

# Insurance Marketplace Realities

2023 Spring update

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An aerial photograph of a waterfall. The water is a vibrant turquoise color as it cascades over a dark, rocky ledge. The water is splashing and creating white foam at the top of the waterfall. The surrounding area is a mix of dark rocks and some sparse, dry vegetation. The overall scene is dynamic and visually striking.

# Introduction



# Executive summary

Searching for an elegant way to summarize the trajectory of the insurance industry over the last quarter has been a somewhat frustrating effort, so I will settle, instead, for some very practical language. It's been a mixed bag.

Big news in the first quarter of 2023 was the failure of Silicon Valley Bank (SVB) in early March and the demise of several other major global financial institutions. At the Zywave Advisen Casualty Conference a few days after SVB, I sat with Russ Johnston, president of Nationwide Commercial Lines, on a View From the Top panel where he described our economy as being in the longest telegraphed recession in history. While perhaps said in jest, the statement certainly feels directionally accurate. The interest-rate environment has impacted all and has far-reaching implications in a cash-heavy industry like insurance.

That said, the financial markets remain strong, and unemployment is still low. While what 2023 will bring to our economy remains predictably uncertain, our insurance market is, for the most part, telegraphing positive signs for our buyers.

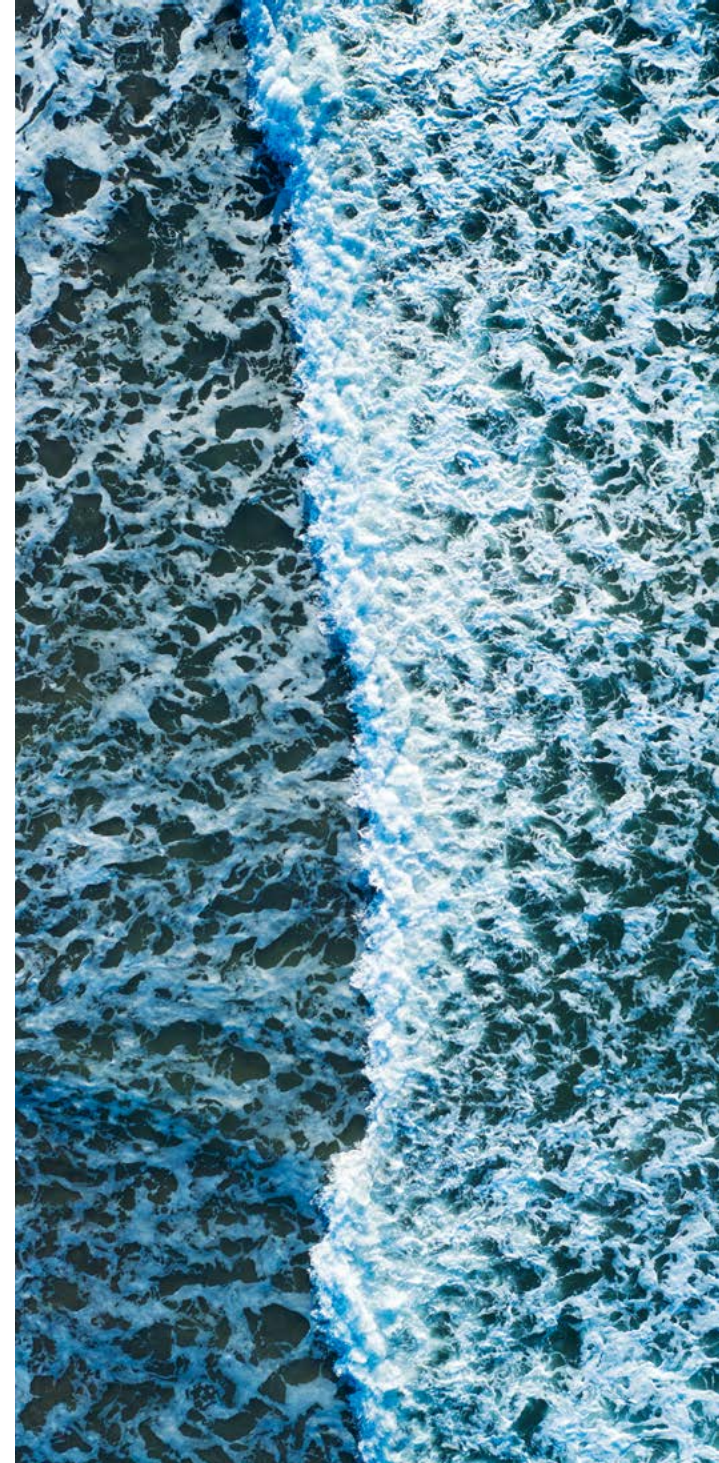
Leading the way is directors & officers insurance. The strong financial market in the last few years has mitigated claim activity, and insurance carriers are aggressively pursuing market share, which is helping drive down pricing at rates unseen in more than a decade. Even the cyber marketplace has new capacity pursuing growth, and while just a short period ago one could expect 50% (or more) rate increases on their programs, we're now seeing those same programs renew with flat rates. Related, our experts have seen an uptick in ransomware activity in the last month and, should that trend continue, the market could be quick to respond.

