looking for precedents for what's facing our world and our industry today, you have to go back decades. It's been over half a century since large-scale armed conflict broke out in Europe. It's been decades since inflation hit levels we're seeing now. It's been over a century since the world faced a deadly pandemic, an ordeal we all hope is in its last significant chapters. In short, you have to go back a long way to find a moment with commensurate levels of disruption.

As the crisis in Ukraine continues, our first thought is about the resulting humanitarian crisis. With civilians suffering, the number of refugees swelling, and the hopes of a quick negotiated peace disappearing, our hearts go out to all those impacted by this tragic turn of events. Our second thought is about how we help our clients manage their personnel, investments, operations and businesses in this region. The global economic impact of the crisis and the sanctions against Russia is still a big unknown. In terms of insured losses stemming from the crisis, we estimate now that P&C insurers could be looking at something close to $15 billion. That's a big number, but to put it in perspective, 2021 brought over $130 billion in insured catastrophic losses.

Turning to inflation and the overall prospects for the North American economy, there are several factors at play. Some indications point to a leveling of inflation, but common household costs keep climbing – just ask anyone filling up their car at a gas station. Meanwhile, the future of interest rates adds to the uncertainty. The Fed is raising rates, as national economic attention moves from the pandemic to rising prices, but how fast and how far rates will go up remains to be seen. Other indicators give cause for concern. Home mortgage application recently fell to their lowest point in two years. The overheated home real estate market that took hold in the pandemic may be cooling off, and perhaps other parts of the economy will pull back with it.

These broad economic trends of course impact the P&C industry, and for more detail on how all that might play out, we include the article below, "Inflation, investment returns and new upward pressure on insurance rates from some of our industry analysts." But in the bigger picture we're happy to offer a bright spot in this otherwise dark moment in history. By several key measures, the insurance industry is in a better position than ever. Policyholder surplus has surpassed a rather astonishing one trillion dollars. Net income is at unprecedented levels. Return on equity (ROE) for insurers is also up significantly. The industry is more than ready to handle the $15 billion in losses the Ukraine crisis could yield.

For buyers, the marketplace still has its challenges, especially for less attractive risks. Rates are still going up in most lines, as reported below. But in most lines, increases continue to decelerate, and the market is stabilizing. The solid foundation for insurers should ultimately bode well for insureds.

Of course, much could change in the next six to 12 months. Disruption and uncertainty are the watch words of the day. But in our world, there's another watch word: resilience. In fact, that summarizes what we do for our clients: offer the perspective to respond to uncertainty, disruption and risk and help them keep moving toward resilience.

Jon Drummond
Senior Editor, Insurance Marketplace Realities
Head of Broking, North America
+1 312 288 7892
jonathon.drummond@willistowerswatson.com

Looking forward, looking back

The most eye-catching story when it comes to insurance rates remains with cyber. While the hard market gradually loosens its grip, cyber rates continue to spike – and spike higher. Last fall we predicted increases of 50% to 150%. Now we are forecasting 100% to 200%. Outside of cyber, conditions are slowly improving for commercial insurance buyers in North America. Increases are still the norm, but the deceleration of those increases is now at the point where a fair number of insureds can expect single-digit increases or even flat renewals for the first time in several annual cycles – as long as they can present a compelling risk picture to the marketplace.

We are, of course, a long way from a soft market. This issue marks the fifth in a row where the number of lines predicting rate decreases has come in at zero. Experts in 26 of our now 33 lines of coverage (we added architects and engineers this issue) are predicting that most buyers will face increases. But even here there are some breaks in the clouds: eight of those lines put the bottom end of their rate prediction at flat increases. And in 13 lines, half of the 26, the increases are forecast to be smaller.

Here are highlights from our spring 2022 predictions:

- Property is one of the lines where the bottom end of the rate prediction is flat – down from +2% to +10% for better risks. Less attractive risks can still expect to see +15%.
- Liability increases are expected to dip modestly, from a range of +5% to +12.5% to a range of +4% to +10%.
- Similarly, predictions of umbrella increases dipped (from a range of +10% to +30%) to <+20% for high hazard risks and from <+20% to <15% for low/moderate hazard risks.
- D&O is forecast to see some rate *decreases* in some best-case situations for the first time in several issues of this publication.
- Three lines that have been forecasting rate increases but now include the possibility of flat renewals are fidelity/crime, energy and D&O for financial institutions.
- Two lines moving in the opposite direction are terrorism and trade credit – perhaps not a surprise given the crisis in Ukraine. In these lines, predictions of small decreases for some have given way to predictions for flat renewals at best for trade credit, and increases in double digits for many buyers of terrorism and political violence cover.
- Similarly, two lines are calling for higher increases than in the fall edition: personal lines and life sciences.

In short, buyers will still be paying more for their insurance in most cases. But in most lines, with the notable exception of cyber, improvement is expected to continue through 2022 – unless inflation and/or the crisis in Ukraine end up turning the direction of the marketplace.

Market trends: lines facing increases, decreases or a mix*

Marketplace Realities issue	Decreases	Increases	Mix/flat
2022 spring update	0	26	7
2022	0	24	8
2021 spring update	0	30	1
2021	0	29	1
2020 spring update	0	23	5
2020	2	20	5
2019 spring update	2	14	9
2019	2	14	9
2018 spring update	2	10	10
2018	7	7	9
2017 spring update	10	6	7
2017	10	6	7
2016 spring update	9	8	5

*The 2022 spring update includes architects and engineers (A&E) for the first time. The 2022 edition includes middle market as a separate line of business. The 2021 spring update figures include marine hull/liability and marine cargo as separate lines. The 2021 figures include life sciences and alternative risk transfer predictions for the first time. The 2020 spring update figures reflect the addition of managed care errors & omissions as a separate line of business. The 2020 figures reflect the addition of personal lines and financial institutions as separate entries. The 2019 figures reflect the addition of marine, cargo and senior living/long-term care as separate lines of business. The 2018 spring update figures reflect the absence of marine in that issue; the 2017 figures reflect the addition of international coverage as a separate line, and the 2018 figures reflect the addition of product recall and the subtraction of employee benefits, which are no longer covered in this report. Casualty lines are discussed in one combined report but are included in this table as separate items (GL, umbrella/excess, auto and workers compensation).

For more insight on how you can prepare for a challenging marketplace, contact your local WTW representative.

Inflation, investment returns and new upward pressure on insurance rates

Our industry is indeed in a moment of great uncertainty. As of April 2022, the financial markets have been buffeted by several trends in addition to the crisis in Ukraine. A consensus is building that their combined impact on inflation will be more than transitory. We now seem to be on the cusp of a new era of higher interest rates and, for a time, higher inflation. A key question is for how long?

Higher interest rates and higher inflation generally lead to both moderate claims inflation, and in the near term, depressed investment returns – although higher interest rates will increase yields for invested premiums, they will also lower the value of fixed-rate bonds. These factors in turn lead to higher pricing in insurance markets, particularly in specialty business lines where replacement costs are driven by the prices of commodities and labor costs – both of which are rising.

Inflation expectations always encompass uncertainty. We outline three potential scenarios.

- The most benign is a transitory short spike in inflation, as labor and manufacturing bounce back quickly to meet post-pandemic demand levels. Given the elevated consumer price index reports for the last five months, this appears unlikely if not impossible.
- A stronger case can be made for a medium-term (two-year) rocky period of elevated inflation, as industrial activity (oil wells and mines, global manufacturing and cargo) and recalibrating labor markets get back in sync in a fast-moving global economy.
- A less likely case, in our view, includes a sustained period of higher inflation or stagflation. This would only come about if reaching a new equilibrium in material and labor markets takes longer than expected.

Regardless of how long and intense this period of inflation turns out to be, we expect it to have an impact on the insurance marketplace.

Rising rates and shrinking balance sheets

In response to inflationary pressures, the Federal Reserve has begun tightening monetary policy and raising interest rates. Many in our industry have not experienced such conditions.

From 2008 to 2015, the central bank, in response to the Great Financial Crisis – kept short-term rates just above 0% to spur growth and fortify damaged bank balance sheets. This significantly increased the money supply. Keeping rates so low for so long while growing the money supply raised the possibility of inflation.

By early 2016, the Federal Reserve began modestly raising rates, which appeared to be helping both to maintain economic growth and tame inflation expectations. Then, in March 2020, the global pandemic intervened to literally send everyone back home, close city centers, and shutter the economy as we knew it. The U.S. government injected a huge amount of money into the economy. The pandemic led to other economic turns as well.

A truly global event

The COVID-19 pandemic impacted mortality rates, mental and physical health and the worldwide economy. Now, with vaccination rates up and the pandemic hopefully waning, the economic aftereffects of the pandemic are becoming apparent.

As demand rises, there is supply-side impact as well.

Supply chain disruptions combined with reduced output levels at manufacturing facilities have decreased the supply of many industrial goods. The pulse of new and unplanned-for demand, along with the depressed supply, has shocked markets and led to significant upward pressure on prices.

This spike in demand has affected the auto, construction, and metal industries in particular.

The pandemic also brought a significant shift in the labor market. In the great resignation, as many as 4.5 million Americans left the workforce. With the economy opening back up and sparking more demand for labor, we are seeing modest to significant upward pressure on wages.

The combined effect of these economic and social forces would have been enough to push prices up. Then another unexpected event took place: Russia sent its armed forces into Ukraine.

Another global event

The ongoing crisis in Ukraine is clearly taking an unimaginable humanitarian toll. However, Russia is also a major energy supplier to Europe, and Russia and Ukraine together represent an important percentage of global wheat harvests. This energy disruption has helped push the price of crude oil from the $70 per barrel in December 2021 to nearly $120 per barrel in early March 2022.

The capital markets have experienced significantly higher levels of volatility, higher credit spreads and now a flattening of the U.S. yield curve. The latter is often seen as a predictor of an upcoming recession. Clearly, any sustained period of higher oil prices will increase the likelihood of a recession and hurt risk asset investment returns.

Impact on insurance

Impact on claims. A potentially short- to medium-term pulse of higher inflation will likely have a significant impact on expected claims, particularly for specialty lines, such as aerospace, commercial auto, construction, energy, marine cargo and marine hull. Increases in material replacement and repair costs, including labor costs, should be expected to a significantly raise insurer projections of future expected claims.

Impact on investment returns. The first of a likely series of rate hikes by the Federal Reserve has lifted short- to medium-term interest rates. The resulting higher yields for new investments may well be offset by the expected losses due to further increases in rates over 2022. Increased interest rates improve reinvestment yields for new premiums, but also reduce the value of the existing bond portfolio. The extent of this reduction will depend on the investment strategy employed, realization requirements and the accounting treatment of the portfolio. Additionally, the specter of higher inflation could lead to lower than expected or negative equity returns. Low projected returns across both bonds and equities for 2022 and 2023 due to the expected future increases in interest rates would obviously depress the investment returns across the investment portfolio for insurers.

Impact on pricing. Insurers facing claims inflation and depressed investment returns will likely consider higher and differentiated renewal prices.

These increases will depend on the tenor of the claims exposure. For shorter claims, conditions might benefit to some degree from slightly higher investment return assumptions due to higher yields, Medium-term to longer claims will be exposed to the higher risk associated with greater investment losses from medium-term bonds, as well as potentially depressed investment returns overall.

Insurer's prices may well reflect and anticipate both the higher expected claims inflation and lower expected investment returns, driving prices higher. The extent of the increases will depend at least in part on the impact of inflation dependency of a given claims stream.

Most of the lines in this report are predicting a continued easing of price increases, as the hard market of the last couple of years abates. But upward price pressures remain.

What to look for in 2022 and beyond

In addition to keeping an eye on the economic trends outlined above, policyholders can and must analyze their risks carefully and consider which risks they are willing to self-insure or alter coverage to address exposure to higher loss possibilities. Additionally, policyholders should assess the level and size of coverage required as asset prices and replacement costs may have risen. Buyers should engage in discussions with their insurers early on to avoid surprises in this highly uncertain and volatile period.

Ashwin Belur, BA, MSE, MBA
Director, Insurance Investment Team
+44 20 7170 2467
ashwin.belur@willistowerswatson.com

Jon Drummond
Head of Broking, North America
+1 312 288 7892
jonathon.drummond@willistowerswatson.com

Property

Rate predictions

Non-challenged occupancies: Flat to +10%

Challenged occupancies: +15% or more

Rate increases continue to decelerate, but the current inflationary spike in insurable values will sustain premium updraft.

Premium pain will continue through 2022, but premium increases for most insureds will likely be driven more by inflation raising insurable values than by increases in rate.

- The market is at an inflection point, whereby insurer balance sheets have been strengthened, and rate levels are beginning to keep pace with loss costs. As a result, rate increases will continue to slowly moderate throughout the year for most insureds.
- The bifurcated state of the market remains, as underwriters continue a highly discriminating approach to risk selection and pricing. For challenged occupancies – such industries as forest products, metals, waste management and food and beverage, and insureds with losses, protection challenges or cat exposures – double-digit rate increases are likely. On the flip side, those accounts that have performed well from a loss perspective, have reached a level of rate adequacy and have monetized retentions to rid themselves of attritional loss effects will find themselves in an advantageous position, with over subscription across all layers of the program becoming common.

Insured natural catastrophe losses for 2021 are estimated at $105 billion to $120 billion, according to several sources, making it the third highest nat cat loss year since 2011.

- While there was no mega event, the accumulation of catastrophes, which included hurricanes, floods, tornados and freezes, well exceeded the $70 billion average annual loss since 2011. So-called secondary or non-modeled perils contributed significantly to the industry loss record yet again. These perils include flood, tornados, hail, extreme temperatures, winter storms and wildfires.
- Whether attributable to climate change or greater insured values being in harm's way, the frequency and magnitude of these loss events are an increasing component of loss costs that must be priced for.

Valuation of assets used to produce a schedule of values will be the marquee issue for property insurance buyers this year. Without proper valuation, insureds may find themselves underfunded for retained risk, not properly purchasing adequate cat cover or setting sublimits improperly for key coverage elements.

- The challenges in asset valuation are set against a background of climate change-related natural disasters that have become more frequent and severe. This potential new normal could render current cat modeling out of date.
- Other factors include the global pandemic, which has caused severe supply chain issues from availability/price of materials, a shocking shortage of skilled workers in the labor market and longer-duration business interruptions.
- In determining replacement costs, no factor has more potential significance than inflation. According to a recent report, four leading construction cost indices saw upswings for the U.S. as of January 2022:
  - Marshall & Swift: +16% to +24.53%
  - RS Means: +15.83%
  - FM Global: +18.4%
  - ENR: +13.94%
- Property premiums are determined by a simple formula: rate X value. Although value derivation may be more fact- and data-based than rate, it is still a negotiation. However, proper, reliable asset valuation is essential. Accurate modeling outputs will help with setting of limits, deductibles, business continuity planning, claim adjustment/payment and, ultimately, pricing.

- While many buyers are concerned that underwriters will use the valuation issue as a reason to push for increased premiums (after three years of sustained rate increases for many), underwriters counter that changing valuations help determine probable maximum and/or maximum foreseeable losses as well as the return period loss estimates produced by catastrophe models – and must be part of their equation.
- Many underwriters recognize the factors at play causing spikes in values and will to some degree have an open mind on the issue. Some underwriters may be agreeable to trading rate for value to some degree, while others may be agreeable to a stair step, multiyear approach to getting the values right.
- For buyers perceived by the market as presenting inaccurate or out-of-date values, underwriters will push for the imposition of potentially claim-limiting clauses, such as the occurrence limit of liability clause, which restricts recovery to no more than 100% of the values reported for each location (thus negating the blanket aspect of most policies) and margin clauses, which similarly restrict recovery for the value reported for each location but add a buffer, typically of 10% – 25%.
- Some underwriters may also ask for an increase in deductibles commensurate with the spike in insurable values.
- As a result of the focus on valuations, many buyers may wish, or in many cases, be compelled to get an independent appraisal. This approach should go a long way toward providing the carriers with some concrete value accuracy and a comfort level when assessing an insured's risk.

Treaty reinsurance renewals were late to finish on January 1 and show signs of continued rate firming and withdrawal of capacity from catastrophe lines.

- Retrocessional markets and insurance linked securities (ILS), which play an important role in catastrophe reinsurance, held back capacity and were looking for a greater return on capital.
- Insurers will need to absorb these additional reinsurance costs, or more likely, attempt to pass them through, at least in part, to insureds.

COVID claims related to business interruption losses currently being litigated have thus far been substantially decided in favor of insurers.

- There are still hundreds of cases wending their way through the courts, and final outcomes are still years out.
- As insurers appear well-reserved for these potential claims, and infectious disease exclusions in property policies are now universal (like cyber exclusions), any further direct pricing impacts from COVID-related issues on property policies appear to be in the rear-view mirror.

Contingent business interruption exposures still concern underwriters due to continuing supply chain/ logistics constraints, lack of exposure information and unexpected losses.

- As a result, sublimit reductions are being imposed as well as requirements to fully name key customers and suppliers.
- Better data relating to contingent exposures leads to better outcomes in retaining customary sublimits.

Insurers are focused on perils that have increased in recent years.

- Given the frequency of severe convective storms (SCS) that continue to plague the southern U.S. along with wildfire in the west, carriers will continue to scrutinize these exposures and exert greater pressure to implement tornado/ SCS/hail and wildfire percentage deductibles, though they have yet to be mandated across the board.
- The spate of violent political events that occurred in 2020 and 2021 and sadly continue today reinforces the underwriter's desire to maintain vigilance around the peril of strikes, riots and civil commotion (SRCC). Many insureds may find this peril sublimited or, in some cases, subject to higher deductibles, particularly for retail risks.

Underwriters continue to push for the implementation of company/carrier policy forms in lieu of manuscript policies.

- Carrier forms typically appear to be more standard in the single carrier universe, but on large shared and layered accounts, the manuscript remains the most common approach.
- In some cases, carriers will assert that a broader capacity offering can be garnered with a company/carrier form, but cracks in the armor are appearing.

What can insureds do to prepare for upcoming renewals? The simple answer is that the need to differentiate risk has never been greater. Property is not a one-size-fits-all market; carriers are scrutinizing submissions more closely than ever. Key elements for a successful renewal are:

- Start early and take control of the renewal with a commitment to broad data collection and data quality.
- Increased information will help buyers more accurately model any changes (e.g., reduction in limit or increased retention) and help assure that risk management strategies reflect organizational risk appetite or corporate philosophy.
- Analytics provide important guidance as buyers align offerings in the marketplace to their rapidly shifting risk transfer needs. Cat modeling should be conducted annually at a minimum but, certainly, additional runs should be sought if substantial exposure changes present themselves during a policy term.
- Insureds should also consider alternative structures, such as parametric programs, to complement a traditional insurance plan. A parametric contract could provide immediate liquidity in the event of a covered loss while the loss adjustment for the traditional program is processed.
- Buyers need to distinguish themselves from their peers, especially in challenged occupancies. Risk managers must help tell this story and provide the necessary data to satisfy underwriters' insistence on robust underwriting information.
- Underwriter meetings are encouraged; telling a story of mitigation efforts, improved loss control measures and disaster recovery/business interruption plans remains critical in differentiating a buyer's risk. Risk managers need to manage stakeholder expectations as rate increases continue; they should consider creative solutions and alternative structures to mitigate the total cost of risk.

Contacts

Scott C. Pizzi
Head of Property Broking, North America
+1 908 517 6876
scott.pizzi@willistowerswatson.com

Gary Marchitello
Chairperson of North American Property Practice
+1 212 915 7914
gary.marchitello@willistowerswatson.com

Domestic casualty

Rate predictions

General liability: +4% to +10% or more

Automobile liability: +5% to +12.5% or more

Workers compensation: –2% to +4%

Umbrella liability:
High hazard: <+20%

Low/moderate hazard: <+15%

Excess liability:
High hazard: <+15%

Low/moderate hazard: <+10%

The primary commercial liability marketplace remains stable, with workers compensation continuing to be the most favorable line of coverage for buyers. The umbrella and excess liability market has dramatically improved, with recent renewals yielding the lowest quarterly rate increases since the onset of the hard market.

External forces could play a big role in insurer results and hence in the insurance marketplace.

- One of the big unknowns for the rest of 2022 is what impact increases in interest rates and inflation will have on insurance rates, both individually and in the aggregate.
- Inflation, recently accelerating past 7%, is driving up claim costs in everything from medical bills to motor vehicle repairs and may outpace any investment income improvements resulting from anticipated Federal Reserve increases in interest rates.

Factors positively impacting the umbrella/excess casualty market include increased deployment of available capacity, new excess carrier entrants and capacity, and programs that were previously amended to mitigate rate increases during the height of the hard market now being better positioned to attract competition at renewal.

- We continue to trade risk in a two-tiered marketplace, where challenged classes and/or lower primary attachment points see greater increases.
- Excess capacity is being procured at somewhat more competitive rates – particularly when compared to what we experienced in the first half of 2021.
- Buyers have reduced their costs during recent renewals by procuring less excess coverage and increasing their retentions. We expect better conditions going forward.

Conversely, several broad factors continue to drive ongoing concern within the overall casualty market.

- Inflation and its impact on claim costs
- Interest rates
- The marketplace facing considerable uncertainty around litigation in a post-pandemic world
- Continued increases in third-party litigation financing
- Continued social inflation:
  - Jury pools are desensitized to vast monetary values.
  - Wealth disparity has an impact on loss ratios: jury awards trend higher in geographic areas with greater levels of income inequality.
- Carriers questioning and reevaluating reserve adequacy
- Carriers asserting coverage limitations and changes in treatment of defense for high-hazard industries
- Continued liberal class action certifications
- Nuclear verdicts and catastrophic liability losses garnering significant punitive awards

Lead umbrella and excess liability renewal results have significantly improved with rates rising at a decreasing rate – a trend that began in Q2 2021.

- The lead umbrella market has largely corrected itself over the last few renewal cycles with respect to pricing and attachment points.
  - Most programs have now been exposed to the challenged market for multiple renewal cycles and, while buyers still face rate increases, pressure to completely overhaul structure has significantly eased.
  - All markets remained focused on pricing adequacy and recalibrated attachment points, but overall, the umbrella/excess space has drastically improved.

- While alternative competitive lead umbrella and excess liability capacity continues to be difficult to procure for high hazard/challenged risks, the landscape for low/moderate hazard classes continues to improve.
- Capacity is returning to the excess liability market.
  - Typically, deployed capacity has increased to ~$950 million, up from ~$690 million in early 2020, based on WTW data and observations, as a result of legacy carriers recently utilizing more of their available capacity on excess towers.
    - Carries prefer to deploy this additional capacity in multiple layers and not necessarily in a single tranche.
  - These capacity increases have brought a new level of competition.
    - With more available capacity in the high excess space, brokers are often oversubscribed.
  - The more flexible carriers are with respect to attachment and capacity, the more likely they will be to secure lines in the more attractive capacity layers.
    - Carriers seeking to participate in the high excess capacity space are being asked to offer needed capacity on mid excess layers on a ventilated basis.
    - Carriers unwilling to participate in the lower layers have offered additional capacity or lowered their price in the higher excess.
- Carriers reluctant to deploy all their advertised capacity have begun to participate on various excess towers by offering larger limits.
  - While the jumbo layers of the past (i.e., $50 million – $75 million) are still uncommon, some carriers are beginning to again deploy large amounts of capacity throughout a tower, albeit in two to three tranches.
  - The net result has been reduced rate volatility in excess layers and, in some limited cases, rate reductions.
- The trend toward supported lead umbrella capacity (i.e., primary carriers deploying umbrella capacity on the same programs) continues and, while there is still a strong unsupported lead umbrella market, leveraging the less volatile primary lines, especially workers compensation, is common.
  - In Q4 2021, the percentage of supported programs was in single digits, as moving large and complex programs multiple times in a short period is not optimal.
- While underwriting and pricing guidelines remain somewhat fluid, they have stabilized with recent renewals as carriers are less reactive to market conditions and less likely to change their positions over the course of renewal discussions.
- Communicable disease or specific COVID-19 exclusions are now commonplace but not uniform, creating further challenges in structuring excess liability towers.
- Many clients have explored captive use.

Auto liability has remained unprofitable for insurers as claim payments remain on the rise. Insureds continue to see rate increases, program restrictions and restructuring of deductible thresholds.

- AM Best reports that despite years of rate increases, the commercial auto sector continues to experience underwriting losses.
- The Council of Insurance Agents & Brokers reports that commercial auto underwriters have now increased pricing, on average, for 40 consecutive quarters since the third quarter of 2011. However, during roughly the same period, commercial auto underwriters saw more than $22 billion in underwriting losses.
  - Social inflation is playing a major role in combined ratios remaining above 100%, despite several years of steady rate increases.
  - Increases in loss costs continue to outpace increases in rate/pricing and insurers' gradual corrective underwriting actions.
- Recently available data illustrates sources of this upward rate pressure:
  - The National Safety Council (NSC) estimates:
    - $241.9 billion in costs for motor-vehicle deaths, injuries and property damage in the first half of 2021
    - 31,720 motor-vehicle deaths for the first nine months of 2021, an increase of 12% from 28,325 during the same period in 2020
      - The above projection is the highest number of fatalities during the first nine months of any year since 2006.
      - This is the largest increase in fatalities since reporting began nearly half a century ago.

- Federal Highway Administration data illustrates that vehicle miles traveled (VMT) in the first nine months of 2021 increased by 11.7%, which equates to approximately 244 billion miles, from the same time in 2020.

- As a result of increasing claim costs, umbrella carriers continue to demand higher attachment points, resulting in a stretching of primary limits or the introduction of excess buffers.
- Continued upward rate pressure has pushed insureds to reevaluate deductible thresholds, implement corridor deductibles or explore alternative risk transfer (ART) solutions.
- Increased frequency and severity of losses are the result of a multitude of factors, including more vehicles on the road covering more miles, distracted driving, rising medical expenses, commercial trucking driver shortages, legal climate changes and decaying public infrastructure.
- A recent University of Missouri study confirmed that sleep disorders elevate crash risk in drivers, especially workers with shift worker sleep disorder (SWSD), who were almost three times more likely to crash than other drivers.
  - About 16% of Americans are shift workers, working outside the traditional 8 a.m. to 5 p.m. workday.
  - Drivers with sleep apnea and insomnia were 29% and 33% more likely to crash or almost crash, respectively, than the control group of about 4,000 volunteers around the country.
  - The CDC reports that being awake for 24 hours or more is equal to having a blood alcohol content of 0.10%. This is higher than the legal limit (0.08% BAC) in all states.
- Risk managers recognize that drivers who text while operating a vehicle are 23 times more likely to become involved in a vehicle accident, so they are exploring risk control technology to help manage this exposure.
  - NHTSA data shows that more than 1,000 people are injured daily in accidents in which at least one driver was distracted.
- ***Repurposing***, a buzz word of the pandemic that came into currency as businesses modified job duties to meet changing demand, has impacted auto risks — e.g., in-house restaurant servers who are asked to deliver take-out orders using their own vehicles. Repurposing can raise the non-owned and hired exposure to both restaurant owners and their insurance carriers. Insureds should look at the employees' personal auto policies to ensure that coverage under those policies would not be void in such circumstances.

Workers compensation renewal rates, depending on year-on-year payroll exposure variance, will continue to range from slight rate reductions to modest rate increases, as carriers continue to manage premium requirements with pandemic-impacted payrolls continuing to rebound.

- While we await full year 2021 data, the National Council on Compensation Insurance (NCCI) reports 2021 net written premium for private carriers declined through the first two quarters of 2021, compared with the first two quarters of 2020.
- Loss ratios through the first half of 2021 were similar to those observed through the first half of 2020.
  - 2020's net combined ratio for private carriers was 87, up from 85 in 2019 and 83 in 2018, marking the seventh consecutive year of underwriting gain, the fourth consecutive year of results under 90 and the third-lowest combined ratio since the 1930s.
  - Years 2018 to 2020 saw the lowest loss ratios in at least 30 years, with loss adjustment expenses (LAE) at their lowest levels since the early 1990s.
- Workers compensation continues to be the casualty line with the most COVID-19 claim activity.
- NCCI's COVID's Impact on WC report illustrates:
  - COVID-19 WC claims may be categorized as follows: indemnity-only, medical-only, and indemnity claims with an associated medical component (indemnity + medical).
    - Unlike the typical WC claim distribution, indemnity-only COVID-19 claims represent a significant share of reported pandemic-related claims in every state analyzed.
    - These indemnity-only claims explain some of the observed differences between the pre-pandemic and COVID-19 WC metrics.
  - On average, COVID-19 indemnity claims closed more quickly than non-COVID-19 indemnity claims. Indemnity-only claims are the driver.
    - These short-duration, wage replacement claims were not as prevalent in the WC system prior to the pandemic.
  - The ratio of paid to paid + case losses is lower for COVID-19 claims than non-COVID-19 claims.

- To some extent, this may reflect higher insurer case reserves in the denominator of the ratio, given the uncertainty associated with possible future development on COVID-19 claims.
  - In almost every state, the average cost of a COVID-19 claim is lower than that for non-COVID-19 claims.
    - This may be impacted by the later-than-average accident date for COVID-19 claims.
  - Including COVID-19 claims, most states saw a decrease in total claims between accident years (AY) 2019 and 2020.
  - Excluding COVID-19 claims, all states saw a decrease in claims between AYs 2019 and 2020.
  - Countrywide, total claim counts decreased by 2.6% in AY2020, while non-COVID-19 claim counts decreased by 13%.
- As a result of COVID-19, deferral of elective treatments and medical care for other non-acute conditions may extend claim duration and put upward pressure on claim costs.
- The ongoing pandemic has reduced return-to-work opportunities and light-duty programs, which could increase claim duration.
- Presumption legislation varies among states in terms of how and to whom it applies. The variation in presumption legislation is one of many factors driving differences in the distribution of COVID-19 claim counts.
- Many excess workers compensation policies were historically designed to include batch language for communicable disease claims. With the advent of COVID-19 this coverage enhancement has been limited and, in many cases, excluded.
- More ergonomic injuries may be expected as a larger percentage of the workforce is working remotely in spaces not designed for that purpose.
- COVID-19 has created greater uncertainty in defining "the course and scope of employment," with many workers now telecommuting.
- A workplace outbreak of a communicable disease, such as COVID-19, is more likely to be covered by workers compensation if several factors are present:
  - Presumptive legislation creating a pathway for designated claims
  - An elevated risk of contracting the disease due to type of employment
  - Ease in identifying the time and place of disease transmission
  - State statutes and case precedents that favor workers compensation claimants
- Telehealth, on the rise since the outbreak of the COVID-19 pandemic, continues to play a key role in workers compensation by providing more efficient access to high-quality medical care, mitigating medical expenses and lost time from work, and reducing claim severity.
- New medical technology alone can inflate loss costs by 40% to 50% and is a key driver in mega claims.

Buyers should continue to focus on differentiating risk profiles, exposures and loss experience – with the support of analytics.

- Analytic tools remain crucial to these efforts as they enable identification of risk financing options at a time when shifts in buying strategies and program structures remain common. These shifts demand risk quantification to help identify optimal program structures.

Contacts

Casey Petersen
Executive Vice President
Primary Casualty Broking Leader
North America
+1 312 288 7432
casey.petersen@
willistowerswatson.com

Matthew W. Hannon, ARM
Executive Vice President
Head of Casualty Broking,
Midwest Region
+1 212 915 7751
matthew.hannon@
willistowerswatson.com

International casualty

Rate predictions
Flat

Despite outside pressures from related insurance markets and a complex global landscape, the international casualty marketplace remains relatively stable, with markets continuing to differentiate through notable investments in capabilities, data and resources.

The marketplace for international casualty for U.S.-based insureds remains healthy and competitive overall, with ample capacity to meet most of the insureds' coverage needs.

- Elements of disruption observed in previous quarters in related lines of business have begun to subside, and data from recent renewals suggests that confidence and stability are trending upward once again.
- The multinational landscape remains a complex one, with the recent turmoil in Eastern Europe raising new questions about coverage availability and the movement of cash, i.e., premium and claim settlements. Given the fluid nature of events, insureds with impacted risks should examine options relating to how subsidiaries might participate in global programs and the location of premium collection, with discussions beginning as early as possible.

Premium rates are projected to remain flat, with understandable caveats for significant exposure changes, claim history and marketing frequency.

- Strategic and thoughtful pursuit of alternative quotes can help buyers achieve optimal results when partnering with carriers across multiple lines of business.
- With insureds reopening discussions about business expansion and growth projections, markets can expect organic premium to rebound toward pre-Covid volumes, which should mean less upward pressure on rates at renewals.
- Long-term rate agreements remain possible and can drive stable results, helping insureds operate within operating budgets.
- Seeking early commitment between all parties well prior to a renewal also helps achieve longer-term stability.

Exposure data requirements remain in place with an impact on policy language.

- While competition for market share remains healthy, carriers still require time and detailed exposure information in order to conduct thorough underwriting, something we suspect will continue. The risks entering the market from a number of industries continue to present new and evolving complexities, which has required carriers to make adjustments to policy language.
- For certain industries, particularly retail and manufacturing, exclusionary language related to per- and polyfluoroalkyl substances (PFAS) is becoming increasingly common. Insureds should anticipate discussions of their exposures and requests for additional exposure details.
- Certain industries are seeing more specific underwriting and policy language regarding emerging issues, such as sexual molestation and autonomous vehicles.
- Communicable disease remains an important issue across the marketplace for many industries and occupancies, with underwriters requiring information from insureds about safety precautions and company procedures addressing employee safety.
  - Stand-alone coverage has become available for infectious disease liability, so far out of London with a claims-made trigger.
  - Communicable disease exclusions remain common, though the exclusionary language is not consistent across the market, and with sufficient detailed information, underwriters may limit or remove the exclusionary language.

Program structure should be designed to respond to insureds' business needs – beyond the need to pay claims.

- When considering the structure of an international program, decisions about where to issue local policies and the coverage/limits to be localized should consider future requests that insureds may receive from third parties to provide evidence of coverage. Pitfalls can be avoided by taking the time during renewal to examine the location of those contracted relationships and the coverage/limits that may be requested.
- Insureds are seeing more requests to evidence higher local limits than in the past. Most international casualty carriers can offer localized limits up to $10 million or even $20 million if needed, and it's much easier to address program structure at renewal than mid-term.
- Buyers can often combine other coverage elements into a package including property coverage. In previous quarters, the property component came with challenges on rate as well as catastrophe coverage availability, but recent trends show improvement.

Buyers should coordinate the placement of international casualty with U.S. casualty and umbrella.

- Regardless of the size of the insured's business overseas, the three separate casualty renewals (U.S., umbrella and international) should remain closely connected throughout the renewal process to prevent gaps and leverage premium spend.
- Risk managers should ensure coordination between the U.S. and international programs about occurrence and suit locations and coverage territory, as well as attachment strategy regarding excess limits.

Contact

Andrew Estill
Director of Operations
Global Services and Solutions
+1 312 288 7845
andrew.estill@willistowerswatson.com

Middle market

Rate predictions

Favorable risks

Property: +5% to +10%

General liability: Flat to +5%

Automobile: +5% to +10%

Workers compensation: Flat to +5%

Umbrella: +5% to +10%

Excess: +5% to +10%

Challenging risks

Property: +10% to +15%

General liability: +10% to +15%

Automobile: +15% to +25%

Workers compensation: +5% to +10%

Umbrella: +15% to +25%

Excess: +15% to +25%

The middle market segment is starting to stabilize as many clients have already faced market corrections in recent cycles. Expect to see a deceleration of rate increases and program structure changes for favorable risks. However, challenging conditions remain for adverse risks, which continue to experience rate increases; though, even for these buyers, increases are less steep.

Marketplace overview

- Market corrections on rate, program structure and capacity have impacted most buyers.
- Insureds with notable losses and heavy cat exposures and those in certain industry segments continue to be considered difficult risks. As before, tougher classes of business include habitational, transportation, healthcare, social services, hospitality, food and foundries.
- Carriers have aggressive new business and retention goals, which are resulting in competitive outcomes on favorable business.
- Despite the stabilization, carriers continue to carefully manage capacity, increase rates and issue non-renewals on challenging accounts.

Property

- Property limits, including business interruption, are being closely examined by underwriters to ensure proper valuation.
- Contingent business income coverage continues to see tighter underwriting guidelines and reduced limits.
- Cat exposures (coastal, earthquake, flood, wildfires, wind) are harder to place. Capacity is being reduced and deductibles increased.
- Convective storm deductibles are being added in states that previously did not have them – or these deductibles are being increased.
- Additional exclusions for civil commotion and riots are being seen on some hospitality, public entity, retail and real estate accounts.
- Water damage coverage is seeing higher deductibles and lower sub-limits, and water damage mitigation is a focus.
- Underwriters are focusing on accurate construction occupancy protection exposure (COPE) information, including age of roof.
- Tougher property risks once written on a 100% single-carrier basis are being pushed to shared/layered programs.
- Loss control visits are more frequently required prior to quoting.
- Affirmative cyber peril and communicable disease exclusions are being applied on property policies.
- Given the recent increase in vacant properties, carriers are focused on what protections are in place and close attention should be paid to vacancy clauses in policies.

General liability

- Carriers are showing heightened concern about human trafficking exposures for hospitality and real estate accounts.
- Sexual abuse and molestation coverage continues to see capacity reduction and scrutinized underwriting.
- Most markets are no longer considering uncapped per-location aggregates.
- Communicable disease exclusions are still being included.
- PFAS (per- and polyfluoroalkyl substances) exclusions are starting to appear.

Automobile

- Mono-line auto risks are extremely challenging to place and should always be leveraged with other lines of business.
- Livery and ride-share exposures have become mandatory exclusions.
- Hired and non-owned auto continues to be heavily underwritten, and buyers with higher exposure are not finding market interest.

Workers compensation

- Infectious disease-related exposures are closely underwritten.
- Remote working has created questions surrounding accurate payroll reporting, especially in monopolistic states, as coverage needs to be purchased through the state pools.
- More underwriting scrutiny is being placed on accounts with exposures in tougher jurisdictions.

Umbrella and excess liability

- Higher attachment points are being required by lead markets on both general liability and auto policies for most risks.
- For tougher risks, buffer layers are increasingly being explored.
- Markets have begun to deploy more capacity on both leads and excess.
- Capacity for lead umbrellas has stabilized, and reductions in limits are less common.
- Supported leads are more competitive, as carriers leverage primary lines with their umbrella capacity.
- Risk purchasing groups are still an option, but underwriting guidelines are being tightened, and additional time is required for underwriting. Capacity is being reduced and insurers/reinsurers are changing frequently.
- Clients continue to review contractual requirements and limits purchased.
- Carriers are less willing to provide certain coverages, such as professional and sexual abuse/ molestation.
- Minimum premiums have increased significantly, driving pricing higher for excess layers.

COVID-19

- Removal of communicable disease exclusions can be negotiated if proper COVID protocols are in place.
- Carriers have begun to offer carve-backs to the communicable disease exclusion, providing coverage for non-pandemic-related communicable diseases.
- Clients continue to navigate regulatory issues surrounding vaccine and mask requirements.
- Carriers remain concerned with workers compensation exposures in states with presumptive rules.
- As workers return to worksites, scrutiny is focused on increased exposures and the potential for increased loss activity.

Contacts

Deb Prince
Western U.S. Middle Market Broking Leader
+1 312 288 7328
deborah.prince@willistowerswatson.com

Krista Cinotti
Eastern U.S. Middle Market Broking Leader
+1 212 915 7783
krista.cinotti@willistowerswatson.com

Cyber risk

Rate predictions
+100% to +200%

As cyber markets continue to limit their exposure to ransomware losses and other widespread events, buyers should be prepared to face dramatic premium increases or non-renewals if they are unable to demonstrate certain minimum-security standards, starting with remote desktop protocols and multi-factor authentication.

COVID-19 continues to impact the cyber market.

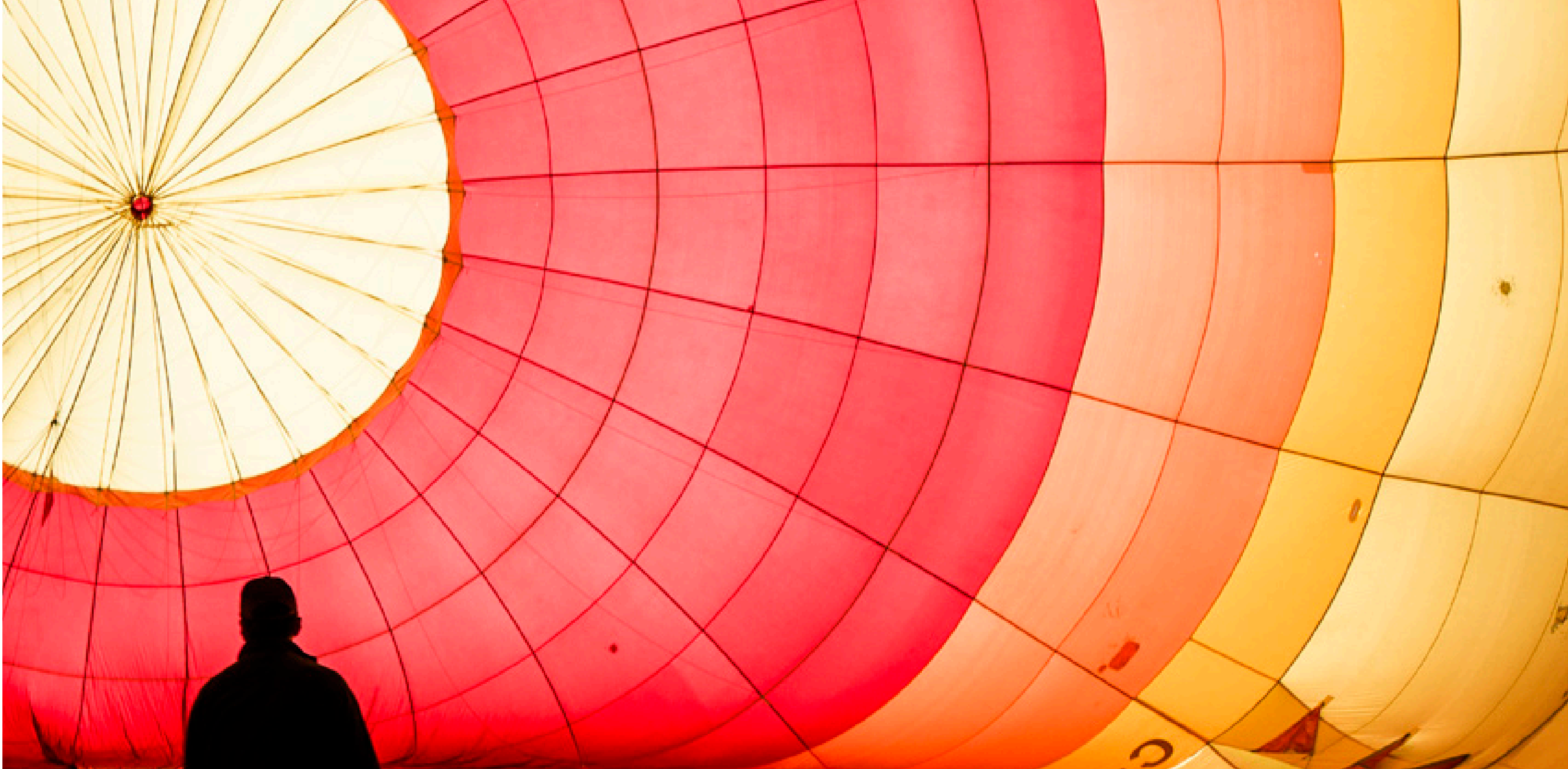
- The work-from-home era, possibly now permanent to at least some degree, may be contributing to an increase in phishing and hacking activity, as certain organizations have been more vulnerable than usual due to employees working remotely on potentially less secure networks with less secure hardware.
- According to the IBM and Ponemon 2021 Cost of a Data Breach Report, the average breach cost was $1.07 million higher in breaches where remote work was a factor.

Primary and excess cyber renewals are now averaging premium increases above anything we've seen: 100% to 200% and even higher. Capacity continues to tighten.