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**The property and casualty market, however, appears to be in a state of unsettled disagreement, as it continues to be a tale of haves and have-nots.**

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Starting with the "have-nots," it is a list of one — property insurance — and what they don't have is CAT capacity. As the industry ushered in the new year, all eyes were on January 1 property reinsurance renewals. While Hurricane Ian's recorded record high \$68 billion in insured losses had minimal impact on the commercial retail insurance market, it did have a profound impact on the reinsurers. Beginning in October, reinsurers proclaimed a hard market, and January 1 arrived with higher premiums, bigger retentions and limited capacity for CAT coverage. This position





has drawn the retail property market into a hard market, and many CAT-exposed risks are finding it difficult to fill out their programs. There are signs that reinsurance capacity may be more abundant come July, which would help ease the voracity of the hard property market.

On the flip side, one would have to go back to 2018 to see casualty capacity at levels higher than today, though deployment of that capacity has changed. Carriers are successfully ventilating their limits, and perhaps this strategy, along with some regulatory reform (e.g., Florida HB 837), could be enough to support long-term stability for this line.

So many ups and downs impacting the industry — you can understand my initial struggle in finding the right words to describe our current position. At the end of the day, we find ourselves in a cautiously optimistic “wait and see” position relative to several factors that can significantly influence outcomes for our industry. But while we’re waiting, let’s enjoy the positive trends that are forming outside of property insurance and make the most of the favorable conditions while we can.

Let’s also not forget that we’ve been through all this before. WTW has been helping clients work through difficult and uncertain times for decades, and we bring perspective that will help collectively move us through the challenges of today toward a brighter tomorrow.

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

## Here are some highlights from our spring 2023 rate forecast predictions:



### Property

Challenged occupancies

**+25% to +40%**

Non-challenged occupancies

**+10% to +20%**

- Pressure to obtain higher returns for deployment of catastrophe capacity/ aggregate will drive premium increases for insureds while inflationary pressure, reinsurance optimization and persistent scrutiny on valuation of assets remain.



### General liability

**-3% to +5%**

- Liberal class action certification & a highly-organized plaintiffs' bar
- Desensitized jury pools & uncertainty around litigation in post-pandemic world
- Those with exposures materially impacted by inflation may find more flexible rate outcomes.



### Automobile liability

**+5% to +10%**

- 2021 AL segment combined ratio is estimated at 101.3
- NHTSA puts the fatality rate for 2021 at 42,915 up 10.5% from 38,829 in 2020
- Large auto verdicts: 300% increase over seven years in trucking claims
- Distracted driving



### Workers' compensation

**-5% to +2%**

- Profitable combined ratio for eight years straight
- Opioid addiction
- Aging workforce
- Medical wage inflation
- Medical technology advancements increasing treatment costs to reducing mortality



### Umbrella liability

High hazard/challenged class

**Flat to +15%**

Low/moderate hazard

**Flat to +7.5%**

- After the peak in 2020/21, pricing adequacy has attracted greater global capacity
- Risk-specific (two-tiered) underwriting remains, with high hazard risks or lower attachment points yielding worse outcomes
- Uptick in frequency of punitive awards



### Excess liability

High hazard/challenged class

**Flat to +5%**

Low/moderate hazard

**-5 to +5%**

- Even with improving capacity, the industry still faces the impact of nuclear verdicts, catastrophic liability losses and the expansion of litigation funding
- A return at looking at pricing rate relativity between layers has emerged.

## Highlights continued:



### Cyber

**Flat to +10%**

- Market stabilization is continuing in 2023. This is largely due to fewer companies paying ransoms, a reduction in overall cyber claim activity, and improved controls by insureds.



### D&O

**Public company – Primary:**

**-10% to flat%**

**Public company – Excess:**

**-10% to -15%**

**Private, not for profit – Overall:**

**-15% to -10%**

- Abundance of capacity and a stabilized securities litigation environment continue to drive competitive market dynamics.
- Broader market conditions have improved since the peak of the hard market in Q3 2020.
- Moderation has been significant and is expected to continue through the remainder of 2023.



### Terrorism and political violence

**Terrorism and sabotage:**

**+15% to +40%**

**Political violence:**

**+25% to +45%**

- Current political/economic conditions and conflicts around the globe are helping drive up pricing for terrorism and political violence insurance.
- The crisis in Ukraine, viewed by many to be the latest and most significant potential loss to the terrorism and political violence market in years, has ushered in changes mandated by treaty reinsurers.
- The deployment of captive insurance vehicles continues to provide access to otherwise unavailable or uncompetitive capacity for terrorism risk.



### Surety

**Flat**

- 2023 will be a challenging year for the surety industry, as the global economic growth slows down due to high inflation and tightening financial conditions.
- The collapse of Silicon Valley Bank (SVB) may have a global ripple effect.
- The talent shortage in surety lingers; however, it is driving hiring and training not experienced in the industry for decades.



An aerial photograph of a massive waterfall. The water is a vibrant turquoise color as it cascades down, creating a thick layer of white foam at the base. The surrounding landscape is rugged and rocky.

# Major product lines



Click on the buttons to view each major product line.



## Rate predictions

**Challenged occupancies**

**+25% to +40%**

**Non-challenged occupancies**

**+10% to +20%**

### Key takeaway

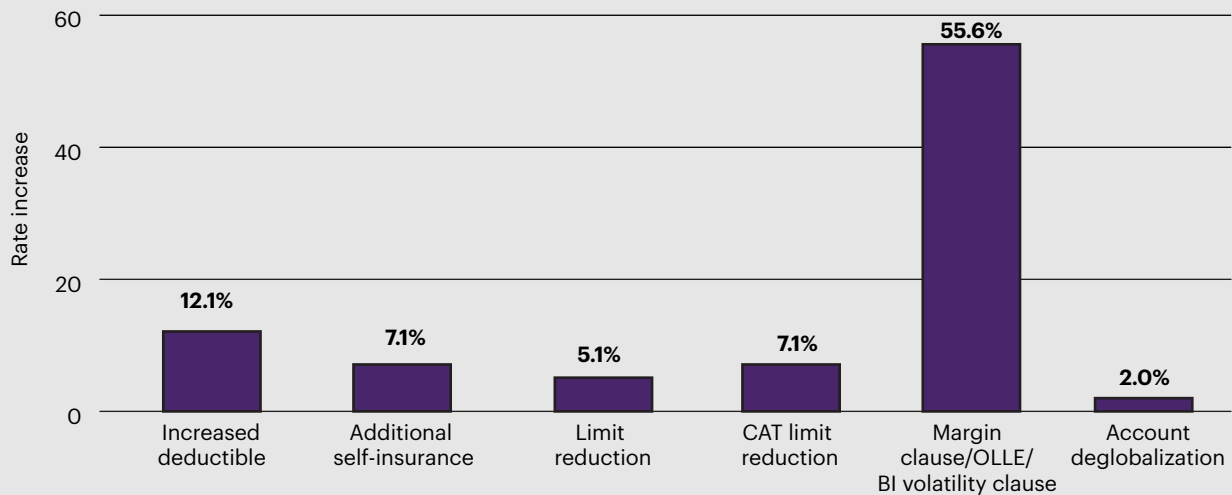
Pressure to obtain higher returns for deployment of catastrophe capacity/ aggregate will drive premium increases for insureds while inflationary pressure, reinsurance optimization and persistent scrutiny on valuation of assets remain.

**The direct property marketplace will continue to experience the effects of reinsurance treaty renewal results.**

- Every insured will see continued pressure at renewal on rates, values and terms. The overall risk profile of the insured (cat/non-cat, loss free/heavy losses, etc.) will determine the overall impact.
- With a prolonged reinsurance treaty season, insurers will further exacerbate the already hard market conditions.
- While the changes to individual insurer treaties will be varied on a case-by-case basis, the consistent theme at January 1 was double-digit increases in both rate and retention, leaving insurers to determine how to pass along the results of their restructured treaty protection to individual insured while reviewing their 2023 strategy. This caused a significant delay in receiving terms for Q1 renewals and will have a similar effect as Q2 quotes, where Q2 quotes are provided on a more condensed timeframe.