- Q2 renewals are expected to continue to see the jaw-dropping corrective retention and premium increases we saw in the preceding quarters. Increases will be steepest for those organizations that cannot demonstrate strong cyber risk controls, culture and overall cyber hygiene.
- Heavily exposed industries are likely to see increases on the higher side of our predicted range: healthcare, higher education, public entities, manufacturing, financial institutions, construction and large media and technology companies.
- Struggling to build towers, clients are often faced with the prospect of less overall coverage and being forced to consider alternate risk solutions, such as self-insuring and captives.
- Underwriting decisions are heavily influenced by the security controls a company has in place in conjunction with pricing and attachment points.
- Carriers are taking a much closer look at total capacity deployed on programs. Many large towers include U.S., London and Bermuda carriers, and many are looking to reduce or limit the total amount of capacity put up globally on a single tower.
- Renewals are taking longer to complete because carriers do not want to quote early for fear of an incident occurring between quoting and binding – and carriers are often unwilling to provide any significant extensions. It is more important than ever to start the submission process early so materials can be refined for best presentation to underwriters.

As losses show no signs of slowing, carriers are looking for new ways to underwrite cyber risk.

- Cybercriminals are targeting companies in every business segment with ransomware attacks. As these attacks become more sophisticated, threatening a firm's entire electronic infrastructure, ransom demands have increased – often reaching eight figures.
- Data breach costs remain highest in the U.S., where the average cost of a data breach in 2021 was $9.05 million, up just under 5% since 2020. For the eleventh consecutive year, healthcare data breach costs were the highest, increasing from an average total cost of $7.13 million in 2020 to $9.23 million in 2021, a 29.5% increase (IBM and Ponemon 2021 Cost of a Data Breach Report).
- Ransomware attacks cost an average of $4.62 million, more expensive than the average data breach ($4.24 million) (IBM and Ponemon 2021 Cost of a Data Breach Report).
- Certain carriers are relying more heavily on cyber security consultants for technical expertise as well as third-party scanning technologies to highlight potential vulnerabilities.



- Excess carriers are increasingly not aligned with primary coverages and are seeking to benefit from exclusions placed on excess policies below them in a tower.
- More carriers are requiring supplemental applications for ransomware and other common events, as there is increased concern around systemic losses and the potential impact they could have on the broader marketplace.

Markets continue to constrict coverages to limit their exposure to regulatory risk, ransomware losses and other widespread cyber incidents.

- Largely in response to the E.U. General Data Protection Regulation (GDPR) that went into effect in May of 2018 and the subsequent trove of data privacy legislation introduced across the U.S., most notably the California Consumer Privacy Act and New York's copycat legislation, *Senate Bill 567*, we are seeing cyber markets pull back on offering wrongful collection and compliance coverage.
- Cyber markets are lately deploying co-insurance and or sub-limiting all coverages stemming from ransomware, increasing retentions and developing language to further limit their exposure.
- Certain markets have added broad Solarwinds and Log4j exclusions to their policies, making it essential for organizations to report notices of circumstances if either they or one of their vendors use or used the software.
- The Russia/Ukraine crisis has created a heightened risk of cyber attacks spreading to organizations on the periphery of the crisis. Some carriers are asking additional underwriting questions about whether insureds, their subsidiaries or their critical vendors have exposure in Russia, Ukraine or other potentially impacted countries and are considering adding territorial restriction endorsements onto their policies.
- Cyber underwriters continue to work closely with their counterparts in other lines to address silent cyber coverage, as more and more carriers withdraw or limit cyber coverage in non-cyber insurance lines due to concerns over aggregation.

Contacts

Joe DePaul
National Cyber/E&O Practice Leader
+1 973 829 2972
joe.depaul@willistowerswatson.com

Jason D. Krauss
FINEX NA Cyber Thought & Product Coverage Leader
+1 212 915 8374
jason.krauss@willistowerswatson.com

Directors and officers liability

Rate predictions

Stable risk profiles

Public company – primary:
Flat to +20%

Public company – excess layers:
-5% to +10%

Private and not-for-profit – overall: +5% to 20%

Side-A /DIC: Case-by-case, with minimums impacting most risks

Challenged risk profiles

Non-U.S. parent, U.S. exposures, IPOs and SPACs,
Challenged industries: Case-by-case; large potential rate and retention increases

Increases in rates and retentions have moderated significantly since the peak of the hard market. New capacity continues to drive more competitive market dynamics.

Broader market conditions have improved since the peak of the hard market in Q3 2020. Although rate increases persist, moderation has been significant and is expected to continue through the remainder of 2022.

- Newer markets with fewer legacy claims are attracted to the current pricing environment.
- New excess capacity has yielded ongoing moderation of rate increases since the peak in 2020. This capacity inflow has given buyers leverage and an enhanced ability to fill capacity holes.
- Traditional insurers, however, continue to seek corrections.
- A tale of two markets persists: More favorable risks are the initial beneficiaries of new capacity. More challenged risks continue to experience hard market challenges. This is especially the case with private and not-for-profit organizations.
- **Economic uncertainty:** Recovery from the lingering pandemic has brought economic growth; however, headwinds associated with global tensions and hostilities, inflation, supply chain issues, staffing, scaling back of government subsidies and pervasive tensions around public health measures create uncertainties about continued growth, business reopenings and insolvencies.
- **D&O underwriter focus:** Carriers are looking at financial strength (especially liquidity); environmental, social and governance (ESG) concerns; industry; claim history; COVID-19 resilience; regulatory uncertainty; loss-cost escalation; cyber and privacy; event-driven claims; and systemic exposures.
- **Initial public offerings (IPOs) and special purpose acquisition companies (SPACs):** IPO filings increased significantly in 2021. More than half were SPAC IPOs. This, coupled with increased SPAC-related securities litigation, continues to manifest in heightened underwriter uncertainty and hard market terms and conditions.
- **Private and non-profit companies:** Accelerated rate increases experienced in 2020 levelled off in 2021 and continue to do so in 2022. Yet the tale of two markets for many private and not-for-profit organizations creates sharp contrasts in renewals for stable risk profiles and industries vs. high-risk profiles and challenged industries.
    - **Primary:** Insureds with low and stable risk profiles are seeing enhanced competition, even flat renewals or decreases in select instances, the tradeoff being higher retentions. The market for high and/or distressed risk profiles remains challenging.
    - **Excess:** For larger risks, excess markets have recalibrated increased limit factors (ILFs). For challenging risks, inverted pricing may occur, where higher excess layer pricing may exceed pricing in the layers below.
    - **Retentions:** Carriers continue to press for higher retentions. Even for smaller risks, minimum retentions are being scrutinized and regularly increased. The severity of the increases most often depends on prior renewal increases and the need, if any, for continued correction.
    - **Conservative deployment:** The discipline demonstrated by leading insurers has been taken up broadly and for the most part consistently across D&O markets.
    - **Capacity:** Capacity is more widely available than in recent quarters, which is having a buyer-friendly impact on market conditions – especially for preferred risks.

- **Side A:** Predictions on across-the-board rate changes for Side A placements remain less reliable. Instead, over the past several quarters, we have seen lead Side A minimum premiums, regardless of expiring rate. Pricing changes may, therefore, be more or less severe depending on the insured's expiring premium.

Underwriting: D&O portfolio adjustments will continue into 2022.

- Thanks to new capacity, we expect decelerating rate increases ahead.
- Excess pricing recalibration has fallen off, a trend we expect to continue into 2022. In some cases, we may see decreases on layers that were overcorrected during the hard market.
- The tightening of terms we saw in the first half of 2021 has moderated and is expected to continue moderating into 2022.
- Some buyers will be particularly challenged.
  - Non-U.S. parent, U.S. exposures
  - IPOs and SPACs
  - Challenged industries, e.g., oil and gas, healthcare, life sciences, higher education, cryptocurrency, cannabis, retail (private), restaurants (private), sports/entertainment (private)
  - Liquidity challenged and pre-restructuring/bankruptcy risks

Several trends and exposures bear watching.

- **ESG, inclusion and diversity (I&D):** Organizations face increased pressures to address ESG concerns from operational and investment perspectives. Questions of adequacy of disclosures create both shareholder and regulatory exposures. Board diversity and corporate I&D protocols also remain critical to D&O risk. Heightened exposures have resulted in increased underwriter scrutiny into ESG practices more broadly.
- **Securities class actions:** SCA filings in 2021 decreased dramatically YOY, to just over half of average annual filings in 2017 – 2019. Significantly fewer SCAs related to M&A are largely responsible, yet even traditional (non-M&A) class action filings have decreased. Average settlements in 2021 were less than half of the 2012 – 2021 average. Median settlements are below $10 million for the first time since 2017.
- **SEC whistleblower awards on the rise:** In FY 2021, the SEC awarded approximately $564 million in whistleblower awards to 108 individuals, representing the largest amount and the largest number of individuals so awarded in a single fiscal year. Stunningly, these figures are approximately the same as the *total* dollar amount and number of individuals awarded in the 11-year history of the whistleblower program. The SEC announced an additional award and, separately, three more, in January 2022, totaling more than $53 million which, extrapolated, would put 2022 on pace for a new record. Whistleblower awards themselves do not represent D&O insurer losses, but companies with major whistleblower situations generally experience securities litigation. This accelerated whistleblower activity also reflects heightened regulatory scrutiny and prosecutorial success in the current presidential administration.
- **IPOs, SPACs:** IPO filings increased significantly in 2021. More than half were SPAC IPOs. SEC statements on the accounting treatment of SPAC warrants slowed SPAC activity in the second and third quarters of 2021. Nevertheless, the growth in traditional public offerings, as well as ongoing SPAC-related activity, continues to manifest in heightened underwriter uncertainty.
- **Restructuring/bankruptcy/insolvency:** Chapter 11 filings in 2021 trended below historical averages and well below filing levels in 2020. Nevertheless, with government subsidies slowing or ending, and with continued economic uncertainties ahead of us, we may see a rise in filings. Bankruptcy claims, which impact both private and public companies, can be among the most severe.
- **Duty of oversight claims:** Plaintiffs asserting *Caremark* duty of oversight claims in Delaware derivative litigation have had recent success in overcoming motions to dismiss, leading some to suggest a weakening of high *Caremark* pleading standards. Are increased *Caremark* claims and related increased books and records demands on the horizon?

Side A D&O in a captive? Changes in Delaware law may ease some but not all prior concerns.

- Changes to Delaware's indemnification law, signed into law in February 2022, would authorize, with conditions, the use of captive insurance to cover D&O liabilities, whether or not the corporation would have the power legally to indemnify. The changes may ease previous concerns about the ability to insure non-indemnifiable (Side A) losses in a captive, particularly with regard to certain derivative lawsuit losses.
- Nevertheless, concerns persist about whether a captive may pay bankruptcy-related Side A losses, a question the law is silent on. Solutions may be available to address the Side A bankruptcy exposure, such as access to credit markets, indemnification trusts and other, less-traditional alternative insurance structures.

Contact

John M. Orr
D&O Liability Product Leader
FINEX North America
+1 415 955 0196
john.orr@willistowerswatson.com

Lawrence Fine
Management Liability
Coverage Leader,
FINEX North America
+1 212 309 3623
larry.fine@willistowerswatson.com

Employment practices liability

Rate predictions

Primary (domestic markets): +5% to +15%

Bermuda markets: Flat to +10%

While the employment practices liability (EPL) rate environment is slightly improving, we expect COVID-19 employment-related litigation to keep increasing as companies formalize return-to-work/remote work policies, which may include company-imposed vaccine mandates.

We expect the EPL market to continue to be challenging through 2022.

- The extent of rate increases will be determined by many factors, particularly industry, loss history and location of employees. Assuming no change in risk profile and no losses, rate increases are more likely to be at the lower end of the range provided above. California continues to be the most problematic jurisdiction. New Jersey, New York and Florida continue to be challenging as well.
- **Retentions:** Expect continued pressure on primary retentions, as well as separate retentions for class actions, especially in California. Expect separate retentions for California claims and for highly compensated employees (particularly in healthcare and financial institutions).
- **Limits:** Many domestic markets are looking to reduce their limits to $5 million.
- **Excess:** As in other lines, excess EPL markets are following primary increases in addition to looking to correct increased limit factors (ILFs).
- **Capacity:** Overall capacity in the EPL market is stable, but it is becoming more limited for the industries that have been most strained (i.e., healthcare, retail, hospitality and leisure) by COVID-19. Lack of competition for these risks is contributing to rate increases.
- **Underwriting:** Expect a significant number of questions related to COVID-19 return-to-office plans and vaccine mandates.
- **Coverage:** Coverage remains intact; carriers continue to add privacy/biometrics exclusions and include limited COVID-19 exclusions on a case-by-case basis.

As of January 13, 2022, vaccine mandates are currently in the hands of the employer.

- The U.S. Supreme Court issued a stay on the Department of Labor's Occupational Safety and Health Administration (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS). The ETS, released on November 4, 2021, had mandated COVID-19 vaccinations or at least weekly testing for workers at companies in the U.S. with 100 or more employees, subject to legal exemption. Subsequently, OSHA announced that it was withdrawing the ETS as an enforceable emergency temporary standard, but not as a proposed rule.
- Employers not covered by another federal, state or local vaccine mandate are free to implement whatever policies and practices are best suited to their workplace.
- Employers who choose to maintain workplace vaccination policies must still follow other applicable laws, such as Title VII and the Americans with Disabilities Act, and be cognizant of requirements in the various states.
- If an employer can legally implement a vaccine mandate, plaintiffs may challenge whether the employer is properly considering accommodation requests.
- *Religious accommodations:* Courts are now examining the threshold issue of what is an undue hardship on an employer in a religious accommodation case and whether standards should be brought in line with those used in disability claims. We have seen an uptick in such failure-to-accommodate claims.
- *Disability accommodations:* With the return to work in 2021, employers have received an increase of accommodation requests. The EEOC has provided guidance on what employers should be aware of when faced with an employee's request for an accommodation.

COVID-19 employment-related litigation continues.

- We continue to see an increase in litigation and claims related to COVID-19. More than 4,400 cases have been filed thus far, with healthcare and retail continuing to be the most affected industries.
- Retail and healthcare have also seen the most COVID-related class action activity.
- California has seen 83 COVID-19-related class action lawsuits filed, followed by Ohio and Illinois with 16 each, and Florida with 15.

Socially driven movements, such as Black Lives Matter, pay equity and #MeToo continue to produce claims that impact employment practices liability litigation and legislation.

- In the wake of #MeToo, President Biden recently signed a law that amends the Federal Arbitration Act and bans mandatory arbitration agreements covering sexual harassment and sexual assault claims.
- The bill provides that employees who are parties to arbitration agreements with their employers have the option of bringing claims of sexual assault and sexual harassment in arbitration or court. When an employee chooses to file a sexual assault or sexual harassment claim in court, the court, rather than an arbitrator, will decide whether court is the proper forum for the claim.
- We anticipate that employers with arbitration agreements in place will in the future see more sexual assault and harassment claims filed in court rather than arbitration.
- Insureds should continue to expect questions from underwriters regarding inclusion, diversity and equity initiatives.
- In relation to pay equity, there has been a push to require employers to offer pay transparency for applicants and employees. Many states, including California, Rhode Island, Maryland, Washington, Connecticut and Colorado, are implementing laws wherein employers must disclose the pay range for applicants.

States continue to introduce their own biometric privacy laws.

- The Illinois Biometric Privacy Act (BIPA) has been the subject of many class action claims against organizations with employees in the state of Illinois. We have since seen other states, including Texas and Washington, implement their own biometric laws (although neither of these laws creates a private cause of action). New York City and Portland, Oregon have similar laws which do include a private cause of action.
- The U.S. Court of Appeals for the Seventh Circuit has clarified the federal standing requirements for claims brought pursuant to BIPA, thereby providing a road map for plaintiffs who wish to steer clear of federal court.
- We continue to see many EPL policies include an exclusion for BIPA claims; however, buyers can look to other coverage lines, such as general liability and cyber, for potential coverage for this exposure.

Contacts

Talene M. Carter
National Employment Practices Liability Product Leader
FINEX North America
+1 212 915 8721
talene.carter@willistowerswatson.com

Joann N. Nilsson
Associate Director – Claims Advocate
FINEX North America
+1 212 915 8388
joann.nilsson@willistowerswatson.com

Errors and omissions

Rate prediction

Large law firms: +5% to +10%

Mid-size law firms: +5% to +10%

Management consulting firms: +15% to +20%

Accountants: +10% to +20%

As London markets are requiring cyber exclusions or endorsements on many professional liability policies to clarify coverage for silent cyber exposure, buyers need to understand their impact and to ensure coordination with any separate cyber policy in place, especially regarding third-party liability. Although U.S. markets are not yet imposing such cyber carve-backs, they will generally follow cyber coverage restrictions imposed by lead London markets.

The overlap of professional liability and cyber continues to be a focus in the E&O marketplace.

- As ransomware attacks have hit professional firms across all industries, insurers are increasingly concerned about silent cyber exposure.
- Underwriters continue to place more emphasis on coordinating cyber and professional liability coverages.
- London markets have now taken steps to require silent cyber exclusions. While this adjustment has not yet been widely seen in the U.S. and Bermuda, given the fact that Lloyd's participates on most large law firm programs, we believe it is only be a matter of time.

Lawyers

- Firms with poor loss experience, areas of risk management weakness or historically low rates will see higher rate increases, while firms that are paying closer attention to what insurers deem rate adequacy should see rate increases ease and level off.
- While capacity is being carefully managed, it is still widely available to meet the needs of large law firms.
- Excess market carriers are being less aggressive on pricing due to increased competition.
- Primary carriers are continuing to press for higher retentions.
- Although insurers have been less inclined to offer policy wording enhancements, recent new market entrants and the increased competition they have brought, especially in excess layers, have helped buyers when negotiating coverages.
- COVID-19 and economic uncertainty continue to impact insurance renewals, with carriers often requesting additional information from existing policyholders and for new business. Professionals can expect questions on operations, financials, information security and even legal advice and contract provisions in the work-from-home era – which may outlast the pandemic.
- Rate increases increasingly vary firm to firm. Firms with poor loss experience, areas of risk management weakness or historically low rates will see higher rate increases. Better risks paying what insurers deem to be adequate rates will see lower rate increases. Increases may be in the 5% range for some firms.

Accountants

- Accounting firms are continuing to see increased rate pressure, and firms with losses are seeing premium increases in the 15% to 20% range. London markets are seeking higher premiums than domestics.

Consulting firms

- Underwriters are worried about the scope of services provided by consulting firms. There may be a pricing penalty for firms that offer a very broad scope of services.
- Premiums for management consultants are still being impacted by a very large claim payment made on behalf of a leading management consultant related to services provided to a pharmaceutical/opioid manufacturer.

Technology

- Evolving product and service delivery technologies are pushing the edges of technology E&O into other coverages, including general liability, cyber and other types of professional liability.
- Internet of Things (IoT) devices, especially, are interacting with people, property and equipment in ways that can create new exposures.

- New property damage and bodily injury liabilities have arisen from the use of monitoring services that run on IoT technology and connected networks. These new liabilities have led to further focus on contract requirements and interactions between insurance policies.
- Carriers remain hesitant to offer excess technology coverage on blended technology-cyber programs.

Errors and omissions (E&O), or professional liability, is arguably the most complex area of specialized insurance, with several distinct market places:

- Stand-alone E&O for certain professions (lawyers, consultants, accountants)
- Technology E&O, sometimes stand-alone, but often coupled with cyber insurance
- Miscellaneous professional liability (MPL), including those industries without a specific, dedicated policy form

Contacts

Joe DePaul
National Cyber/E&O Practice Leader
+1 973 829 2972
joe.depaul@willistowerswatson.com

Jason D. Krauss
FINEX NA Cyber Thought & Product Coverage Leader
+1 212 915 8374
jason.krauss@willistowerswatson.com

Fidelity/crime

Rate predictions
Flat to +7.5%

Crime insurers are clinging to the hard market wave and are looking to capture rate increases where possible. All insurers are feeling the impact of social engineering losses, which are driving high frequency of low dollar value claims.

Crime underwriters remain focused on two areas.

- **Social engineering**
  - Social engineering coverage remains largely sublimited, yet some underwriters have expressed their intent to narrow coverage further.
  - Social engineering deductibles are increasing to match overall policy deductibles.
  - Higher limits or sublimits are only available on those accounts with best-in-class policies and procedures.
  - Buyers will find limited appetite in the market to extend social engineering coverage to include loss of "other property."
  - Both commercial and financial institution (FI) insurers are adding belts and suspenders language to ensure that social engineering losses will not be covered outside of the explicit social engineering fraud insuring agreement.
- **Cyber**
  - Insurers are clarifying or eliminating previously afforded crime coverages that may be duplicative with cyber (e.g., extortion and destruction of data).
  - Several insurers are adding exclusionary language intended to clarify that the crime policy will not respond to cyber-related exposures, namely extortion/ransomware payments.

All eyes are on cryptocurrency.

- The specie market only provides coverage for cold storage, which is the physical loss or damage to keys and codes if they are physically held and stored in a secure location.
- We see limited appetite among U.S., U.K. and Bermuda insurers to write crime coverage for crypto risks. Some insurers will consider writing established companies, with a preference for those who are acting in a service provider capacity (i.e., custodians) and who can afford meaningful deductibles.

Some insurers are starting to apply cryptocurrency-related exclusions to crime policies, even if there is little or no exposure.

Contacts

Matt Klein
National Fidelity Product Leader
+1 212 309 5515
matt.klein@
willistowerswatson.com

Colleen Kutner
U.S. Fidelity Thought Leader
+1 303 765 1546
colleen.kutner@
willistowerswatson.com

Fiduciary liability

Rate prediction

Commercial/nonprofit (defined contribution pension plan assets up to $50M): +5% to +15%

Commercial/nonprofit (plans asset $50M to $500M): +15% to +45%

Commercial/nonprofit (plan assets above $500M): +20% to +50%

Financial institutions: +10% to +25%

Increases in premiums have moderated slightly, particularly for insureds who saw double-digit increases last year, but class action retentions remain high, with continued upward pressure. A U.S. Supreme Court decision may override lowered claim frequency and severity trends. Nevertheless, the currently limited market for primary fiduciary shows some signs of slight expansion.

Underwriters continue to be wary of fiduciary risks, but there has been some stabilization.

- **Underwriting focus:** Although there were only about 44 excessive fee class actions filed in 2021, down from almost 100 in 2020 (Miller, B. (2022, January 27). *New 401(k)-fee suit filings plummeted last year.*), and most recent settlements have been below $5 million (previously most settlements exceeded $10 million), carriers are still concerned about the unpredictability, high costs of defense and substantial number of still pending cases. The U.S. Supreme Court's pro-plaintiff ruling in the Northwestern University excessive fee case (discussed below) disappointed insureds who hoped that a victory for the defense could reverse the negative pricing trends in fiduciary liability; although the Court's holding was very narrow, most carriers have seen it as a justification for continued tough terms and possible escalation.
- Particularly with commercial and large nonprofit (university and hospital) risks, underwriters are focused on defined contribution pension plans with assets greater than $250 million, where previously the cut-off had been $1 billion. Now some carriers don't want to quote plans with assets above $1 billion.
- Even smaller plans cause concern, now that a few smaller plaintiff firms have targeted them. Insurers are seeking detailed information about fund fees, record-keeping costs, investment performance, vendor vetting processes and plan governance, causing some insureds to seek assistance from their vendors in filling out applications.
- **Retentions/sub-limits:** Insurers are even more focused on retentions than on premiums. First-dollar coverage has become almost impossible to obtain. Increased retentions of seven figures remain commonplace for specific exposures, e.g., prohibited transactions/excessive fees and sometimes all mass/class actions, with at least one carrier insisting on eight-figure retentions. Carriers are attempting to push retentions even higher, but insureds who already have seven-figure retentions have generally been successful in resisting increases. Even the non-class action retentions are generally six figures now (previously five figures). Some insurers may only offer a sublimit of liability or exclude entirely prohibited transactions/excessive fees coverage. Marketplace results will vary with plan asset size, plan governance and claim history, but it is a challenge to get credit for positive risk factors.
- **Coverage breadth remains steady:** Other than increasing retentions, carriers have not generally been restricting coverage. It should be noted, however, that terms can vary substantially. Many carriers are still receptive to offering coverage-enhancing endorsements.
- **Blended coverage:** Many organizations, including financial institutions and private/non-profit companies, continue to buy fiduciary liability coverage as part of a package policy, which in some cases has softened the marketplace challenges.
- **Is some relief in sight?** A little. While

some carriers have all but left the market and others have expressed little interest in writing new business, some traditional financial line markets that have not historically written much fiduciary risk have begun to provide limited alternatives on a case-by-case basis (particularly if there are related primary D&O opportunities). Most carriers are closely monitoring the capacity they are putting out, and $5 million primary limits are now more common than $10 million.

- **Rate prediction qualification:** Rate increases depend on the insured's existing pricing. Insureds who have already had at least one round of double-digit percentage premium increases may be able to keep increases to a range of +5% to +15%. Price per million of coverage can vary substantially among risk classifications, notably those involving plans with proprietary funds.

Many accounts are still viewed by carriers as challenged, particularly in certain industries.

- Challenged classes include financial institutions with proprietary funds in their plans, whether currently or in the past, especially if they have not yet been the subject of a prohibited transaction claim. However, financial institutions without proprietary funds in their plans and/or who accept relevant exclusions and/or already have elevated premiums are seeing smaller increases.
- In the nonprofit space, large universities and hospitals have seen some of the most substantial premium and retention increases and have struggled to find placement. This is the result of a wave of excessive fee cases in this sector in recent years. However, a lull in university suits has been helpful in that sector, while hospital systems remain severely challenged.
- Underwriters continue to be focused on such issues as excessive revenue sharing, uncapped asset-based vendor compensation, expensive retail share class investments, expensive actively managed funds, lack of regular benchmarking and RFP processes. Some carriers are nervous about potential insureds who have recently improved their processes but might be attractive targets for plaintiff firms who would make allegations about the prior period.
- Virtually any organization may be treated as risky by some carriers and, as mentioned above, it can be challenging to get credit for best practices.

Broader economic challenges may be increasing risks, but low unemployment and favorable stock market performance are positives.

- Underwriters have focused on defined contribution plan risks and have not paid as much attention to other types of plans, especially health and welfare plans. However, this could change if economic uncertainties accelerate these risks.
- Uncertainties include the pace of post-pandemic business reopenings and shifts in the work force. If new COVID variants arise, the market could harden further.
- Cutbacks in benefits (particularly retiree medical benefits) and/or workforces may lead to claims and potentially large class actions.
- As a result of favorable economic factors, entities that still have defined benefit pension plans saw their funding status improve from an average of 88% at the end of 2020 up to 96%.

Litigation has dropped from a 2020 high but could resurge; legislative and regulatory changes create uncertainty.

- **In 2021, excessive fee claim frequency dropped significantly from its 2020 highs:** For over a decade, a growing number of plaintiff firms have been suing diverse public, private and non-profit entities, making allegations involving allegedly excessive investment and/or recordkeeping fees that resulted in reduced investment principle and reduced returns; many of these class actions also alleged sustained periods of underperformance by specific investment options. Although three times more cases were filed in 2020 alleging breaches of fiduciary duty involving excessive fees than were filed in 2019 – substantially more than in prior years as well – it appears that only 44 such cases were filed in 2021 (less than 50% of 2020 volume). Also, although most previous settlements exceeded $10 million (ranging up to $62 million), several recent settlements have been well under $5 million. Carriers, however, have generally not acknowledged the frequency and severity drops or tempered their increases accordingly, and recently have been using the pro-plaintiff decision in the Northwestern University case as a justification for tougher terms.
- **Other types of class actions persist:** Suits alleging reduced benefits due to the use of outdated mortality table assumptions continue to be litigated, as well as class actions involving COBRA notice deficiencies or improper benefit reductions.
- **Employer stock class actions**

against public companies have died down, but private companies' ESOPs can still see claims: In the continuing aftermath of the U.S. Supreme Court's decision in *Fifth Third Bank v. Dudenhoeffer,* 573 U.S. 409 (2014) very few employer stock drop class actions have been filed, and those few continue to be dismissed. Nevertheless, carriers remain concerned about employer stock in plans; they will often exclude employer stock ownership plans or include elevated retentions. Meanwhile, class actions against private companies with employer stock plans, mostly arising from valuation issues in connection with establishing or shutting down such plans, continue to be filed occasionally and are seldom dismissed on early motion.

- **The U.S. Department of Labor (DOL) may now bring cases that were previously time-barred:** The DOL achieved a decision that it is generally entitled to a six-year statute of limitations (as opposed to the three-year limitation period, which is triggered by "actual knowledge" of a violation of ERISA) in which to bring a claim, even if information from which a breach could have been detected was included in a Form 5500 filed with the DOL. The Court did, however, caution that the DOL could not rely on the longer statute of limitations if it was "willfully blind." (Walsh v. Bowers, 2021 WL 4240365 [D.C. Hawaii, Sept. 17, 2021])
- **The DOL has launched several plan cyber audits:** In April 2021, the DOL issued guidance providing tips and best practices to help retirement plan sponsors and fiduciaries better manage cybersecurity risks. Not long after, the DOL initiated many audits regarding retirement plan cybersecurity practices and has continued to do so.
- **The DOL's proposed new rule reinstating an "all things being equal" standard to environmental, social and governance (ESG) investing awaits final rule status:** In October 2021, the DOL published for comment a new rule modifying the previous administration's 2020 rule that sought to discourage retirement plans from investing in ESG-related investment options by forcing fiduciaries to justify such investments. The change is "intended to counteract negative perception of the use of climate change and other ESG factors in investment decisions caused by the 2020 Rules, and to clarify that a fiduciary's duty of prudence may often require an evaluation of the effect of climate change and/or government policy changes to address climate change on investments' risks and returns." Pursuant to the new proposed rule, plan fiduciaries would be allowed to consider collateral benefits of ESG investing on a tie-breaking "all things being equal" basis and may also consider that ESG risks can directly affect financial interests as well. The proposed rule would apply the same fiduciary standards to the selection and monitoring of a qualified default investment alternative (QDIA) as applied to other designated investment alternatives, including permitting consideration of ESG factors notwithstanding that such decisions could be politically controversial. The 60-day comment period on the proposed new rule ended in December, but the rule has not yet achieved final status.
- **Pooled employer plans (SECURE Act):** The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) amended provisions of federal law, including ERISA, to establish a new form of multiple employer plan (MEP) called a pooled employer plan (PEP), which allows employers to join and delegate both investment and plan administration fiduciary obligations to pooled plan providers (PPPs). PEPs and PPPs need to ensure that they have sufficient and appropriately tailored fiduciary liability insurance to address emerging exposures contemplated in PPP/PEP arrangements. A slowly increasing number of small employers are joining PEPs.
- **COVID-19 relief legislation:** The American Rescue Plan Act (the Act), which was passed in March 2021, has been providing pandemic-related financial support to families as well as temporary COBRA and Affordable Care Act subsidies. The Act also extended funding stabilization for single-employer pension plans, modifications to executive compensation rules, as well as financial assistance for certain multi-employer pension plans. So far, the Act has resulted in large payments to two critically underfunded multiemployer pension funds.

U.S. Supreme Court decides Northwestern University excessive fee case for plaintiffs.

- On January 24 the U.S. Supreme Court issued its eagerly awaited decision in the Northwestern University excessive fee case, finding for the plaintiffs and remanding the case back to the 7th Circuit.
- The 7th Circuit had affirmed a holding that dismissed the case, which arose from the offering of allegedly imprudent investment options, solely because plaintiffs were offered other indisputably prudent investment choices. The Supreme Court's decision rejected the 7th Circuit's uniquely extreme position on the "investment choice" defense.

- Plaintiffs and carriers are likely to try to paint this decision as devastating for excessive fee defendants, but in fact it doesn't move the ball at all (whereas a pro-defendant decision could have been very helpful to plan sponsors). The decision simply stands for the proposition that excessive fee class actions are potentially viable claims if pled with sufficient specificity.
- Unfortunately, the decision does not provide meaningful additional guidance concerning what constitutes sufficient specificity to establish a plausible pleading other than cautioning future courts that "[a]t times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise."

Buyers should keep on an eye on key loss drivers.

- **Excessive fees:** Excessive fee cases continue to drive loss development, although the number of such suits in 2021 was only 50% of the volume in 2020, and recent settlements have been low. The U.S. Supreme Court's pro-plaintiff decision in the Northwestern University case is being used by most carriers as a justification to continue to increase premiums and attempt to push retentions higher.
- **Financial institutions:** Excessive fee claims against financial institutions often include allegations that plan participants were disadvantaged due to conflicts of interest if a plan sponsor included its own overpriced investment options in the plan; such claims tend to settle for substantially more than class actions without such alleged conflicts of interest.
- **Any sized plan can be a target:** Although the first excessive fee cases seemed to focus on specific industries and plans whose assets exceeded $1 billion, in recent years it appears that no plan is safe. Various public, private, multiple employer and nonprofit entities have been sued, and even plans with assets below $100 million have been targeted (although suits against plans with assets below $1 billion have not resulted in any eight-figure settlements).
- **M&A:** Carriers may apply increased scrutiny to insureds with substantial merger and acquisition and/or spin-off activities, which can lead to changes in benefits and related complaints.
- **No claim yet? Not so fast:** Organizations that have not been the subject of claim activity may not necessarily be viewed as a better risk. Particularly for financial institutions with proprietary funds in their plans, currently or historically, insurers may assume that a proprietary fund-related claim is likely at some point. In general, carriers are aware of ERISA's long statute of limitations (six years) and are therefore more concerned with past practices than they might be in connection with other policies.
- **Limit adequacy:** With excessive fee litigation pushing claim frequency and severity, buyers should be vigilant in reevaluating limit adequacy. With the fiduciary market remaining hard, some insureds have been tempted to cut the size of their towers, but arguably this is the wrong time to take such short-term measures. It might be challenging to add capacity, but opportunities are still available.

Contact

Lawrence Fine
Management Liability Coverage Leader
FINEX North America
+1 212 309 3623
larry.fine@willistowerswatson.com

John M. Orr
D&O Liability Product Leader
FINEX North America
+1 415 955 0196
john.orr@willistowerswatson.com

Financial institutions – FINEX

Rate predictions

D&O – Publicly traded financial institutions: Flat to +10%

D&O – Private financial institutions: +5% to +15%

Side-A /DIC: Flat to +7.5%

D&O/E&O – Asset managers (excluding private equity/general partnership liability): Flat to +10%

Bankers professional liability (BPL): Large: +5% to +15%

Middle market: +5% to +20%

Insurance company professional liability (ICPL): Life: +5% to +20% P&C: +5% to +30%

Rate increases will continue to abate with further market stabilization, increased competition and a general sense from insurers that portfolios are in a more sustainable place.

The anticipated deceleration of rate increases for financial lines as a result of new market entrants, market expansions and corrective portfolio measures continues to play out, and the rate of deceleration may increase as we continue through 2022 with rates closer to flat and the potential for decreases on excess layers.

- Financial line coverages, except for fiduciary liability and cyber, continue to see a moderation of rate increases and stabilization of retention increases generally secured in the prior two years. (For more detail, refer to the sections of this report on fiduciary liability and cyber.)
- Insurers are typically comfortable with current capacity and attachment points, but some are now looking to increase capacity, likely with a ventilated approach, and attach on lower layers of a program tower, particularly as rates compress higher up a program tower.
- Following the significant portfolio corrective actions taken by insurers over the past two years and increasing competition in the marketplace, insurers are focused on new business and growing portfolios.
- New market entrants are most often providing excess capacity rather than primary capacity; this will continue to help fill capacity needs and drive competitive pressures.
- Even with the moderation in the market, financial institutions continue to explore the use of (or expanded use of) captives, alternative program structures, self-insurance and risk financing portfolio analytics to better manage program volatility in the future.
- Key emerging risk trends are becoming more top of mind for many financial institutions: ESG (with an emphasis on climate, inclusion and diversity), crypto/digital assets, return to work and vaccination protocols, economic recovery, rising inflation and the effects of the crisis in Ukraine.

Financial institution D&O continues to see rate increases, but they have trended downward.

- Q4 2021 financial institution public D&O renewals saw a median rate increase of 9.3%, compared to a 20.0% increase for Q4 2020, per our client rate trend data.
- Primary and excess D&O rates are more aligned, with some tapering of excess rate increases. There may still be pressure to bring lower excess layer increased limit factors (ILFs) closer to 70%, but this should be minimal and in pockets, as excess rate recalibration was largely achieved over the past two years.
- Side A DIC rates have trended more competitive, with rate increases in line with or less than the primary rate increase. However, this could change with an increase in substantial derivative litigation.
- Private D&O rate trends are slightly more favorable for buyers, but the focus on retentions continues. Private financial institutions were largely spared the pullback in entity coverage seen in the commercial space, but underwriters will continue to add E&O exclusions, if not currently in place.
- On the heels of a record year in 2021 for financial services M&A activity, deal making is poised to be strong for 2022. Underwriters are focused on acquisition and divestiture activities and how they change the risk profile of insureds. Extended reporting period (tail) pricing factors are coming down slightly from 2021.

Professional liability (E&O) varies by subsector, with regulatory trends a key focus by underwriters across all subsectors.

- **Asset managers:** Asset managers generally continue to be viewed favorably and are a targeted growth area for most insurers. Across the financial institutions industry, rate increases have come down most for asset management D&O/E&O programs, with lower single-digit increases being common. Retentions and coverage remain stable, unless an insured has had a substantial increase in exposures.
- **Insurance companies:** The market for ICPL continues to be challenged. There is limited primary capacity, though a couple of insurers have revisited their strategy and are issuing new policy forms, and some new market entrants will cautiously write excess ICPL. Rates have largely stabilized, but increases continue to prevail. "Cost of insurance" claims remain a significant concern. Sales and marketing coverage for life insurers is difficult to obtain, with many markets affording only sublimits or higher split retentions – or excluding cover altogether.
- **Banks:** BPL continues to be challenged by high claim frequency and severity and, as such, primary capacity remains limited. However, there is renewed interest from some insurers that are targeting banks with $5 billion to $20 billion in assets. BPL rate increases have moderated, but some may still experience double-digit increases, although likely less than what was applied in 2021. Retentions are now largely in a sustainable place after two years of increases.

We continue to monitor several coverage trends.

- **ESG:** Greenwashing, evolving global regulatory regimes, nat cat portfolio concentration and disclosures are growing areas of underwriting focus. We recommend that companies highlight their ESG framework, strategy, governance and initiatives to demonstrate their progress in this area.
- **Crypto:** Underwriters are focused on understanding crypto/digital asset exposures for all types of financial institutions. A small number of insurers have applied specific crypto exclusions. While most financial institutions have cautiously approached crypto/digital assets due to a lack of regulatory framework and clarity, there is a growing demand from customers for solutions in this area. We recommend that companies review their exposure and strategy for near-term and future use of crypto/digital assets with their insurance advisors.
- **Russia – Ukraine:** This is very much an evolving area. As of this writing, underwriters are seeking to understand how companies are assessing direct and indirect exposures, monitoring the situation and what actions have been taken. As insurers assess their own portfolio exposures, with scrutiny on war/hostile act exclusions, we may see pressure for a pullback in coverage.
- **Boundary cyber risk:** Cyber/privacy exclusions continue to be applied to non-cyber lines (e.g., E&O, EPL) to clarify the intersection and overlap of cyber risks across different coverages (boundary cyber risk). D&O insurers are asking more cyber-related underwriting questions. As (re)insurers continue to assess their silent cyber exposures and, as the cyber threat landscape evolves, we recommend reviewing all cyber-related coverage to be sure it is appropriate and to create better alignment and integration between programs.

Contact

Heather Kane
U.S. Head of FINEX Financial Institutions
+1 212 915 7905
heather.kane@willistowerswatson.com

Aerospace

Rate predictions

Airlines: -5% to +5%

Aircraft lessors/banks:
Flat to +10%

Products manufacturers and service providers:
+5% to +10% or more

Airports and Municipalities:
+10% to +15%

General aviation: +5% to +15%

Space: Rate changes depend on risk and limit; percentage range not applicable

Rate increases continue to decelerate with more capacity entering the marketplace and new insurers seeking their share of the inflated premium base created over the past couple years, while incumbent insurers seek to maintain, or in many cases, increase their market share. However, the impact of the crisis between Ukraine and Russia on the aviation market remains unknown as billions of dollars in aviation assets remain in Russia with little hope of recovery. The aggregate value of such claims could be in excess of those claims stemming from 9/11.

Airlines

Underwriters are expected to make money in 2021 despite a slight softening in the market toward the end of the year. Worldwide claims were not significant, despite a large hail loss for several domestic airlines, which did not turn out as bad as first forecast. Rates and premium saw downward pressure as capacity expanded slightly due to increased appetite from underwriters, who focused on maintaining their premium base rather than applying rate increases. We expect some buyers will see modest decreases in 2022.

- Global and domestic capacity is forecast to increase significantly in 2022. While underwriters may continue to look for rate increases on their global books, they will be hard pressed to get them with the domestic airlines, given the exposure rebound from the lows of the pandemic.
- In addition to adding capacity, some markets are looking to increase their lines.
- Minimum premiums remain in place for most airlines. This will help underwriters maintain their premium levels in case another COVID variant rises to disrupt the industry.

Aircraft lessors/banks

Hard market conditions prevail but rate increases are starting to plateau as insurer appetite remains strong in this segment. We continue to see greater emphasis on differentiation for loss-sensitive risks.

- Insurers continue to assess exposure and liabilities to Ukraine, Russia and surrounding areas. Combined impact of the Ukraine crisis and developing airline assets held in Russia may have far reaching impact on this class.
- Increased claim activity has continued, involving repossession expenses and technical records. Prior-year losses are expected to exceed the contingent premium base due to the large number of repossessions.
- Ground accumulation totals of leased assets globally are beginning to taper off.
- Overall market capacity remains adequate, especially for those profitable insureds with a growing fleet.
- Continued underwriting oversight from insurer senior management continues with heightened focus on technical records, repossession expenses and ground accumulation exposures.

Product manufacturers and service providers

After two years of improved performance for insurers, we are starting to see a deceleration in adverse market conditions in this sector. That being said, markets are still pushing for modest rate increases on clean business.

- Underwriters are targeting larger rate increases on maintenance and repair organizations (MROs)/ground handlers and on accounts with significant loss ratios or significant deterioration in losses.
- Underwriters continue to restrict some elements of non-core coverage and clarify their positions on others (i.e., excess non-aviation liability, electronic data event exclusions, and software clauses).
- Pricing adequacy is also an increasing focus for underwriters — meaning they will consider numerous factors when determining their technical price.

- Long-term relationships with insurers continue to benefit buyers and we are starting to see more discussion of potential long-term deals for preferential portfolio segments and clients.

Airports and municipalities

Rate corrections continue as hard market conditions slowly begin to ease.

- Large and surprising verdicts continue to keep social inflation and the potential for nuclear verdicts fresh in carriers' sights, leading to a general sense that pricing remains inadequate.
- Individual account experience and exposures will be more important going forward, rather than the broader market approach seen during the peak of the hard market.
- Horizontal programs with limits above $250 million continue to be evaluated closely by carriers and may end up being placed vertically due to reductions in capacity and/or appetite.
- Creative structuring is more prevalent, with excess layers becoming increasingly attractive to insurers.
- Marketing remains necessary if municipal boards want competitive options – assuming any can be found.
- Insureds can continue to expect non-aviation excess limit reductions, such as excess employer's liability and excess auto, as well as more clarified exclusions, such as cyber.
- COVID-19 exclusions are becoming more standard on excess employer's liability, when applicable.

General aviation

Although increases continue to decelerate, underwriters are still looking for an uplift in rates.

- Underwriters remain very focused on pilot training and require successful completion of 12-month model-specific SIM training. Exceptions typically require senior management approval, and contracted pilots remain under scrutiny.
- Underwriters are pushing for hull deductibles on fixed-wing managed fleets/charter ops and even some single ship IA fleets.
- We have seen no major changes in coverages and sublimits as underwriters have been closely reviewing and reducing these over the last couple of years.
- New capacity is being deployed by new and existing markets, which is putting pressure on underwriters to offer more competitive pricing on larger quota share placements.
  - Underwriters are inclined to stay on current business and are not very aggressive on new business, though this has been changing, and we expect further flexibility as the market softens over the next 12 to 18 months.
- Underwriters are beginning to consider multiyear deals and we expect to see more of this going forward. As the market starts to soften, underwriters will look to lock in a rate for two or three years rather than face downward rate pressure at annual renewals.
- Supply chain constraints and labor shortages continue to increase the cost of repairs and aircraft down time, effectively increasing the total cost of claims.
- Environmental, social and governmental (ESG) stances of carriers have begun to translate into more restrictive underwriting on risks that present an adverse picture on sustainability, e.g., older aircraft with less efficient/higher carbon emission engines.
- Movement of underwriting talent between insurance carriers may shake up the market some, with underwriters at new markets wanting market share while elsewhere appetite may be limited as leadership evaluates the book for profitability.