Figure 1. **Renewal program changes**



■ % of 99 Accounts

In Q1 renewals, almost 1/3 of our renewals took on this strategy

Source: WTW internal data

- With the dynamics of the current market conditions, insurers are seeing increased submission flow into the market. Underwriters have more ability to be selective on deals. Hence, we are seeing a flight to quality, where insurers are using the hardening market to housekeep existing portfolios prior to focusing on new business.
- Given the challenging market conditions, insurers are being asked to provide several quote options, which has increased their workload and slowed down the response time.

**Reductions in available catastrophe aggregates have led to insurers deploying wind and quake aggregates more judiciously where the largest return for their capital is available.**

- Insurers are looking to “optimize” their portfolio — meaning reduce their aggregate exposure to catastrophic perils, as well as ensuring they are receiving adequate returns for their limited amount of aggregate capital.

- This is translating to clients with losses, large catastrophe exposure, or both, experiencing a combination of significant retention and rate adjustments at their 2023 property renewals.
- The ongoing expectation for 2023 is for a continued reduction in capacity in high hazard Nat-Cat zones.
  - Insureds heavy in Tier 1 named windstorm (i.e., Florida) and/or CA earthquake are poised to be hit the hardest, especially if those accounts have suffered losses.
- There is a concern, with limited aggregate available, that capacity for catastrophe risks may be fully deployed by midyear resulting in a shortage for Q3/4.
- For shared and layered accounts, the buffer or excess layers where the insurable values continue to impact attachment points, both capacity and cost continue to be challenged. Larger excess layers continue to become more compressed to ensure completion, thus driving more premium into the lower layers.
- Insureds have begun to investigate alternative self-insuring options to limit the trading of dollar practices of old. They are also re-evaluating their historical conservative risk management philosophy to purchase less limit than in previous years to strike a balance between the cost efficiency of their spend and enough/adequate coverage in place.

**Due to valuation concerns and continued outsized losses plaguing the property market because of inflation or underreporting, we are starting to see mandated coverage restrictions.**