Space

Since the rate corrections of 2019 – 2020, this sector has stabilized.

- Risk differentiation is based on limit requirements and technology-based risk variations.
- The market's annual premium income target remains $750 million; once achieved, the sector should enjoy profitability.
- Market income has been hampered by pandemic-related project delays in addition to several large market-wide claims.
- New insurers/capacity have come into the market to replace some exited/decreased capacity.

Contact

Jason Saunders
Senior Director, Head of Global Aerospace – North America
+1 404 224 5054
jason.saunders@willistowerswatson.com

Alternative risk transfer (ART)

Rate predictions

Structured programs: Flat

Parametric nat cat weather programs: -5% to +5%

Parametric weather index programs: Flat to +5% (+20% to +30% Asia)

Parametric pandemic programs: Flat

Portfolio programs: +15% to +30%

Captive stop loss: Flat to +5%

Parametric and structured solutions continue to be the focus of the ART market in 2022. Portfolio/integrated risk products continue to face hard market conditions.

Market fatigue from poorly qualified and structured opportunities is apparent. ART deals supported by robust analytics and negotiated over realistic timeframes continue to fare better.

- The parametric market, now established for many risks, continues to see an influx of investor capital and MGA-facilitated capacity and technology platforms. While this appears to duplicate capacity providers, it also disrupts established deals and pricing and drives innovation. Lenders are increasingly accepting parametric solutions, reducing historical barriers to utilization.
- Structured solutions embedded in recent years are now expanding into other lines of business. Having been established to address a specific need, typically in primary property or casualty lines, clients are leveraging their investment in the mechanism to drive efficiencies into other lines of business.
- As in property and casualty, fronting is now being aggressively deployed to address such risks as cyber, where insureds balance the prospect of no/limited risk transfer and contractual requirements.
- Captive use has increased, though that has not necessarily translated into multiline stop loss or other ART approaches, as insureds simply retain risk.
- Portfolio/integrated risk products are attracting less attention as they face the same pressures as traditional lines: rate increases, capacity reduction/withdrawal and team disruption. Underwriters have basically embedded risk financing features, moving these programs into their structured solutions books.

Structured solutions

- Insureds with challenging risks or large risk appetites have benefited from deploying structured solutions.
- In addition to increased use beyond property and casualty, these solutions are also attracting interest as reinsurance of captives.
- Mature programs are expanding to absorb a wider set of risks.
- Key advantages are:
  - Managing the cash flow impact of large losses while allowing insureds to stay within their risk tolerance and secure risk transfer capacity for remote loss scenarios.
  - Replacing monoline layers where insurers are demanding rates-on-line (premium/limit) of 40%+.
  - Creating a bridge between increased retentions and higher traditional market attachment points.
  - Providing coverage for hard-to-insure risk classes for three to five years.
  - Offering significant pre-loss financing that helps align the insured's risk tolerance with that of the insurers.

Parametric solutions

- **Natural catastrophe risks**
  - Parametric hurricane and earthquake programs are the mainstay of ART activity in the Americas and other nat-cat-prone areas of the world. They are also being increasingly adopted by sovereign and public entities to aid in disaster recovery.
  - Insureds have a greater understanding of the limitations of traditional property policies and are realizing the broader potential ESG-linked uses of ART approaches.
  - Deployment has increased for hail, flood (water height) and wildfire, with new products emerging for tornadoes and network outage.

- Typical use is to complement the property placement, in-filling deductibles, topping up sublimits or covering uninsured risks (such as non-damage business interruption risk).
- To insureds exasperated by long, drawn-out claim adjustment processes following catastrophe events, the simple structure, use of independent data and quick settlement involved with parametric solutions are appealing.
- While few see parametric solutions completely replacing traditional insurance, parametric programs can provide an immediate source of liquidity in the event of a catastrophe while the insured gathers the data for their traditional insurance claim.
- This market continues to attract investor capital supporting new MGAs, and technology continues to drive product refinement. We are conscious, however, that these MGAs often access the capacity of established parametric markets. This could suggest that this market will see consolidation in the future.

- **Weather risks**
  - Parametric weather index products that address extremes of precipitation, temperature, humidity, snowfall, etc. are increasingly being adopted by insureds to hedge against non-damage business interruption events, especially with growing concern over climate change.
  - Activity is highest in the agriculture, construction, transportation, leisure and hospitality sectors, and buyers range from public entities to corporations of all sizes.
  - In the renewable energy sector, these products support the revenue generation of wind and solar assets over 10- to 15-year periods.
  - Insurers are keen to expand this sector to diversify the natural catastrophe concentration in their portfolios and protect against loss resulting from warm northern hemisphere winters.
- **Pandemic solutions**
  - Parametric pandemic solutions offer protection for lost revenue, lost gross profit and an increase in expenses from a non-COVID-19 pandemic event. These programs respond on a dual trigger basis requiring: 1) a World Health Organization notice (PHEIC or pandemic) and 2) either a breach of a pre-agreed level of cases or deaths in particular geographies, or a civil authority restriction by a federal or state government in particular geographies.
  - These programs could help manage the cash-flow impact of a future wave of COVID-19 through a multiyear structured (pre/post loss funding) component (not risk transfer).
  - One leading reinsurer continues to “make the market” with others now publicly supporting this approach.
- **Emerging solutions and indexes**
  - Broad non-damage business interruption solutions are becoming available using various economic and industry or risk indexes.
  - Multiperil policies are being written using generic industry indexes (REVPar, Footfall) that are correlated to multiple risks.
  - Insureds’ own production data is also being used where it is robust, has sufficient history and has gained insurer approval.
- **Analytics**
  - Parametric contracts are data driven, with claims being settled entirely on the value of the agreed data set. As such, they rely completely on a thorough analytical understanding of a risk and its correlation to a selected index.
  - Basis risk continues to be the key challenge and needs to be clearly understood by potential buyers.
  - The use of blockchain deployment has been aired many times, as the characteristics of this sector are a good fit. That said, there is little movement in this direction, likely because these programs require a notable degree of upfront customization (especially for large insureds), and programs run quite efficiently today.

Fronting solutions

- As capacity may be limited or simply not available for cyber insurance, many insureds are creating fronting programs of $5 million to $100+ million, leveraging their risk tolerance to retain the risk. This means that the money otherwise spent on insurance premiums can be redeployed into security improvement.
- We expect this dynamic to appear in other challenging lines, especially where legislative change allows the assumption of risks not previously within scope.

Portfolio solutions

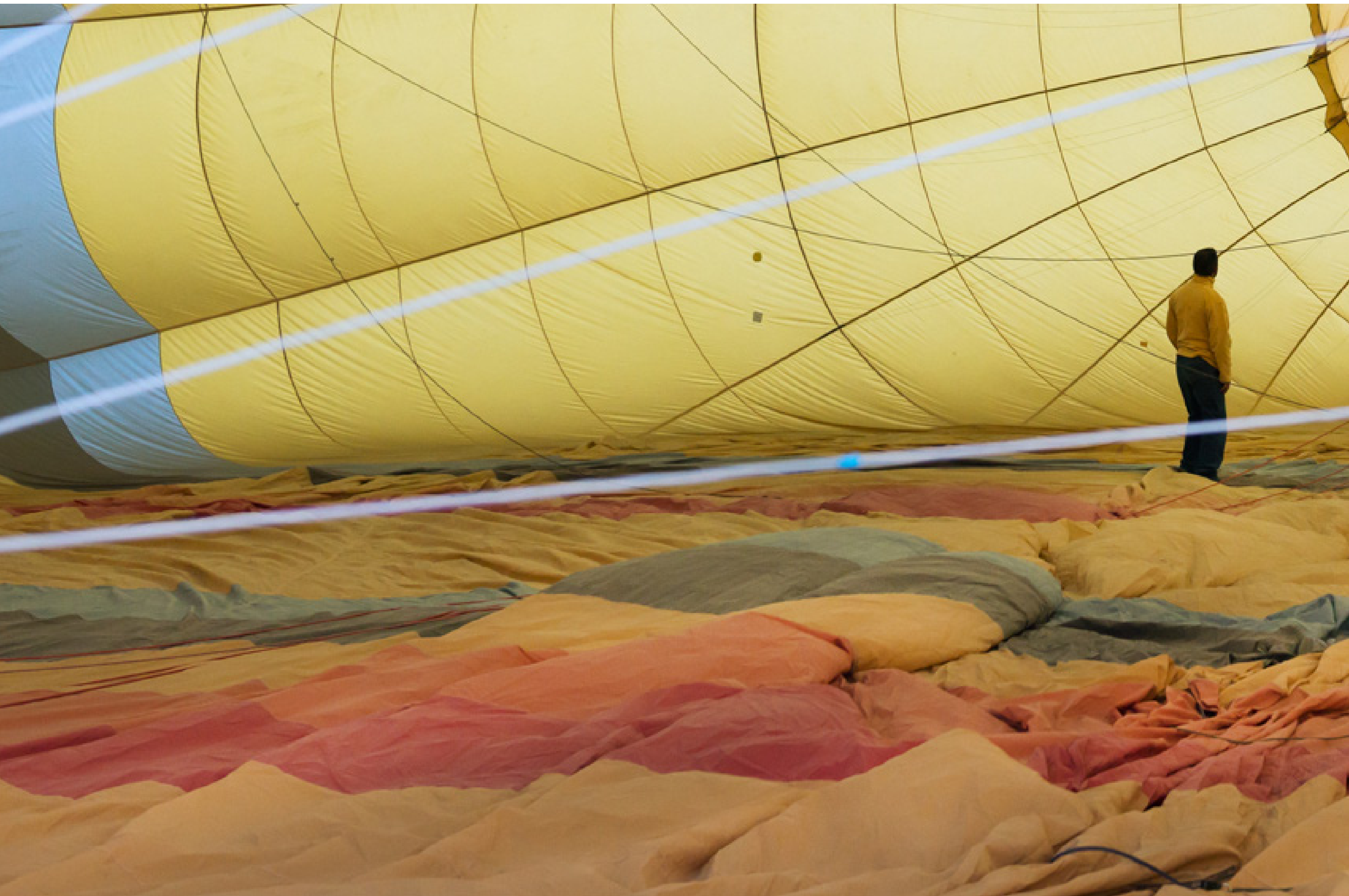
- Capacity for multiyear portfolio solutions (or integrated risk programs) has diminished significantly, as ART units are forced to adopt the same underwriting restrictions imposed on their traditional monoline colleagues.
- These markets increasingly focus on structured solutions or multiline stop-loss protection for captives or for a portfolio of deductibles/self-insured retentions.
- That said, those clients who previously established multiyear integrated programs are benefiting significantly by being insulated from market volatility and rate increases, at least until such programs renew.

Catastrophe bonds

- Commentators highlight that investor interest and new sponsor participation saw record activity in 2021 and suggest a strong outlook for 2022, as well as continuing price improvement.
- Adoption by non-insurance corporates remains low, suggesting most corporates do not face capacity restrictions or high premiums, factors that would promote investigation of capital market alternatives.

Contact

Derrick Easton
Managing Director, Alternative Risk Transfer Solutions
+1 212 915 7826
derrick.easton@willistowerswatson.com



Architects and engineers

Rate predictions

Professional liability: +5% to +10%

Project-specific professional liability: +25% or more

General liability/package: Flat to +5%

Auto: +5% to +15%

WC: Flat to +5%

Umbrella: +5% to +15%

Management liability: +5% to +15%

Cyber: +50% to +100%

While the A&E market has remained fairly insulated from the dramatic rate increases and constrictions in capacity in the broader P&C marketplace, we have seen considerable changes from one of the leading A&E PL carriers. The next 12 months will provide an indication of how the market will respond to an evolving risk environment.

Professional liability (PL): While the number of available PL carriers remains high, the number of long-term, stable A&E PL markets is finite.

- The U.S. PL market will remain relatively competitive, although carriers will be evaluating capacity and retention levels.
- Design firms can expect a high level of underwriter scrutiny to continue. Firms can expect underwriters to look closely at their commitment to specific risk management practices, including negotiation of fair and insurable contracts and education of their staff on managing A&E PL-related risks.
- The next 12 months will be a challenging period in the PL insurance market for many design firms – especially those with an adverse loss history.
- **Insuring single projects brings its own set of challenges.**
- Design firms can expect to pay more for insuring single projects, notably, specific job excess (SJX) and project-specific PL (PSPL), due to a hardening PL market and constriction of capacity.
- We continue to see a decrease in available capacity within the PSPL market – especially for large civil design-build projects. Some of the leading A&E PL carriers have taken a hard line on these risks in large part due to alternative delivery methods and the utilization of fixed price contracts with unrealistic pricing and contingencies paired with an imbalance of contractual risk allocation.

Emerging A&E claim trends: In January 2022, Willis A&E released a survey of senior claim managers from 12 A&E professional liability carriers. The survey focused on professional liability claim statistics, professional liability claim trends and emerging A&E risks.

- **Professional liability claim statistics**
  - The cost and time to settle a PL claim are increasing, with most carriers noting it takes on average two to three years (and sometimes more) to settle a matter.
  - The overall frequency of A&E PL claims has remained stable; however, we are experiencing a definite upward trend in severity and an increase in the overall cost to settle matters.
- **Professional liability claim trends**
  - Condo projects continue to be the frontrunner when it comes to the most hazardous project types.
  - Third-party bodily injury claims and design-build/alternative project delivery are the two leading factors behind a continuing trend toward higher severity claims on road and highway/infrastructure projects.
- **Emerging A&E risks**
  - Climate change and the evolving standard of care were identified as leading emerging risks for A&E firms.
  - Social inflation is a key contributor to the increase in claim severity. Increased values in verdicts, an aggressive plaintiffs' bar and concerning trends in reptile theory and litigation financing are fueling this trend.

- COVID-19 has been referred to as "a slow-moving catastrophe" with considerable uncertainty about its ultimate impact. While certainly a major event, most A&E PL carriers have reported few, if any, direct PL-related claims to date. However, the impact on the economy and A&E risk remains to be seen.

The cyber insurance market continues to harden.

- An explosion in cyber claim severity, coupled with high frequency, has had a direct impact on premiums, capacity and underwriting scrutiny.
- In addition to premium increases, critical coverage terms and conditions are being amended, and we are seeing a decrease in available limit and an increase in retention levels.
- Start the renewal process early and review underwriting trends with your broker to ensure you have the proper protocols in place.
- While a stand-alone cyber liability is strongly recommended, robust IT practices to mitigate this risk are a firm's first line of defense.

Contact

Dan Buelow
Managing Director, Willis A&E Architects and Engineers Center of Excellence
+1 312 288 7189
daniel.buelow@willistowerswatson.com

Captive insurance

Captives are increasingly the corporate focal point for managing and structuring risk financing in areas such as climate/weather risks, cyber, non-damage business interruption and D&O.

The trends noted in our last issue continue, with commercial insurance rates rising at a moderate rate. Interest in traditional property and casualty captive programs typically jumps during hard market cycles, but now we see additional consideration given to emerging risks and risks not previously managed through captives.

- This ongoing shift in captive deployment not only reflects insurance market conditions but is further enabled by better data and analytics capabilities.
  - These tools are facilitating advances in quantification of both individual risks and portfolios of risks, including multiple lines of business.
  - In some cases, captives may be able to cover emerging risks before traditional insurance markets have an opportunity to develop their own products.
  - We continue to see an increase in the use of analytics to support decision making and to optimize cost of risk transfer in market negotiations, particularly among captive owners looking to optimize their use of capital and quantify their risk tolerance.
- We expect captives and alternative risk transfer solutions to continue to play an expanding strategic role in risk financing decisions.
- Interest in parametric solutions, especially around climate and environmental risks, remains strong, as clients seek capacity that may not be available in traditional insurance markets.

U.S. domiciles

- Early new captive formation reports suggest a strong 2022 across all industries and lines of insurance. In contrast to recent years, captive dissolutions were down in 2021 and, therefore, we expect a solid net increase in number of captives during 2022.
- Captives that built capital and surplus during the extended soft insurance market continue to be further optimized to support new lines of insurance and new offerings of limits to combat the effects of the lingering hard insurance market.
- Profit center captives are making a comeback, driven by foreign employee benefit risk and third-party risk.
- We are seeing notable expansion of captive formation and use by managed care organizations to support differences in conditions and differences in limits of commercially placed insurance programs, as the commercial market imposes more and more restrictive coverage terms.

Americas offshore

- The key Atlantic and Caribbean domiciles of Bermuda and the Cayman Islands have seen strong growth in the number of new captive insurance licenses issued.
- New activity remains largely focused on business from North America, with additional activity from Latin America. Europe continues to generate activity, while interest from Asia and Australasia appears to be increasing.
- Cayman continues to see new activity in the healthcare sector, which remains its largest generator of captive business, but the type of business written is diversifying.
- Bermuda activity remains centered on larger, more complex global programs at one end of the scale, but also segregated account (cell) business at the other.
- International employee benefits captives are gaining some traction in Bermuda.

Contacts

Peter Carter
Head of Global Captive Practice
+44 (0) 203 124 6300
peter.carter@willistowerswatson.com

Jason Palmer
Regional Head of Global Captive Practice, United States
+1 802 264 9555
jason.palmer@willistowerswatson.com

Paul Bailie
Regional Head of Global Captive Practice, Bermuda and Cayman
+1 441 707 0692
paul.bailie@willistowerswatson.com

Construction

Rate predictions

General liability: +5% to +15%

Auto liability and physical damage: +5% to +12.5%

Workers compensation: Flat to +5%

Umbrella (lead): +5% to +15%

Excess: +10% to +25% (or more – depending on operations, geography, risk profile)

Project-specific builders risk: Flat to +10%

Master builders risk/contractors block programs (renewable business): +10% to +20%

Professional liability: Flat to +10%

Contractors pollution liability: Flat to +10%

Project-specific/controlled insurance programs: +5% to +15%; +10% to +40% for excess

Subcontractor default insurance: Flat to +10%

Last fall we reported that the worst of the hard market was behind us, and that continues to hold true. With insurance rates and interest rates highly (and inversely) correlated, we expect to find further relief in 2022 as interest rates are expected to rise.

Rate increases are moderating.

- We are seeing renewal rate increases continue to decline across all casualty lines.
- Ushered in by a wave of new market capital, the greatest improvement has been in the high excess marketplace.
- Some risk classes still face restricted capacity challenges but are certainly stabilizing.

Construction activity is expected to rise in 2022.

- With the passage of the Infrastructure Investment and Jobs Act, significant increases in construction spending for infrastructure projects are anticipated.
- While infrastructure work is typically focused on heavy construction (roads/bridges, airports, rail, etc.), significant funds are allocated in the bill for "green energy" projects, pointing to a likely increase in alternative energy, solar/wind construction activity as well.

Court activity is expected to rise in 2022.

- Many facilities were forced to close throughout the pandemic and, in most states, courts were no exception, leaving a significant case backlog. Some states have opened faster than others, so the backlogs vary.
- A recent survey published by the Thomson Reuters Institute revealed that the average backlog in state and local courts increased by approximately one-third between 2020 and 2021.
- There is concern in the insurance industry that large (nuclear) verdicts ahead will continue to negatively impact underwriting results and add upward pressure on rates.

Improvement in results for reinsurers could ultimately yield better conditions for some insurance buyers and worse conditions for others.

- Reinsurance is a major factor in many casualty renewals, often impacting rate beyond the ceding underwriters' discretion. According to Fitch Ratings, January 2022 results were a mixed bag, with lines of business subject to poor loss experience (property and cyber) experiencing steep increases. Conversely, the casualty reinsurance marketplace appears to be softer.
- Fitch upgraded the reinsurance market from "stable" to "improving."
- AM Best's outlook remains constant at "stable."
- Moody's changed its outlook from "negative" to "stable."

General liability (GL)

General liability rates have continued to stabilize while underlying exposures have risen. The mounting backlog of construction work presents opportunities for contractors, but delays in obtaining materials and rising labor costs will be a factor in upcoming renewals.

- Material costs rose an average of 22% over the last year (Bureau of Labor Statistics), exacerbated by countless supply chain delays. As a result, builders and contractors are looking at alternative building materials and new material suppliers (Wall Street Journal). Contractors should fully research new materials to avoid circumstances that could give rise to GL claims.
- The backlog of residential construction projects is at an unprecedented high, which means residential contractors will have a large pipeline in the coming years. The number of authorized housing units that have yet to be started is up 44% from a year ago (Market Watch). Due to the significant potential for a rise in construction defect claims down the road, the insurance marketplace for residential construction remains challenging. While the overall market may be turning in favor of the contractor, we are not expecting significant pricing relief in the residential construction segment.
- Construction labor wages increased by 4.46% from August 2020 to August 2021. As wages are a primary exposure base for GL premium rating, insureds can expect increased premiums, even when the number of workers on the payroll remains the same (GlobeSt).
- Although the rate of price increases is moderating, certain high hazard construction operations (street and road, residential) will continue to see higher costs. Contractors with more challenging risk profiles, poor loss experience or ineffective risk management protocols will continue to experience a challenging marketplace. Contractors should continue to bolster loss control and quality assurance programs to improve the underwriting perception of the risk.
- There is increased competition among carriers for best-in-class risks, resulting in positive marketing outcomes. In some circumstances, renewal *decreases* are being obtained.
- A comprehensive underwriting submission delivered to the marketplace with substantial (90 days minimum) underwriting lead time will usually produce more favorable renewal results, particularly with submissions to new carriers.
- While increased carrier competition may yield better renewal results, incumbent partners continue to be an attractive option for most annual renewals. Often the familiarity with the contractor's operations provides incumbent carriers a level of confidence that allows for increased underwriting flexibility regarding terms, conditions and pricing. Furthermore, as the overall marketplace improves, incumbent carriers are less willing to lose a quality piece of business to competition.

Auto liability (AL)

The auto market remains challenging; however, rates are beginning to taper off after years of drastic increases.

- A significant drought in qualified truck drivers has put substantial pressure on contractors to find suitable drivers. The number of truck drivers in the country fell by 7% from 2019 to 2020 (New York Times).
  - Many firms have been forced to consider using younger or less experienced drivers to meet labor and schedule demands.
  - This is especially challenging for contractors with heavy fleets.
  - The national driver shortage has prompted the creation of a pilot program that will soon allow people as young as 18 to drive commercial vehicles across state lines.
  - It is still unclear how the market will react; we anticipate that carriers may seek to limit exposure to less experienced drivers by coverage restrictions on commercial auto policies or include an additional charge.
  - The risks associated with using less experienced drivers are likely to bring additional underwriting scrutiny.
- Recent auto liability renewals have experienced an average rate lift of +8.5%. The fourth quarter of 2021 was the fourth consecutive quarter that yielded an average rate increase under 10% (WTW's State of Casualty Marketplace).
  - Regular increases in claim severity have been a key factor behind the chronic underperformance of commercial auto over the past decade (WTW's State of Casualty Marketplace).
- Underwriting scrutiny is increasing on hired/non-owned auto exposures, as carriers begin to treat this exposure similarly to the owned fleet.

- Fleet makeup is a significant factor in carrier appetite and program structure. Heavier fleets (extra heavy power units, dump trucks, ready-mix trucks, etc.) still represent significant risk, yielding continued upward pressure on rates and deductibles.
- The percentage of contractors' auto liability programs with a minimum $5 million combined single limit (CSL) has remained stable over the past year, which indicates that the umbrella market may be more comfortable with the industry's overall increase in attachment points.

Workers compensation (WC)

Workers compensation still exerts a stabilizing influence on most contractors' programs. However, an increase in claim frequency due to contractors racing to keep projects on schedule may to some degree reverse this trend.

- Contractors are under pressure to hire additional labor to keep up with their mounting backlogs. Labor shortages may require contractors to hire from a less experienced labor pool, making risk control and safety even more critical. The use of job monitoring technology is becoming commonplace and proving effective.
- The ongoing stability of workers compensation underwriting experience has enabled contractors to offset rate increases in general liability and automobile liability rates.
- After several years of modest rate increases, contractors with good loss experience are now able to obtain modest rate *decreases*. We expect this trend to continue.
- Despite an overall improving workers compensation market, rising labor costs have acted as a counterbalance, preventing rates and overall premiums from dropping significantly.
- Markets continue to demonstrate a broad appetite for construction workers compensation opportunities. However, the marketplace for monoline guaranteed cost coverage is extremely limited. Best renewal results are obtained when workers compensation is coupled with the other primary casualty lines of business – general liability and automobile liability.

Umbrella/excess liability

Despite years of substantial rate increases, umbrella and excess carriers are still conservative with their capacity in lower layers of an excess tower. However, recent new capacity has entered the excess market and the resulting increase in competition has encouraged rate stabilization and occasional rate *decreases* in excess towers.

- After more than two years of an exceptionally hard umbrella and excess market, where the availability of lead umbrellas, unsupported by the primary casualty lines, virtually dried up, most contractors have now paired their primary and lead umbrella programs with the same carrier to achieve the most efficient results. Capacity in the unsupported lead umbrella market remains almost non-existent.
- Capacity in the first $25 million of an umbrella and excess tower is commonly considered a working layer, so that in recent years many insureds have been forced to piece together lower layers employing multiple carriers on a quota share basis. However, as the overall marketplace for umbrella and excess improves, some insureds have been able to eliminate quota share arrangements, thus obtaining overall premium relief on the excess tower.
- Although general market conditions are improving, many contractors with high-hazard operations or who perform work in challenging geographies are forced to obtain coverage from non-admitted markets when the standard market declines the risk or coverage.
  - Common coverage restrictions in the non-admitted marketplace include exclusions for cross suits, punitive damages, wrap-ups, residential/condominium conversion exclusions and anti-stacking limitations. However, often these non-admitted carriers are willing to consider coverage modifications when contractors and their respective brokers provide ample underwriting information and negotiate coverage effectively.

Controlled insurance programs (CIPs)

Although social inflation, COVID-19 project delays, drastic cost fluctuations of materials and the continuing trend of nuclear verdicts are continuing to impact CIP pricing, we have seen healthy competition within the admitted marketplace for commercial project risks. Whether pursuing an owner-controlled or a contractor-controlled program, a robust submission with comprehensive underwriting data remains the most important factor in pursuing carrier support for CIPs.

- Information crucial to the underwriting process includes sponsor experience, general contractor performance and history, loss control measures and specific details surrounding quality to ensure a successful project delivery.

- Depending on project size, scope and lead time, taking the opportunity to present the risk directly to carriers from the sponsor's perspective has helped produce competitive options.
- Terms and conditions depend on quality information as well as the pursuit and purchase of other project-specific lines of business. Carriers are concerned about the CIP becoming a catch-all when other available coverage has not been secured, especially in the wake of a significant claim.
- Several carriers are providing project risk control technologies designed to increase project safety and improve construction quality, thus reducing the potential for costly long-term defects. The availability and efficacy of these technologies should be considered when selecting an insurance carrier. A modest increase in upfront cost may result in significant long-term reduction in deductible losses.
- While market conditions for excess capacity are gradually improving, moderate rate increases are still the norm.
  - It remains a rarity to see $25 million in capacity deployed by a single excess carrier.
  - Minimum premiums can be determined on a price-per-million basis or per-annum, which requires creativity to appropriately align quota share partners at a suitable attachment point.
  - Obtaining competitive unsupported lead umbrellas remains one of the most difficult challenges. Lead umbrella capacity often leverages the primary placement.
- Reinsurance treaty stipulations continue to drive required rate and non-negotiable terms and conditions based on class of business.
  - Communicable disease exclusions remain requirements with most carriers due to treaty restrictions. At times, however, we have seen successful removal of specific exclusions when proper prevention protocols and onsite mitigation practices are in place and can be verified.
- Project extensions remain difficult to obtain at original program pricing and terms. Depending on the timing and project loss experience, extensions can be astronomically costly.
  - If an extension is going to be required, begin the negotiation process as early as possible.
- Unlimited rolling programs have become more restrictive, with less available capacity in the market.
  - Due to the scrutiny surrounding certain classes of business, programs that historically allowed for a small percentage of a more challenging risk, e.g., frame condominiums, are now requiring a completely different rate structure or requiring the risk to be placed outside of the rolling program.
  - When annual reinstatement of the general aggregate applies in the primary it can be challenging to secure follow form in the excess.
  - We are continuing to see per-project general aggregates and per-project products-completed operations aggregates being applied with a cap so carriers can control their total amount of limit deployed.
  - New York continues to be a challenge. General liability may only be offered on a very large or matching deductible basis.

Residential, wood frame and single-family build-to-rent portfolios all face limited marketplace options. Coverage can often only be obtained in the E&S marketplace.

- Although new carriers have entered the E&S space, this is not creating a more competitive marketplace for these challenging classes of businesses.
- Due to the trend toward more single-family build-to-rent projects, carriers that do have an appetite for the profile are typically limited in the total amount of capacity they can deploy for the class. Once a carrier has hit capacity limitations, they are simply unable to entertain additional risks, even if the initial loss indications across the portfolio are exemplary.
- Problematic jurisdictions continue to force for-rent, non-frame projects into the E&S marketplace, with large rate increases on both primary and lead as most carriers consider the lead excess to be a working layer.

New York controlled insurance programs (CIPs)

The liability market continues to trend drastically upward with no signs of slowing down.

- Historically, projects in the five boroughs of New York City have faced extra underwriting consideration. Now, however, most of the marketplace underwrites any risk impacted by New York labor law as a statewide risk, affecting every project in the state.

- Under a CIP, if an enrolled contractor's worker sustains an injury resulting from a fall or a falling object, the typical result is a labor law general liability claim *in addition* to the workers compensation claim.
- Due to inflation, nuclear verdicts and insurance payouts trending upward on labor law claims, payouts are not expected to slow down or level out any time soon.
- New York State courts tend to lean as broadly as possible to favor injured employees.
- Alternative dispute resolution (ADR) has been employed on a major upstate project, resulting in reductions in the frequency and severity of labor law claims. However, such programs require long lead times to initiate and implement properly.

Builders risk

With the exception of wood frame construction, competitive terms and conditions are still achievable on most new ground-up projects. Prototypical technologies, unique construction methods and extreme natural catastrophe-exposed projects continue to face hesitancy from the marketplace and/or more restrictive terms and conditions.

- Underwriter scrutiny continues to delay the quote process. Providing complete and accurate underwriting information is a prerequisite. Highlighting best-in-class supply chain efficiencies and material procurement protocols will help raise underwriter comfort levels.
- Water damage continues to plague the market. Higher water damage deductibles can be expected, especially on high-rise, residential and wood frame projects. Water mitigation plans are a more frequent requirement in these sectors.
- Carriers are still looking to achieve technical adequacy with high cat-exposed MBRs as natural catastrophe events seem to worsen year after year.
- Specific coverage extensions, such as LEG 3 and damage to existing property, continue to be closely scrutinized by underwriters and available limits are decreasing. If and when offered, higher rates and/or deductibles usually apply.
- Due to increasing costs on materials, we see growing concern over the adequacy of the original policy limit in the event of a complete loss. Construction costs should be monitored throughout the project life cycle and the limit of liability adjusted as needed. Brokers should also push for higher escalation clauses, although carriers have been reluctant to offer significant increases to this point.

While extensions remain challenging on some projects, carriers have been more flexible and are offering more reasonable terms and conditions.

- Increased rates and deductibles, in addition to possible restrictions in coverage, can still be anticipated on extensions. Projects with losses, heavy cat-exposed locations or opportunities backed by reinsurance support can still expect more severe restrictions and corrections in rate and overall terms.
- Carriers continue to scrutinize underwriting data and seek additional approvals, causing overall quote delays.
- Engaging with the carrier as early as possible when an extension is needed remains crucial. Correspondence should include all available information about the status of the project and the reason for the extension.

The wood frame market continues to be extremely challenging, with finite capacity causing rates to rise.

- Large-scale developments/projects are becoming more common, and the need for multiple carriers on a single risk leads to premium increases and possible non-concurrent terms and conditions.
- Adequate lead time for wood frame submissions is critical – turnaround takes weeks to months depending on project size and complexity.
- Site security has become a requirement for most wood frame construction. Risk managers and contractors should look at site security as part of the all-in construction cost instead of an additional cost. Electronic service monitoring can be costly, depending on the scope of work and length of the project. Engaging vendors early will assist in estimating costs.
- Along with site security, water detection service implementation on wood frame projects is encouraged. While not always a requirement, it does help separate a project from others and increase carrier appetite.
- Crime scores are closely monitored on all projects, as civil unrest, riots, arson and looting in certain geographies have proven challenging to underwrite. Buyers should anticipate higher rates and even stricter security requirements in these locations.
- Wildfires continue to be front of mind for underwriters, and wildfire deductibles or restrictions may appear on new placements.

Professional liability (PL)

The construction professional liability market remains relatively competitive, although increased underwriting scrutiny continues, with carriers careful about capacity deployment and retention levels.

- Adequate capacity and continued competition are keeping rate increases manageable compared to other P&C insurance lines. However, we are continuing to see upward pressure on rates and retentions, especially for project-specific capacity.
  - Total U.S. capacity continues to be in excess of $300 million, with additional capacity available through London, Bermuda and other international markets.
  - While there is still significant total capacity in the market, carriers are generally restricting capacity for any one risk.
  - Protective indemnity and rectification coverages are now included in standard forms offered by leading carriers, but terms and limits can vary considerably, and we are seeing added underwriting scrutiny for these enhancements.
  - Some underwriting authority is being removed from the field, leading to a longer underwriting process.
- Project-specific placement solutions vary based on the controlling party (contractor/engineer/owner) procuring the insurance; regardless, we are seeing increased underwriting scrutiny, motivating brokers and underwriters to find innovative solutions for evolving contract structures.
  - Market capacity for architects and engineers (AE) project-specific solutions has contracted, especially for large project-specific placements.
  - Many carriers in the contractor's professional liability market are reserving project-specific capacity for existing clients.
  - Large design-build infrastructure projects continue to produce adverse loss experience for the AE market, creating risk allocation challenges for contractors, particularly when employing design-build contract delivery.
  - Buyers can expect underwriting scrutiny of coverage enhancements, such as rectification/mitigation. Underwriters are also conducting detailed contract reviews related to insurance requirements, limitations of liability and contractor assumption of design responsibilities.
- There is continued interest in owner-procured professional indemnity policies for further protection on project risk.
  - Increasing project values create a corresponding rise in professional liability risk, yet many contractors and design professionals do not carry limits that adequately address these larger exposures.
  - Traditional project-specific professional liability policies covering all design risk on a project can still be obtained, but many buyers prefer the cost efficiency of professional liability products that offer a protective indemnity coverage approach.
  - Shrinking capacity for architects and engineers and continuing pressure for contractual limitations of liability are driving increased demand for owner-procured protective indemnity (OPPI) for projects.

Contractors pollution liability (CPL)

The expected increase in construction activity in 2022 will likely raise the demand for contractors pollution liability (CPL) coverage. Recent carrier entries as well as contraction in the site pollution market makes CPL coverage a highly competitive product line. Though even with the increased competition, slight rate increases are expected.

- Regulatory scrutiny has increased in the past few years regarding per- and polyfluoroalkyl substances (PFAS), as several lawsuits have been filed and verdicts reached. PFAS exposure is being monitored more closely than ever.
  - According to the Center for Disease Control (CDC), the persistence of PFAS is a concern because the chemical does not break down in the environment, hence it being called a "forever chemical." It can move through soils, contaminate drinking water and has been found to build up in fish and other wildlife.
  - PFAS are used in many household products, but also have been used in building materials, such as coatings, sealants/adhesives and wires/cables.
  - While most general liability policies include pollution exclusions, contractors will need to be aware of the coverage provided and mindful of the materials they use to ensure they are adequately protected.

- The following exposures continue to fuel the need for practice- and project-specific CPL coverage: pollution exposures during work and after completion, indoor air quality, Legionella, mold and water-related issues, application of chemicals, installation of building products, excessive siltation, emergency remediation expenses, contractor-owned locations, beyond-the-boundaries scenarios, and transportation and disposal of construction debris.
- The largest expected rate increases continue to be associated with monoline habitational, hotel, hospitality and hospital risks – sectors that continue to experience the highest claim activity.
- Site pollution coverage that may accompany a pollution wrap-up program will require special attention, as this product line continues to experience reductions in capacity and tightening of policy terms, as well as limited appetite with respect to emerging exposures and such contaminants as PFAS.
- Claim activity related to redevelopment of brownfield properties continues – although carriers try to limit exposure by adding exclusions associated with historic fill, dewatering and voluntary site investigations. In addition, we are seeing increased claim activity related to stormwater run-off from construction sites. We are seeing claims brought by project owners, citizen action groups and regulatory agencies.

Subcontractor default insurance (SDI)

SDI carriers continue to add capacity in anticipation of continued growth in demand into 2022 and beyond. As delayed projects get back online, we are seeing steady increases in backlog for 2022. Access to qualified labor will be a key challenge in getting this work done. Owners, developers and general contractors continue to leverage the comprehensive coverage SDI provides to ensure operations and projects are protected against subcontractor default.

- The SDI marketplace now has seven carriers, including five that we consider actively engaged in the product line. Four of those five can offer single limits of $50 million or greater per loss.
- Carriers continue to offer flexibility for annual and multiyear programs and on subcontractor enrollment amounts, which is opening SDI programs for small, mid and larger sized contractors.
- Talent is shifting in the SDI sector. Leaders have changed firms, and there is a new market which is set to open in 2022 led by ex-leaders of a key SDI player.
- With the introduction of new capacity and choice, buyers should review current policy terms, conditions and pricing.
- Underwriting in the current environment will continue to present challenges. SDI carriers are critical of contractors who are altogether new to SDI, and virtual underwriting meetings may not be sufficient to build trust. Carriers are beginning to methodically open travel for in-person underwriting and risk engineering visits, which is driving more concrete relationships.
- For the near term, contractors will have to contend with inflation, material and supply uncertainty and ongoing qualified labor constraints. We expect contractors to consider a balance of SDI and subcontractor bonds to get through this period of growth and uncertainty.
- Despite current uncertainties, the SDI marketplace is robust. Markets are responding responsibly with some adjustments to their program offerings. In addition to the overall increase in market capacity, the anticipated entrance of a new carrier offering significant limits, without legacy exposure, provides an additional option for both the near and long term.

Contact

Jim Dunlap
North American Construction Broking Leader
+1 312 288 7439
james.dunlap@willistowerswatson.com

Energy

Rate predictions

Downstream property

Favored programs: Flat to +2.5% (small reductions for the top risks)

Technical rating adequacy yet to be achieved: +10% to +12.5%

Upstream property

Offshore fixed assets: Flat to +2.5%

Offshore contractors: +2.5% to +5%

Onshore contractors and smaller E&P programs: +2.5% to +5%

Midstream and offshore construction: +5% to +7.5%

Downstream: While buyers by no means enjoy a soft market yet, the very best programs have now broken the no-reductions barrier.

Upstream: The hardening dynamic continues to flatten, but concerns over reduced exploration and production (E&P) activity and lack of market leadership alternatives are generally preventing actual rating reductions.

Downstream

Positive factors are now outweighing the negative for buyers in this market, with continued insurer profitability and increased capacity.

- An additional $500 million of realistic market capacity is now available for North American risks.
- The premium pool has also increased, due primarily to increased oil and gas prices and revised asset valuations following the easing of pandemic conditions in key regions.
- The loss record in this sector continues to be moderate, despite several major natural catastrophe losses this year.
- Downstream underwriters are now faced with additional pressure from their management to increase premium income throughput.
- The leadership options in this sector are beginning to increase, as more insurers are prepared to offer their own terms and conditions.
- The market's increased enthusiasm for this class has allowed brokers to align individual insurer contributions to programs more effectively, thereby streamlining the placement process and driving improved terms and conditions.

However, some negative factors will continue to ensure that this is by no means yet a truly soft market.

- There is still no major threat from fresh insurance capital to the positions currently held by the established market leaders. This is preventing further competitive pressure.
- Underwriters are sticking firmly to the policy wordings and clauses generated by the previous hard market, thereby maintaining generally narrower insurance cover than what they offered in the past.
- Insurers are becoming increasingly focused on environmental, social and governance (ESG) issues, although no consensus has yet emerged as to how the market will react to varying ESG profiles in the future.
- Insurers are focusing on the accuracy of asset and business interruption values, a trend that has accentuated as commodity prices have increased and the pandemic has eased.
- For those insurers writing North American named windstorm, earthquake, flood, etc., softening pressures are less likely to apply. Rating increases should be expected for this part of the downstream portfolio.
- Management scrutiny of downstream portfolios continues, which will act as a brake on future softening.

Insurers continue to focus on tightening terms and conditions.

- The new market clause LMA 5515 factors in the maximum percentage of the margin of error between actual and declared values, as well as any premium adjustments. In view of the recent increases in commodity prices, buyers must keep values up to date and accurate if the full quantum of future business interruption claims are to be paid.
- Insurers are also considering implementing an end-of-life clause, which would stipulate that insurers will only pay out on an ACV rather than RCV basis if there is a total loss of a facility that will not be replaced in kind.

There are now three tiers to this market.

- Tier One consists of well-engineered and perceived "good," clean, well-run risks – insurers have received sufficient payback during the last two years to enable them to offer reductions of up to 5%.
- Tier Two consists of programs that are still not at the right benchmarked rating and still require corrective treatment with upper single-digit rating increases.
- Tier Three consists of loss-affected programs where rating increases of between 10% and 12.5% are still being applied.

Upstream

Positive factors are flattening the previous hardening market dynamic, in part due to an exceptional loss record.

- Capacity has reached a new record with no sign of any withdrawals; realistic capacity now stands at some $7.25 billion for the most attractive programs.
- $100+ per barrel oil will lead to some increased activity and higher loss of production income (LOPI) values, generating some additional premium income to the market.
- Most insurers are looking to increase their line sizes and generate additional premium income in 2022, particularly from the most sought-after business.
- January 1 reinsurance cost increases were more modest than anticipated, while Lloyd's overall H1 results have shown a marked improvement over this time last year.
- The overall benign loss record and profitability have been maintained – for now.

However, several negative factors are preventing any genuine market softening.

- Insurers worry over significant incurred but still unquantified losses – for example, a major Norwegian LNG plant explosion in 2019, for which the claim adjustment has yet to be resolved. There have also been various offshore construction and control-of-well losses.
- There has been a recent withdrawal of capacity for Gulf of Mexico windstorm business, with prices expected to rise during 2022.
- Premium income from the contractor portfolio has been particularly impacted by COVID-19 and the new underwriting focus on ESG criteria. This income is unlikely to return to the market as the green energy transition accelerates.
- The insurer leadership panel remains basically restricted, with limited opportunities to secure competitive terms from alternative markets. Market discipline remains strong, with insurers unwilling to challenge the existing status quo.
- There is still a significant degree of management/Lloyd's scrutiny of major upstream programs and a consequent pressure to adhere to established underwriting philosophies.

Insurers' increased focus on ESG credentials is a worrying issue for buyers, as the long-term capacity provision implications remain uncertain.

- The Lloyd's Joint Rig Committee has now produced a standard London market ESG questionnaire.
- Insurers are keen to underwrite this class and simultaneously maintain their own ESG credentials.
- ESG issues are not materially affecting most programs yet but will become more of a focus in the long term.

As in downstream, a three-tier market has now developed.

- Tier One consists of major E&P and offshore contractor programs featuring significant premium income where flat to +5% rating increases are being negotiated.
- Tier Two consists of onshore contractor and medium sized E&P business where increases range between 2.5% and 7.5%.
- Tier Three consists of offshore construction, midstream and loss-impacted business, which generally attracts increases between 5% and 7.5%, but perhaps more for the most disadvantaged programs.