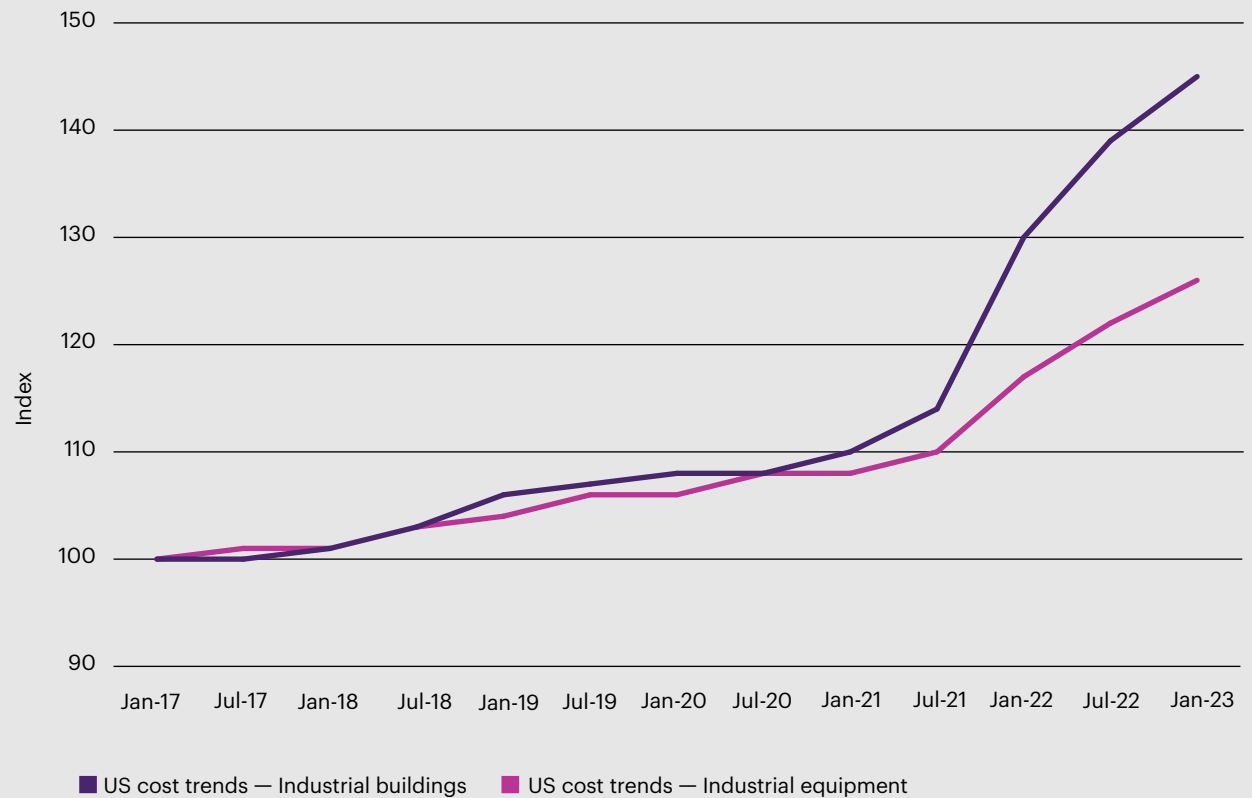
- Valuations remain heavily scrutinized. Insurers are fully focused on ensuring valuations are correct in order to demonstrate to their reinsurers that their portfolio data is robust. We still face a global supply chain problem and high inflation that show little sign of abating. These factors have direct impact on how the insurers view the current property risk landscape and are driving insurers to take a hard look at replacement costs.
- When there are loss expectancies greater than 12 months, coverage restriction may well limit recovery to the values reported and may not contemplate what happens in Year 2 of the loss.
- Insureds will need to have an accurate view on their values, as this is the basis of understanding their overall risk profile. Insureds may find themselves under-funded for retained risk by not properly purchasing adequate cat cover or by improperly setting sublimits for key coverage elements.
  - Appraisals and other back-up data to confirm the statement of values should go a long way toward providing insurers with more confidence regarding value accuracy and a greater comfort level in assessing risk — and possibly removing the clauses mentioned above.
  - Insurers are doing their own bench testing of reported values to ensure that these values are in line with what they expect the replacement cost to be. If insurance companies do not agree with what is being reported on the statement of values, then they are likely to

rate against their own values. This is putting pressure on premiums, as markets could be rating off values that are much higher than what is being reported.

- Until out-of-date valuation information is corrected, insurers will continue to minimize exposure by implementing margin clauses, occurrence limit of liability and/or co-insurance endorsement while increasing premiums.

- Complicating matters for buyers, the language in these clauses varies across the industry, leading to the potential for misunderstandings and conflicting interpretations.
- Be wary of the way these margin clauses will affect coverage for various sectors, especially when statements of values are reflective of forward-looking estimates, or a “snapshot in time, such as average inventory.

Figure 2. **FM Global – United States trends (building & contents)**



Source: FM Global



### Coverage is becoming narrower due to the capacity available to markets from their treaty reinsurance partners.

- Deductible levels have not increased in tandem with inflation, but we are starting to see an emphasis on deductible “correction” for accounts where lower deductibles were historically maintained.
- Maximum deductibles on catastrophe risks are being heavily scrutinized — if being offered at all.
- Florida minimum deductibles and percentage deductibles are being highly scrutinized with pressure to increase.
- Insurers continue to restrict many coverages previously offered, such as communicable disease, cyber and SRCC.
- There is continued pressure to move from manuscript to insurer forms.

### Non-Tier 1 catastrophe perils (aka “unmodeled CAT”) are becoming a focal point as freezes, historic rain and severe convective storms (SCS) have become large events of Q4 2022 and into Q1 2023.

- Given the frequency of SCS and freezes that continue to plague the southern U.S. along with wildfire in the west, insurers will continue to scrutinize these exposures, with greater pressure to implement tornado/SCS/hail and wildfire percentage deductibles — though they are yet to be mandated across the board.
- Percentage deductibles and definitions for convective storm are becoming more commonplace.

### Extensions of coverage that used to be market standard are being scrutinized during the underwriting process.

- Coverage is tightening on extensions of coverage that underwriters feel they have a limited ability to price for, such as contingent time element, service interruption and ground up construction extensions.
- As a result, sublimit reductions and or exclusions are being imposed.
- Better data relating to contingent exposures leads to better outcomes in retaining customary sublimits, i.e., name key customers and suppliers both direct and indirect.
- Insurers will look for insurance buyers to provide copies of any disaster recovery or business continuity plans for review to understand makeup capability relative to CBI exposure.
- Further explanation for why an insured may need certain coverage extensions is being required to continue to obtain these coverages.

### Reinsurance

- The main reinsurance market driver continues to be the supply/demand imbalance caused by a significant overall capacity decrease in the property cat market, with inflation driving exposure growth and loss amplification.
- Broadly speaking the 1/1 treaty renewals for property cat were up at a risk-adjusted rate more than 40%. Insurer retentions in some instances more than doubled. With a lack of available additional limits, or availability at terms deemed economical, insurers were left with a choice of retaining more or writing less.

- In many instances insurers with additional available aggregate will see this aggregate used to address inflationary exposure growth.
- These effects are likely to be felt throughout the balance of 2023. For now, all eyes are on the 4/1 treaty renewals, which tend to have a heavier focus on U.S. E&S insurers and what effect the outcome of these renewals will have. Florida is a particular focus in June.
- The property fac market has a reduced appetite due to aggregate constraints and some minor withdrawals but remains largely stable.
- With respect to the property fac market, the rating environment mirrors the direct market:
  - Non-challenged occupancies: +10% to +20%
  - Challenged occupancies: +25% to +40%

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### As a result of the current marketplace conditions, insureds should employ some key levers to help manage the process while leaning on the strength of trading relationships.

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- Insureds that have diversified their placement into the four different marketplaces, will likely fare better given they have already reserved aggregate in multiple jurisdictions: U.S., London, Bermuda and facultative.
- Insureds who use brokers with an adherence toward an industry-specialized view of risk will ensure a greater focus on controlling the deliverables for a specific segment of the marketplace.

- Insureds need to develop a clear and concise story in their submission, including a summary of their methodology in updating their state in values. If values are perceived as inadequate, pricing will be more punitive.
- It is extremely valuable for the markets to hear the insured's story directly from the insured to differentiate their risk from the rest.
- Insureds should be open to reviewing global programs in totality, with consideration given to pulling out of larger countries where the local market has not been affected by the U.S. treaty price and availability concerns (i.e., China, Brazil, South Africa and Australia). While local coverage may be less robust than the global program, securing DIC/DIL in the global master could help bridge any specific coverage gaps.

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# Domestic casualty



## Rate predictions

**General liability**  
**-3% to +5%**

**Auto liability**  
**+5% to +10%**

**Workers compensation**  
**-5% to +2%**

**Umbrella — High hazard**  
**Flat to +15%**

**Umbrella — Low/moderate hazard**  
**Flat to +7.5%**

**Excess liability — High hazard**  
**Flat to +5%**

**Excess liability — Low/moderate hazard**  
**-5% to +5%**

### Key takeaway

WTW's actual performance on primary auto liability, general liability and workers' compensation continues to outpace expectations, underscoring the value of account differentiation, analytical representation and healthy marketplace competition.



- WTW’s marketplace predictions incorporate various relevant datapoints including trailing figures like average rate changes and insurer profitability as well as forward-looking data such as interest rate expectations and insurer sentiment.
- Over the last two years, actual rates achieved in the marketplace fell below the mid-point of our guidance 83% of the time (20 out of 24 quarters) with twelve quarters where actual rate performance was equal-to or better-than the low-end of the expected range.