Contacts

Robin Somerville
Business Development Director,
Natural Resources
+44 203 124 6546
robin.somerville@
willistowerswatson.com

Paul Chirchirillo
Head of USA Energy Broking,
Natural Resources
+1 212 915 8265
paul.chirchirillo@
willistowerswatson.com

Keith Mattheessen
North America Regional
Industry Leader,
Natural Resources
+1 713 625 1136
keith.mattheesen@
willistowerswatson.com

Environmental

Rate prediction

Contractors' pollution liability (CPL): +5% to +10%

Site pollution liability (PLL/EIL): +5% to +15%

Combined environmental + casualty/professional/excess: +5% to +20%

As expected, the 2022 environmental marketplace is showing signs of growth even as adverse underlying market conditions (constricting site pollution capacity, rising claim severity) and the uncertainty of emerging exposures would suggest otherwise. At the same time, environmental insurance's role in addressing ESG (environmental, social and governance) risk continues to expand.

Rates and markets

- We see a continuation of upper single-digit and low double-digit rate increases for short-term environmental renewals (three-year policy term or less) for an equal policy term – though a slight rise in these increases may be coming as carriers look to keep pace with the increasing costs of remediation and claims.
- Although rate increases have trended lower than other standard casualty lines for renewals with equal policy durations, longer-term environmental policies (greater than three years) are beginning to experience a notable hardening that manifests as a reduction in coverage appetite, policy term and capacity offered at renewal.
- Major markets continue to evaluate their underwriting appetites and look to reduce their exposure on existing programs where possible, while aggressive new entry (and new to retail) environmental markets are stepping in to replace this capacity – keeping any potential rate increases in check.

What's new?

- **ESG risk:** The role of environmental insurance as a tool to address ESG-related matters will be contemplated and discussed with more vigor as regulatory disclosure rules in the U.S. and the rest of the world around ESG are promulgated.
- **Climate:** Environmental insurers are evaluating their books of business for insureds contributing to climate change. Those insureds are seeing a decline in available markets as well as higher rate increases as a result.
- **Environmental justice:** We are seeing increased regulatory enforcement of certain industries located in communities that are the focus of state and federal environmental justice initiatives. Regulators are filing lawsuits against these companies to enforce cleanup mandates, as well as for natural resource damages.

Innovation

- As the development of new analytical tools continues, companies will be able to utilize their own location and loss data to assess their global environmental exposures and cost of risk versus their peers – allowing them to make better decisions for their businesses and tailor their insurance programs to meet their needs.
- Extreme weather, climate change, human environmental disasters, biodiversity loss and natural resource crises continue to be among the highest exposures identified by the World Economic Forum in terms of impact. Accordingly, discussion and interest in coordinated programs to address resulting remediation and tort exposures (with traditional environmental insurance) and economic damages (with parametric insurance/alternative risk transfer) are increasing, with new coverage developments potentially on the horizon.

Coverage and claims spotlight

- **PFAS:** While environmental markets have focused on per- and polyfluoroalkyl substances (PFAS) since 2020, exposure is now faced by standard lines insurance markets for all lines of coverage, including property and products liability. As businesses with past or current exposure to PFAS risk increased activity from environmental regulators as well as third-party lawsuits, carriers are all but eliminating coverage for PFAS. We are seeing similar trends with other chemicals of concern, such as ethylene oxide, and we expect similar coverage restrictions for those chemicals in the near future.
- **IAQ (indoor air quality):** IAQ coverage for mold and Legionella has become more difficult to secure and is increasingly subject to sublimits, higher retentions and per-bed/door retentions for the healthcare and residential real estate sectors.
- **Redevelopment:** Claim activity related to redevelopment of brownfield properties continues – although carriers try to limit exposure by adding exclusions associated with historic fill, dewatering and voluntary site investigations.
- **Stormwater:** We are also seeing increased claim activity relating to stormwater run-off from construction sites, with claims brought by project owners, citizen action groups and regulatory agencies.

Contact

Brian McBride
Head of Environmental Broking
+1 404 224 5126
brian.mcbride@
willistowerswatson.com

Healthcare professional liability

Rate predictions

Primary: +5% to +10%

Excess: +15%

Hospital: +5% to +25%

Allied health: +5% to +15%

Physicians: +5% to +15% (particularly venue dependent)

Loss-affected accounts: Highly variable rate increases

Healthcare professional liability (HPL) and general liability (GL) rates and terms and conditions have stabilized, but the market is closely watching some key global trends. Excess layers are still seeing greater rate pressure and more restricted terms and conditions than lead and primary layers — especially in larger towers.

HPL and GL marketplace

- Despite another market exit, the available HPL capacity has largely stabilized.
- The reduction in deployed capacity from $25 million to $15 million that we've written about in this space increasingly appears to be a permanent feature of the HPL market.
- Several risk retention groups (RRGs) and alternative markets have entered the healthcare liability segment.
- The pace and level of rate increases have also steadied, and rate increases sought by insurers have remained fairly consistent over the last few quarters. Yet there are still some negative market forces at play:
  - Insurers have very pessimistic views about social inflation — a major driver of rising loss severity.
  - Excess layers are subject to more rate pressure than primary/lead layers. There are several reasons.
    - Insurers are more likely to deem excess layers as not having reached rate adequacy.
    - More carriers are necessary to construct large towers, especially on towers greater than $75 million, muting the rate depressing power of competition.
    - Severity trends are still rising, and insurers are concerned about obtaining adequate pricing for catastrophic losses.
- The impact of COVID on claim trends is a much-discussed topic, particularly as courts have been reopening. Dockets are jammed with COVID-delayed cases; this may encourage a rush of settlements to clear caseloads.
- Another COVID-related topic of discussion is its potential impact on healthcare tail; COVID might result in delayed detection of incidents and lengthen the time it takes to resolve claims.
- Some carriers have increased their loss assumptions to account for multiple inflationary trends (e.g., social inflation) — a sign that carriers are not expecting the upward severity trend to ease.
- Carriers are trying to balance the opportunity to grow with their concerns about severity trends, social inflation and unknowns around COVID claims. At times, this has resulted in a degree of market dissonance — a divergence between the rates carriers would like to obtain and what they can obtain in the marketplace — that has been favorable to buyers.
- Have transparent pre-renewal conversations with incumbent carriers to obtain their guidance on rate, attachment, limit deployment and terms, and be prepared to market programs to achieve the best terms and pricing.

Physician's professional liability market

- A few carriers are showing early signs of renewed conservatism due to uncertainty about claim outcomes now that court trials are resuming after the pandemic pause.
- Physician's medical malpractice written premium is shifting from the admitted market to E&S markets. This is in large part due to the admitted physicians' market adopting more conservative underwriting stances, reducing capacity and often seeking greater rate increases.

- API (application programming interface) security is a growing concern in healthcare as cyberattacks increase. X-rays, charts and test results from our physician's office are now all available on our phones, leaving this information more vulnerable to attack.

Macro trends directly impacting HPL/GL

- Global supply chain disruptions can lead to delays in acquiring critical healthcare supplies (medication, PPE and technology), which could directly contribute to an erosion of staff and patient safety. Healthcare entities should prepare to discuss with underwriters the steps they are taking to reduce their exposure to ongoing supply chain vulnerabilities.
- Medical malpractice insurers are concerned about the disruptive effects of the current healthcare workforce shortage. Healthcare entities should be ready to highlight how they have bolstered safety and quality systems in the face of costly employee turnover.
- The future impact of inflation on medical expenses and medical malpractice verdicts is a growing concern. Historically, healthcare inflation has typically outpaced consumer prices; yet the current inflationary pressure has not manifested yet in healthcare. This lag between emergence of inflationary pressures (labor shortage and supply chain disruption) and a rise in healthcare pricing has raised many questions about if (and when) medical inflation will follow. Rising inflation in long-tail business may have a compounding negative effect on distressed loss ratios that could impact model assumptions and, ultimately, pricing.

Contacts

Kirsten Beasley
Head of Healthcare Broking, North America
+1 441 278 0099
kirsten.beasley@willistowerswatson.com

Michael Faralli
Senior Broker
Healthcare Broking, North America
+1 212 915 8384
michael.faralli@willistowerswatson.com

Laura Coombs, RPLU, CPLP
National Physicians Broking Leader
+1 512 651 1660
laura.coombs@willistowerswatson.com

Special contingency risks: Kidnap and ransom

Rate prediction
-5% to +5%

While the prevalence of cyber exclusions will send insureds looking for other solutions to cyber extortion risk, kidnap and ransom products are being increasingly sought out for active assailant risk cover. Insurers are also beginning to restrict coverage for exposure in Belarus, Russia and Ukraine.

The pandemic has so far not had a direct impact on this insurance sector, but it has changed the nature of the risk.

- As restrictions and lockdowns have eased, the incidence of kidnap activity has returned to pre-COVID-19 levels in several countries. While the decline in international travel has led to a perceived reduction in risk, our data shows an increase in the numbers of local nationals kidnapped.
- Moreover, criminals have continued to invest in schemes, such as virtual kidnaps (efforts to extort quick ransom payments when kidnappings have not actually occurred), to exploit the current environment and maintain a cashflow to fund further illicit operations.
- Cyber extortion has also continued unabated, as many technology-related crimes are not impacted by lockdowns or reductions in social and business interaction. Indeed, the steep rise in people working from home has presented cyber criminals a wider range of softer targets.
- Many believe that the economic downturn and lingering financial impact of COVID-19 could lead to increased security threats and higher rates of criminality globally as groups/individuals become more desperate.

Insurers are tightening policy language pertaining to cyber events that could be considered part of a ransom scenario.

- Insurers have almost entirely introduced blanket exclusions for cyber extortion, applying the exclusion on all new and renewal business.
- For those few programs with cyber extortion coverage, very small limits will apply to crisis response fees and expenses, or the policies will carry high self-insured retentions coupled with small aggregate limits.

Coverage restrictions for Russia, Ukraine and Belarus:

- Insurers are beginning to issue exclusions for these countries on new business and renewal quotations.
- Coverage exclusions range from being specific to expatriate and travel security evacuation endorsements to blanket across the entire policy.
- Insurers' coverage exclusions will likely be tied to the security developments in these countries for the immediate and mid-term future.

Interest in active assailant coverage is growing.

- In addition to traditional K&R policies, the special risks market continues to develop and promote policies that respond to a broad range of security-related perils.
- We have seen special risks insurers, as well as other specialty insurers, show greater interest in active assailant coverage and offer increasingly customized solutions (either via endorsement or stand-alone policies) with a focus on post-incident crisis management support, legal liability, business interruption (as a result of both physical and non-physical damage) and indemnification of a variety of incident-related expenses.
- These solutions go beyond traditional terrorism and/or political violence coverage and are increasingly being used to complement traditional policies.

Contacts

Philipp Seel
Special Contingency Risks, Inc.
+1 212 519 7202
seelp@scr-ltd.com

Concetta Longobardi
Special Contingency Risks, Inc.
+1 212 519 7203
concetta.longobardi@scr-ltd.com

Life sciences

Rate prediction
+5% to +10%; possibly more for clients with unfavorable losses or product classes in active litigation

In the short term, insureds should expect mid-single-digit rate increases; in the longer term, the risk landscape for the industry is likely to evolve as courts reopen, and opioid cases result in more insurance carrier payouts.

Capacity

- For most domestic clients who purchase up to $100 million in limits, there is adequate capacity in the U.S.
- The global product liability capacity for life sciences is roughly half the size it was 10 years ago, with the market contraction most pronounced in Europe.
- Roughly half of the current capacity worldwide is in the U.S., supported by a handful of insurers in the U.K. and Bermuda.

Claims and litigation

- Pharmaceuticals and medical devices continue to be targets for product liability lawsuits, with social inflation leading to larger settlements, bigger jury awards, and defense expenses continuing to trend upward. For these reasons, higher limits should be considered.
- Third-party litigation funding is a multi-billion-dollar industry that is reshaping litigation on a global scale.

Coverage considerations

- Connected medical devices require thoughtful program design to adequately address product, professional and cyber liability exposures.
- Coverage for product withdrawal expenses within the product liability form is very limited; those with a recall exposure should explore stand-alone product recall coverage, as recalls continue to be on the rise.
- Early M&A due diligence is critical with respect to past liabilities and retroactive dates.

Risk positioning

- Demonstrating appropriate safety and quality measures, along with adequate contractual risk transfer and indemnification with third parties, is key to gaining favorable market opinion and securing the most competitive terms available.
- Food and Drug Administration (FDA) enforcement and inspections are expected to ramp up again in 2022; underwriters will be looking for timely, amenable responses to any observations or corrective actions.
- Detailed information on new or discontinued products and past recall activity is required for a successful negotiation.

Pricing

- Insurers are seeking 5% to 10% rate increases for most risks with favorable loss history and quality controls – possibly more for those unable to demonstrate quality and safety standards or with unfavorable losses.
- Litigated or challenged product classes (i.e., orthopedic implants, IVC filters, opioids, birth control, nutraceuticals, etc.) continue to face more scrutiny.

Emerging issues

- COVID turned a spotlight on the pharmaceutical industry, with uncertain long-term consequences.
- The FDA is developing a plan to transition away from temporary COVID enforcement policies and emergency use authorizations (EUAs) to return to normal premarket processes.
- Pending legislation for new regulation of LDTs (laboratory developed tests) and other clinical testing is a result of the attention COVID has drawn to such testing.
- Several other developments and issues are likely to change the risk landscape for life sciences:
  - Evolution of gene and cell-based therapies
  - Decentralization of clinical trials to fully virtual or hybrid models
  - Product contamination during manufacturing; impurities from sourcing of raw materials
  - Regulation around CBD products; market appetite still very limited

Contacts

Sandie Mullen
North American Broking Leader
Life Sciences
+1 913 563 8853
sandie.mullen@willistowerswatson.com

Denise N. Gordon, CIC, CRM
Specialty Broking Leader
Life Sciences
+1 651 334 4246
denise.gordon@willistowerswatson.com

Managed care E&O and D&O

Rate predictions

Overall: Hard market conditions but stabilizing

Public MCOs and Blue plans: +15% or more for E&O, +20% or more for D&O

All other MCOs: +10% or more for E&O, +20% or more for D&O

Hybrid entities (accountable care organizations, third-party administrators, revenue cycle management, etc.): +10% or more for E&O, +20% or more for D&O

E&O, D&O and cyber market conditions for managed care organizations (MCOs) remain hard, especially the cyber market, but E&O and D&O are beginning to stabilize.

Rate increases are coming down, but significant coverage restrictions are still being applied, as are sublimits and retention increases. Coverage restrictions and limitations are significant for risks related to antitrust, fiduciary, cyber and systemic or group/association risks.

- Rate increases are decelerating with an exception – one market continues to apply significant increases.
- Retention increases have leveled off, but coinsurance and sublimits continue, especially related to antitrust, association and regulatory claims. Political and regulatory uncertainty at the federal and state level is adding further complexity to the marketplace.
- Cyber exclusions are becoming more common due to the turbulent cyber market.
- Systemic risk plagues MCOs, and managed care E&O and D&O carriers continue to assess their entire portfolios as they consider their exposure to aggregated risk.
- Many carriers require managed care E&O participation to write a D&O/management liability package, which creates anti-stacking coverage concerns, as well as issues related to rate and capacity in larger towers.
- Risk transfer programs must be managed and strategically planned across all lines of coverage in order to avoid gaps in coverage and limit restrictions.
- Reinsurance carriers have increasingly serious issues with antitrust exposures, concerns that are no longer limited to Blue plans. Reinsurance rate increases and capacity in this space are also impacting rate, coverage and capacity.
- The use of captives and other alternative risk financing solutions are on the rise. Fronted programs can be negotiated as an alternative to captive programs.

Is an end to the hard market in sight? Marketplace activity says possibly.

- Two domestic carriers entered the excess managed care E&O and D&O market over the past year, fueling competition in the excess layers and allowing carriers to be moved around in towers to produce premium savings.
- These markets also entered the managed care primary E&O space late in 2021, with one carrier writing primary D&O as well.
- Carriers are hesitant to write hybrid accounts that provide non-managed care services to third parties.
- No new offshore capacity has entered the market. Bermuda and London are high excess markets only.
- Domestic carriers and their offshore counterparts closely coordinate capacity.

How can buyers most effectively continue to weather the storm?

- Communicate early and often as the market changes.
- Consider the broader picture. In addition to rate – growth, M&A, new business activities and adverse loss activity may affect pricing.

- Host carrier renewal meetings and provide submission materials well in advance of renewal dates. These materials should include complete claim information, membership breakdown by type of member, and a complete list of managed care core and non-core services. Individualized underwriting is key.
- Run analytic models. Broad and reliable analytics can support optimal selection of retentions, limits, captive use and alternative risk transfer options across the entire entity. While product line analytics can help an MCO employ the best program for a specific risk, entity-wide risk analytics can help build the most efficient program for the entity as a whole.
- Negotiate terms early.
- Explore alternatives to simply buying blocks of cover in the commercial market.

Buyers should be aware of claim scenarios that can create coverage problems.

- *Antitrust:* Over the last 25+ years, the managed care industry has been involved in many antitrust claims. The ongoing *In Re: BCBS Antitrust Litigation;* (MDL 2406); 2:13-cv-20000-RDP (USDC N.D. AL) is but one example. Antitrust claims can take many forms and follow various legal theories and may be prosecuted in state, federal and foreign jurisdictions. They can be filed by members, providers, competitors and governments. They can be class actions, but many are not. They require specialized legal representation and are expensive to defend. The resulting losses are not always 100% covered. Coverage for these claims is tightening significantly. The recent passage of the federal CHIRA legislation, the Biden administration's focus on antitrust in healthcare, state laws and regulatory pressures may continue to create disruption.
- *Network security and privacy:* Cyber risk is a top risk for every MCO. MCOs maintain large amounts of protected data on millions of members, send and receive billions of dollars monthly and collect biometric data. Efforts to obtain this information by foreign governments, criminal enterprises and other hackers are an everyday occurrence. Claims related to lost business income, ransomware payments, breach response expenses and first- and third-party losses are all on the rise. While there is capacity in the marketplace, buyers must take note of coverage restrictions, the need to dovetail coverage terms with other lines and the difficulty of determining proper limits. Social engineering, ransomware and technology E&O coverage restrictions are growing. Changing state, federal and foreign exposure based on legislative and regulatory action are also adding to the pressure.
- *Government fines and penalties:* Because MCOs are so tied to government reimbursement, plans are likely targets of government False Claims Act investigations, whistleblower lawsuits or administrative fines/penalties. Beyond restitution, damage awards, fines and penalties, defense costs alone can exhaust a risk transfer program. International regulatory compliance is another risk in countries (e.g., the UK, EU, India) where many MCOs now have business operations.

Contacts

Kenneth White, J.D.
NA Managed Care Practice and COE Leader
National Healthcare Practice
+1 954 615 1887
kenneth.white@willistowerswatson.com

Kathy Kunigiel, ARM, RPLU
Senior Managed Care E&O Placement Specialist
+1 860 874 4012
kathy.kunigiel@willistowerswatson.com

Marine cargo

Rate predictions

U.S. market

Transit:

Good loss experience:
+2.5% to +7.5%

Marginal to poor loss experience:
+15% and higher

Stock throughput:

Good loss experience:
+5% to 10%

Marginal to poor loss experience:
+15% and higher

London market

Transit and stock throughput:

Good loss experience: Flat to 5%

Marginal to poor loss experience:
+10% and higher

The hard market continues; however, renewed competition and enhanced growth targets in the marketplace have moderated upward rate movement in 2022. While rate increases are to be anticipated for incumbent renewals, reductions may be achievable in rare cases following a strategic marketing effort.

Underwriting discipline persists. Insurers remain focused on bottom-line profitability, with continued scrutiny of insuring terms and conditions and capacity deployed.

- Rate movement has stabilized for accounts with favorable to moderate loss experience.
- Insureds can anticipate a more predictable approach from cargo insurers at renewal. The hard market cycle has inched premiums closer to technical pricing requirements, while also pressuring deductibles upward and tightening coverage terms. These actions have had a positive impact on underwriting results, which lessens the need for drastic remediating action at subsequent renewals.
- Rate remediation has created an attractive entry point for new and revitalized cargo underwriting operations.
- Certain business segments and exposures are subject to more scrutiny than others, such as temperature sensitive products, pharma, automobiles and high-hazard cat exposures.
- Detailed exposure information and risk differentiation remain crucial to securing favorable terms and conditions.
- Analytical tools should be employed when available to best position insuring structures (with a focus on retention, cat limits, aggregates, etc.).

Vulnerabilities throughout the supply chain have become apparent during COVID-19 pandemic.

- Maritime mishaps, such as vessel fires, engine failures and containers overboard, continue to plague cargo insurers, adding to an already stressed global supply chain.
- A global shortage of available vessels and containers has contributed to an accumulation of values throughout the supply chain. We recommend insureds regularly review the adequacy of policy limits to ensure larger consolidations are accounted for.
- Vessel accumulation has led to a substantial increase in full containers shipped on a single sailing, leading to several incidents of containers lost overboard.
- The introduction of autonomous vessels will create new challenges for clients and insurers and require innovative solutions to manage new risks.
- Geopolitical instability causes uncertainty when certain trade lanes are used.
- Cyber events remain a looming threat to maritime trade.

Cargo and stock throughput markets are challenged by catastrophic losses.

- Large industry losses have occurred as a result of mis-declared cargo, causing concern for insureds and insurers. In some cases, shipowners have declared general average.
- Cat management continues concern insurers as they seek to increase deductibles and reduce cat limits deployed. Additional attention is being paid to cat definitions, especially regarding occurrence definitions and "fire following" buy-backs. In addition, insurers continue to seek the inclusion of straight-line wind in the windstorm definition.

Contact

Anthony DiPasquale
Marine Practice Leader
North America
+1 212 915 8591
anthony.dipasquale@
willistowerswatson.com

Marine hull and liability

Rate predictions

Domestic hull and machinery, good loss records: good loss records: +7.5% to +10%

Domestic hull and machinery, poor loss records: +20% or more

London/international hull and machinery, good loss records: +10% to +15%

London/international hull and machinery, poor loss records: +20% or more

P&I domestic: +10% to +15%

P&I London/international: +10% to +15%

Domestic primary marine general liability: +5% to +10%

Domestic excess marine liability: +5% to +10%, greater with underlying crew and towing exposure

London marine liability: +15% or more

USL&H mutual: Flat to +5%

The marine market remains firm, with underwriters still seeking increases on clean business, while mandating cyber and communicable disease exclusions. Marine underwriters are becoming less willing to provide excess coverage over non-marine exposures.