Figure 1. **General liability rate performance vs. expectations**

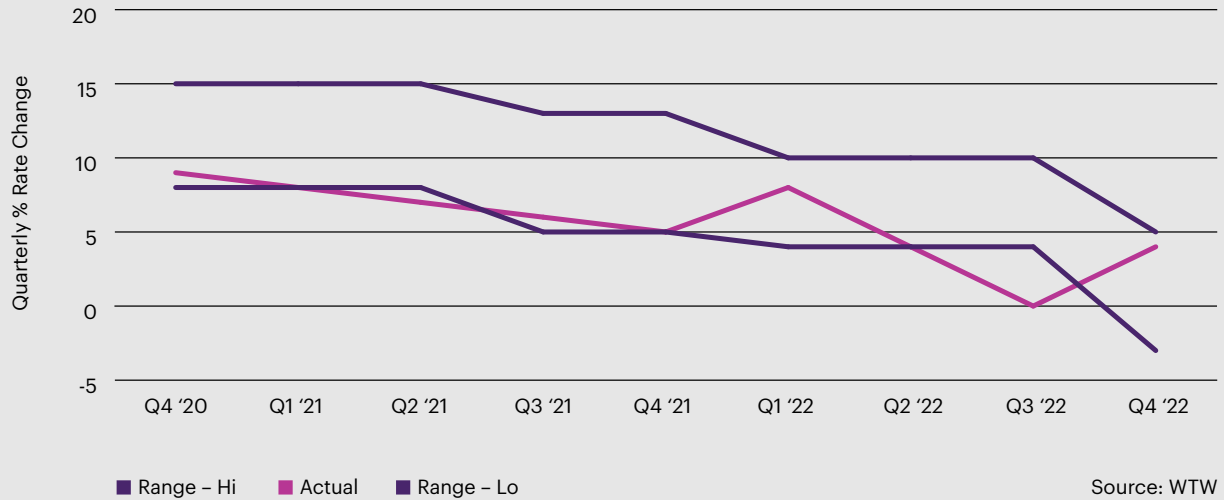
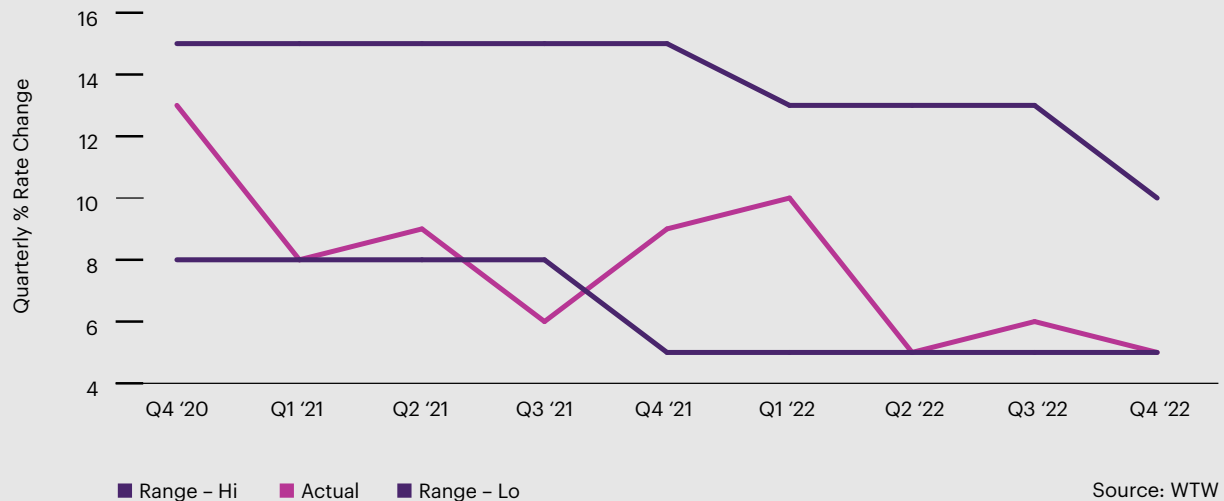


Figure 2. **Auto liability rate performance vs. expectations**





- Our takeaways from these unexpectedly strong outcomes are twofold:

**1. The two-tiered market remains:** With the start of 2021, WTW began to describe the casualty marketplace as “two-tiered,” meaning easing conditions for vanilla exposure and loss-light risks and ongoing difficulty for our clients with inherently risky operations, heavy fleets/ products and/or losses, or those who have not deployed risk mitigation, safety controls, governance, etc. By anchoring our renewal submissions in risk differentiation — describing in detail why our clients should be considered a superior risk, with supporting analytics and documentation — WTW clients have consistently benefitted from our value-added services. In sum, the current marketplace rewards brokers and insureds that can substantiate the reasons why their particular risk should not be treated like “just another account.”

**2. Despite liability and profitability concerns, casualty remains attractive:** As a line of coverage, auto liability has steadily contributed to underwriting losses over the last decade. General liability has similarly weighed on profitability, albeit to a lesser degree. Despite these trends, the buoyancy of the workers’ compensation market, the recent benefit of an improved interest rate environment and the relatively unattractive property and cyber marketplaces have combined to draw insurer interest towards primary casualty and improved outcomes for our clients. The confluence of these effects has allowed our brokers to deliver more favorable results than expected.