Underwriting in the current environment remains demanding.

- Due to reinsurance restrictions, all markets are mandating disease and cyber exclusions.
- Excess underwriters are still seeking to reduce capacity, and quota share placements are the norm, though these trends are easing as most markets have stabilized.
- Placing of excess coverage over $1 million primary placements is increasingly difficult in the face of reduced carrier appetite.
- Marine bumbershoot underwriters have in the past written policies with underlying non-marine liability exposures, such as auto and employers' liability policies. They are becoming reluctant to do so due to adverse loss experience and the underpricing of these exposures. Marine reinsurers have also increased their scrutiny of extending coverage over non-marine risk.

P&I London/international

- For the February 2022 renewal, the International Group of P&I Clubs asked for minimum general increases in the 10% to 15% range.
- Given continuing deteriorating level of large pool claims, there is nothing to suggest that February 2023 renewal will result in any improvement, but it is of course premature to predict with accuracy.

Burdens are increasing on both sides of the negotiating table.

- Underwriters are requiring substantially more data for renewals and new business.
- The high number of buyers marketing their business is overwhelming underwriters, whose time to review is limited.
- Underwriters remain under scrutiny by their senior management, who have become much more involved in the process. This negatively impacts the renewal process from the buyer's perspective.

Contact

Phil Gran
Shipowners Leader
North America
+1 212 915 8312
philip.gran@
willistowerswatson.com

Personal lines

Rate predictions

Homes under $1,000,000: +6 to +8%

Homes over $1,000,000: +8% to +12%

Cat-exposed: +20% to +50% w/limitation or non-renewal

Cat-exposed and/or losses: +50% or non-renewal

Auto: +10% to +12%

Massive rate increases in cat-prone areas coupled with inflationary pressures highlight a persistent hard market in personal lines. A recent pullback by several carriers in California and Florida has exasperated insurance buyers in an already capital-starved industry segment.

Underwriting personal lines coverage is increasingly complex.

- Underwriting guidelines have narrowed for problematic risks, leaving many individuals reliant on state-sponsored insurance programs.
- Premium risk profiles with limited exposure and clean claim history will still have several marketplace options available.
- Others should be prepared for rate increases along with mandatory underwriting guidelines.

Property insurance faces inflationary pressure as carriers drive toward rate adequacy.

- Many carriers are automatically increasing property coverage limits by 8% to 12% in order to catch up to labor and material shortages that have caused a massive increase in construction costs.
- Our prediction last fall of carriers abandoning difficult markets has unfortunately proved true. This exodus from cat-prone areas will cause many real estate deals to fall through and/or clients to self-insure.
- Many carriers are adding capital and resources behind their excess and surplus paper. When the admitted market does not have the appetite for this coverage, carriers may place in the non-admitted market after regulatory requirements are met.
- Notable catastrophe loss events filled 2021 from the beginning, with the Texas freeze in February, to the end, with the Kentucky tornadoes in December, and in between, chief among them Hurricane Ida, which could ultimately cost $30+ billion.

Despite the drop in driving miles during the lockdown, severity of auto losses spiked and now frequency is reaching pre-pandemic levels.

- The used car market has increased by 47%, according to Manheim Used Car Index. This has directly contributed to deteriorating loss ratios for auto insurers.
- We predict a full reversal of the recent easing of auto rates and foresee frequency slightly worsening from pre-pandemic levels.
- Drivers are motoring at higher speeds, causing more serious accidents, and this trend is expected to stay.
- Carriers are clamoring to get rate increases filed with regulators with the goal of reversing deteriorating loss ratios.

Social inflation has spurred an increase in court costs and litigated settlements.

- Courts have reopened their doors to previously stalled litigation leading to many large jury-awarded judgements.
- The Insurance Research Council suggested that “very large verdicts have a strong signaling effect on insurance claimants and insurers, resulting in higher settlement costs across a broad class of insurance claims.”
- Jury awards tend to be higher in geographic areas with greater levels of income inequality (Assured Research).

The growing threat of cybercrime will leave many individuals’ personal information exposed.

- In Q1 of 2021, four in 10 people encountered an unsafe link while using their mobile devices – less than a year later, five in 10 people encountered such threats (Cybercrime).
- With over 80% of personal email accounts exposed on the dark web, bad actors will increasingly steal important personal and financial information by compromising consumers’ online accounts.

- With cryptocurrency becoming more popular among new investors, crypto scams are also rising.
- Many insurance carriers are responding to cybercrime by offering some coverage under their homeowner policies.

Contact
Tyler E. Banks
National Practice Leader
Personal Lines/Private Client
+1 949 930 1766
tyler.banks@willistowerswatson.com

Political risk

Rate predictions
Flat to +20%

Against a backdrop of the first full invasion of one European country by another since World War II, political instability has continued to escalate in many countries around the world, and multinational corporations will need to navigate social unrest and political volatility.

The crisis between Russia and Ukraine has triggered sanctions and political uncertainty in Europe.

- U.S. sanctions have targeted Russian financial institutions, specific individuals and entities, and new debt and equity restrictions. Stringent export controls have been implemented to restrict access to cutting-edge technology inputs.
- Broader ramifications of the crisis include spikes in energy and commodity prices. Ukraine exports more than 40% of its wheat and corn to countries in the Middle East and Africa where price increases can exacerbate existing economic tensions and increase potential for social unrest.

In general, emerging economies have continued to recover from the pandemic, although governments with large post-pandemic debt burdens continue to face the difficult choice of risking sovereign default or cutting debts aggressively and potentially provoking social unrest.

- Countries suffering large pandemic debt-related downgrades included Argentina, Brazil, Chile, Colombia, Ecuador, Indonesia, Jordan, Malaysia, Mexico, Peru, the Philippines, Senegal, South Africa, Thailand, Tunisia and Zambia.
- Protests in Kazakhstan turned bloody as authorities crushed the protest movement, and thousands were detained. Rising fuel prices and dissatisfaction with the government sparked discontent among a population faced with a decline in living standards.
- One year after Myanmar's military-led coup, the country faces the threat of civil war. While most of the violence has been between civilian protestors and members of the police and military, occasional violence has been directed toward companies believed to be Chinese-owned, as some protestors believe Beijing has been supportive of the military's actions. Multinational companies risk getting caught in the crossfire, and the threat of embargo or sanctions has led to several divestitures.
- Turkey's unconventional monetary policies have caused the lira to fall to a two-decade low. With rising inflation rates and decreasing purchasing power, labor strikes have picked up across several sectors.
- A military coup in Burkina Faso adds to the spate of recent coups and coup attempts in West Africa, which have rocked Guinea, Mali, Chad, Niger and Guinea-Bissau. Root causes include increased poverty, unemployment, corrupt leadership and a youth bulge welcoming promises of radical change. Many observers are concerned about a return to the rampant upheaval of the early postcolonial era.
- Belarus faced crippling sanctions from the U.S., the U.K. and the European Union, for which western firms operating in the country may experience direct or indirect retaliation.
- Tensions between the West and China continue. Lithuania became the latest recipient of Chinese retaliation after criticizing China and allowing Taiwan to open a representative office in Vilnius. Concerns over human rights violations in Xinjiang, tension in the Taiwan Strait and South China Sea, as well as an ongoing U.S.-China technology conflict will contribute to growing political risk in the region.

We are following several trends in the political risk insurance marketplace.

- The marketplace continues to experience rate increases, particularly for countries where political risks have risen.
- Property carriers are increasingly excluding strikes, riots and civil commotion from policies; the resulting gaps in coverage can be addressed through political risk insurance.
- Capacity for China, Russia, Ukraine, Brazil, Turkey, Peru, Honduras, Haiti, Argentina, Myanmar, Chile and Belarus appears to be tightening.
- For multiyear programs in force, underwriters cannot increase rates, and insureds are enjoying the insulation from rate increase for the life of the programs (usually three to five years).
- Market conditions are also more challenging in certain sectors, such as technology.
- Carriers are maintaining a selective approach, insisting on increased due diligence.
- We advise multinational companies to maintain a proactive approach to their global portfolio.
- For more detail on political risks in specific industry sectors, please see our recently published reports in collaboration with Oxford Analytica:
  - 2022 update to our Annual Political Risk Survey
  - The top political risks for renewables in 2021
  - Political risks in the natural resources sector
  - Managing new political risks in the technology sector
  - Political Risk Index Winter Edition

Contact

Laura Burns
U.S. Political Risk Product Leader
+1 301 692 3053
laura.burns@
willistowerswatson.com

Product recall

Rate predictions
Flat to +5%

The Food and Drug Administration (FDA) is ramping up its use of technology relative to food safety, since the adaption of the Reportable Food Registry, which allows companies to self-report potential contaminated foods. The agency will be better able to track patterns and focus inspections on particular products, pathogens and allergies. As the underlying data becomes more available and accurate, it will likely become a focus of underwriting and influence submissions.

Marketplace changes appear to be favorable to buyers.

- A new market that began writing January 1, 2022 is looking to grow into the largest insurer in the recall space and has staffed up with recognized talent.
- Some long-time players have also stacked their bench with new underwriting talent.
- Underwriters who left one leading carrier have set up a new shop.
- These moves have increased competition, and we have seen the top end of rate increases drop to 5%. We expect rates will continue to flatten.

COVID has had broad impact on the recall market.

- The well-documented supply chain issues of the COVID era have wreaked havoc on manufacturers, disrupting plans to manufacture products new and old, and representing a barrier to re-manufacturing a recalled product, which can be a threat to bottom lines. Supply chain breaks have impacted materials ranging from silicon chips to common nylon.
- Commodity prices have roller-coastered, rendering the claim and resupply process chaotic.
- Pervasive labor and talent shortages have hit quality control teams, leading to concerns about false and sub-standard inspections.

Brand reputation is a complicated issue in the Internet age.

- Consumers are getting news from multiple sources, and controlling the narrative is a seemingly impossible task.

Changes in government regulations stand to alter the rules of the game.

- The SHARE Information Act, if passed, would increase financial penalties against companies for violating safe product laws and for failure to share safety reports.

Contacts

Kevin Velan
Director
National Product Recall Team
+1 312 288 7140
kevin.velan@willistowerswatson.com

Shawn McCleary
Associate Director
National Product Recall Team
+ 1 312 288 7351
shawn.mccleary@willistowerswatson.com

Senior living and long-term care

Rate predictions

General and professional liability:
Favorable loss experience and venue: Flat to +25% (Higher with adverse loss experience and/or poor venue)

Property:
Non-challenged occupancies: +2% to +10%

Challenged occupancies: +15% or more

Workers compensation: -2% to +4%

Auto: +5% to +15%

Rate increases are stabilizing, and the emergence of new capacity will continue to drive competition. Program structures and coverage terms will continue to challenge the industry, and markets will look to capture premiums reflective of exposure increases along with moderate rate increases.

Professional liability and general liability

- New market entrants should provide much-needed competition for senior living risks, though capacity lost in 2019 and 2020 has not been fully replaced.
- Expect to see rate hike deceleration as the new entrants try to expand market share. Markets will continue to focus on obtaining rate for increased exposures and to decline or non-renew risks with adverse loss history.
- Underwriters are incorporating broader communicable-disease exclusions rather than simply excluding COVID-19. Stand-alone communicable disease liability policies are available, but capacity is limited.
- Insurers are highly selective about the facilities they will write and are particularly reticent to deploy large capacity in such litigious venues as New York, New Jersey, California and Florida.
- To reduce their total cost of risk, many insureds are assuming larger deductibles or self-insured retentions. Buyers need to be proactive in securing lender waivers when retentions exceed those allowed in standard loan covenants or when captives are utilized without acceptable fronting arrangements.
- We are seeing a significant uptick in the use of captive programs for primary layers.
- Renewal timelines continue to be longer than usual due to substantially increased submission flow and less underwriting authority at the desk level.
- Underwriters are seeking more detailed data and information for the renewal process. In particular, information requests may focus on vaccine protocols, staffing adequacy, virus statistics and potential financial instability for senior living communities, given that most lost revenue during the pandemic. (It was reported in 2021 that 49% of assisted living facilities were losing money.)
- Clients seeking to differentiate their risks must focus on incident reporting, claim mitigation, policies and procedures. Emphasis on clinical program management will also have a positive impact, particularly with a focus on fall management, elopement, medical management and infection prevention and control.

Property

- The recent influx of capacity is causing a deceleration of rate increases for non-challenged occupancies. However, challenged occupancies (including senior living) and certain geographic locations continue to see higher increases.
- Capacity remains constrained for accounts underwriters do not consider technically priced or where engineering visits are required for underwriting.
- Insurers continue to restrict many coverages previously offered, such as communicable disease and cyber. Additional tightening is occurring on CBI (contingent business interruption), service interruptions, deductibles for convective storms and increased waiting periods.
- We see continued pressure on the part of carriers to move from manuscript to insurer forms.
- Valuations are being heavily scrutinized, and submissions require ample data to attract new markets.
- Due to the array of occupancy classifications that can apply to this sector, it is imperative to use accurate occupancy classifications for modeling.

Workers compensation

- Six consecutive years of profitable results have allowed rates to level off more quickly in workers comp than in other lines of insurance.
- Underwriting concerns continue regarding opioids, the aging workforce, regulatory reform and medical bill inflation.
- Carriers (including incumbents) are taking an in-depth look at insureds' COVID-19 and infection-control protocols and asking more questions about policies and procedures.

Auto

- 2020 appears to be the auto liability segment's best accident year in 10 years due to the limited number of vehicles on the road. However, combined ratios are still over 100 and the volume of vehicles on the road is increasing as the pandemic subsides.
- 2020's estimated rate of death spiked 24% despite the reduced number of miles traveled.
- Distracted driving remains a significant issue, and communities with high numbers of drivers using their own vehicles will find more underwriting scrutiny and higher pricing.
- Higher occupancy vehicles are also viewed less favorably, and rate increases may be higher if a fleet includes many vans and/or buses.

Contacts

Maryann McGivney
Healthcare Industry Leader
North America
+1 678 777 5994
maryann.mcgivney@willistowerswatson.com

Randy Stimmell
Senior Vice President – Client Executive, Risk Specialties
+1 312 288 7414
randy.stimmell@willistowerswatson.com

Surety

Rate predictions
Flat

The adverse economic challenges created by COVID-19 will persist. Companies will continue to face labor shortages and supply chain instability, which will require operations to be nimble and flexible to reduce the impact on both top- and bottom-line results. We do not, however, anticipate an increase in rates to keep up with inflation due to stringent rate regulation.

The surety industry is in flux but making strides.

- Surety and brokerage companies face widespread labor shortages making quality surety talent elusive. Further adoption of the work-from-home culture may help the industry attract and retain high-performing employees.
- Workflow innovation in a digital world continues to be a priority. The surety industry has made great strides at the federal, state and local levels to dramatically increase the acceptance of electronically executed bonds. Brokerages have been successful at making endpoint users comfortable with the process and product. Remote working models and better verification processes have aided in this transition.

Commercial surety

- Surety terms and conditions have stabilized across industries.
- Industries impacted most heavily by the pandemic will continue to see mixed results should new variants appear, adding further uncertainty.
- Real estate, development and homebuilders will continue to thrive with inventories at all-time lows and demand exceeding supply.

Contract surety

- The construction sector is rebounding, with delayed projects coming back online. Labor and material shortages could impact the recovery and stretch schedules while inflationary pressures increase project costs for both contractors and owners.
- Surety capacity is plentiful across the sector along with active competition among sureties to acquire new business. Pricing is stable with no significant upward or downward pressure.
- Large contractors exhibiting operational excellence, sound capital structures and effective risk management practices have access to ample surety capacity to meet their strategic goals. These companies generally remain in strong positions to capitalize on the shifting landscape, opportunistically expand their footprints and acquire talent.
- Significant infrastructure investment is certain, though the timing of when this will be deployed is unknown, and the actual application of the funding to traditional projects has yet to come into focus. Shifts in funding to new project categories, including technology and social outreach, could impact dollars available for traditional infrastructure projects.

Private equity

- Private equity continues to be a significant component of recovery and growth. The anticipated increase in interest rates will impact how underwriters analyze leveraged balance sheets, with debt terms and maturities coming under greater scrutiny.
- At WTW, we have noted a 52% year-over-year increase in M&A projects that contain surety programs. Most indicators and agencies that forecast M&A activity point to another significant jump yet again in 2022.
- The challenges and uncertainty presented by COVID have sharply increased the number of companies looking to recapitalize or reorganize their current structures.
- Special purpose acquisition companies (SPAC) have not performed as favorably as predicted, which could lead to increased M&A activity.

Contact

Scott Hull
Global Head of Surety
+1 205 868 1364
scott.hull@
willistowerswatson.com

Goly Jafari
Global Head of Surety Strategy and Operations
+1 424 230 2183
golnaz.jafari@
willistowerswatson.com

Jeff Broyles
National Commerical Surety Leader
+1 360 213 8236
jeff.broyles@
willistowerswatson.com

Terrorism and political violence

Rate prediction
Terrorism and sabotage:
+5 to +10%

Political violence:
+10% to + 20%

Rates continue to edge upward along with the threat of terrorism, sabotage and political violence on several fronts.

The crisis in Ukraine has given rise to widespread questions about insurable risk and the application of war exclusions.

- As hostilities, catastrophic damage and the application of sanctions grow, the insurance and reinsurance marketplace is braced for significant losses, with major specialist carriers already experiencing a drop in share value.
- Insureds in the region will be closely evaluating coverage for loss due to war, generally excluded from property policies. Concern also surrounds the application of the five powers war exclusion, which withdraws coverage from any conflict between two or more of these nations: Russia, United Kingdom, United States, China and France.
- Sanctions may also impact companies' losses in Russia and Belarus. Certain governments may prohibit payment of claims if in violation of sanction law.
- An increase in incidents of civil unrest is anticipated as antiwar sentiment and food shortages increase.

The stress of two years of pandemic restrictions has provoked a dramatic increase in acts of violence, thrusting new challenges upon public and private organizations around the world.

- The mandated enforcement of government public health controls has led to widespread interruption of trade and transit – and to frustration. The impact on industry has provoked concerns about the adequacy of conventional all-risk property insurance to respond to financial loss in the absence of direct physical damage.

Terrorism remains a major concern, as incidents of domestic extremism increase, and new global terrorist cells are revealed. Ideologically inspired violence continues to pose a significant threat to national security.

- Insurers continue to offer a wide spectrum of dedicated products designed to mitigate the consequences of an act of terrorism or civil unrest – and, if possible, prevent such acts.
- Despite the increasing threats and incidents, market capacity for terrorism and political violence remains steady, though we anticipate rates to trend upwards as losses accumulate.
- A new generation of crisis management analytical tools offers quantitative and qualitative intelligence with respect to risk concentrations, proximity to potential targets and threat hot spots.
- Captive insurance structures remain a vehicle to access the indemnities provided under TRIPRA (Terrorism Risk Insurance Act 2019), delivering enormous capacity and broad coverage scope.

Contact

Wendy Peters
Senior Director
Terrorism and Political Violence
Financial Solutions
+ 1 610 254 288
wendy.peters@
willistowerswatson.com

Trade credit

Rate predictions
Better risks: Flat

Poor risks: Flat to +5%

Insurers are anticipating higher claim activity for 2022. Whether this turns into a tsunami wave remains to be seen, but past-due filings have increased significantly, and insolvencies in certain geographies are on the rise.

With war in Europe having global economic repercussions, insurers are closely watching the potential for trade disruption there and elsewhere.

- Russia and Ukraine are obvious points of concern along with neighboring countries in the region.
- Turkey is facing the devaluation of the lira.
- Brazil's upcoming elections are creating uncertainty.
- U.K. insolvencies were up 33% at year-end 2021 compared to the year before.

The rate decreases we saw last fall are a thing of the past, though most buyers should see flat renewals in 2022.

- Despite the anticipated claim increases, insurer appetites and limits are back to pre-pandemic levels, and this marketplace remains better for buyers than most P&C lines.
- Sectors being closely watched are transportation, electronics, automotive suppliers and transport equipment.

Trade credit insurers are showing concern about non-bank supply chain finance.

- Insurer underwriting guidelines for non-bank supply chain finance and other monetization programs continue to be restrictive.
- A successful track record of at least three years will be necessary for many insurers to consider onboarding a non-bank client.

Contact

Scott B. Ettien
Trade Credit & Political Risks
+1 212 915 7960
scott.ettien@willistowerswatson.com

Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for losses relating to the Ukraine conflict. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include coverage relating to the Ukraine conflict. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal and/or other professional advisors. Some of the information in this publication may be compiled by third-party sources we consider reliable; however, we do not guarantee and are not responsible for the accuracy of such information. We assume no duty in contract, tort or otherwise in connection with this publication and expressly disclaim, to the fullest extent permitted by law, any liability in connection with this publication. Willis Towers Watson offers insurance-related services through its appropriately licensed entities in each jurisdiction in which it operates. The Ukraine conflict is a rapidly evolving situation and changes are occurring frequently. Willis Towers Watson does not undertake to update the information included herein after the date of publication. Accordingly, readers should be aware that certain content may have changed since the date of this publication. Please reach out to the author or your Willis Towers Watson contact for more information.

Willis Towers Watson hopes you found the general information provided in this publication informative and helpful. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal advisors. In the event you would like more information regarding your insurance coverage, please do not hesitate to reach out to us. In North America, Willis Towers Watson offers insurance products through licensed subsidiaries of Willis North America Inc., including Willis Towers Watson Northeast Inc. (in the United States) and Willis Canada, Inc. (in Canada).

About WTW

At WTW (NASDAQ: WTW), we provide data-driven, insight-led solutions in the areas of people, risk and capital. Leveraging the global view and local expertise of our colleagues serving 140 countries and markets, we help you sharpen your strategy, enhance organizational resilience, motivate your workforce and maximize performance. Working shoulder to shoulder with you, we uncover opportunities for sustainable success – and provide perspective that moves you. Learn more at wtwco.com.

wtwco.com/social-media

Copyright © 2022 Willis Towers Watson. All rights reserved.
WTW_35055/04/2022

wtwco.com