Figure 3. **Workers compensation rate performance vs. expectation**

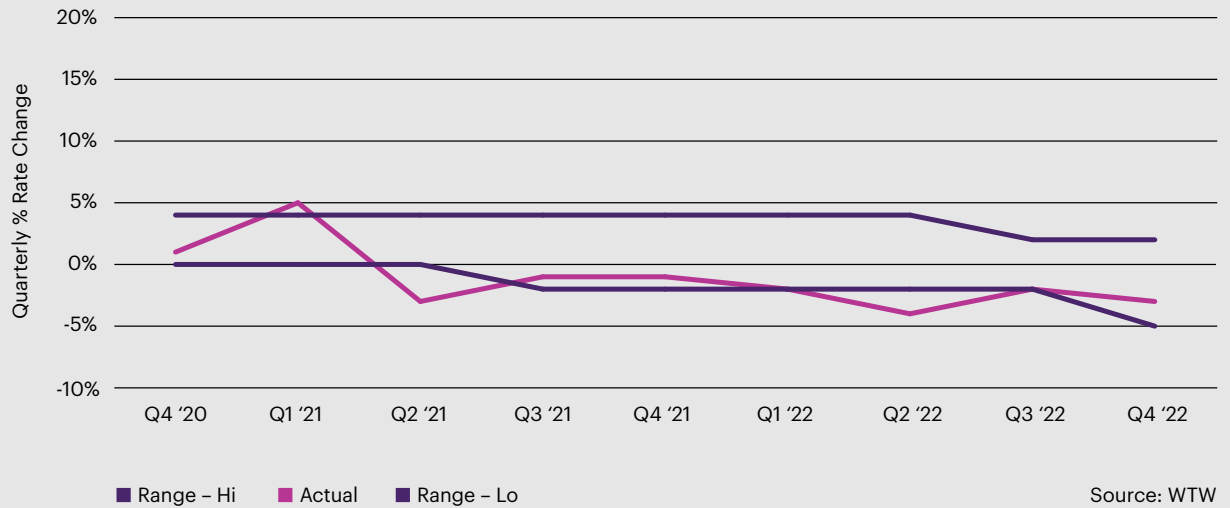
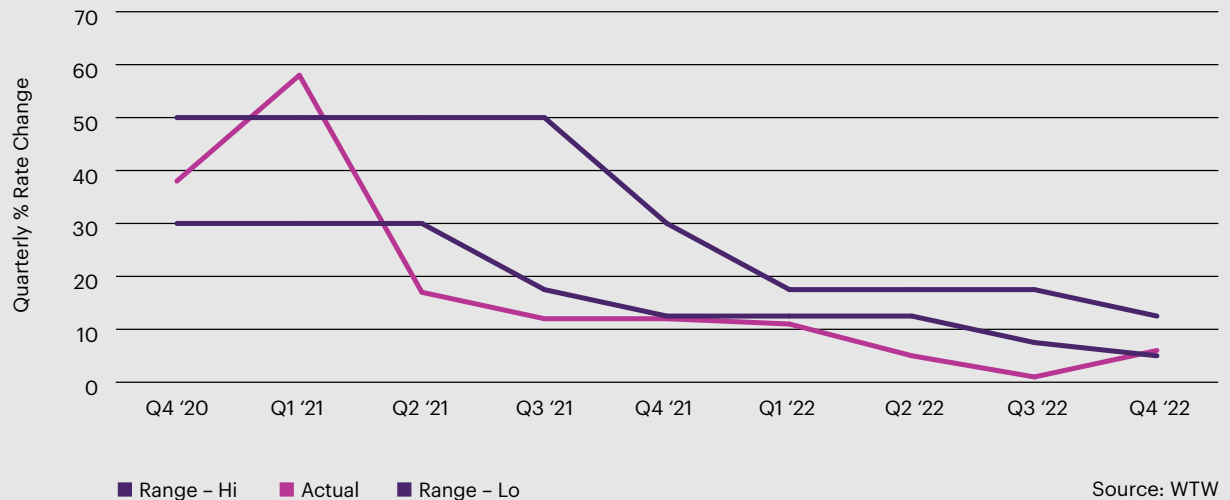


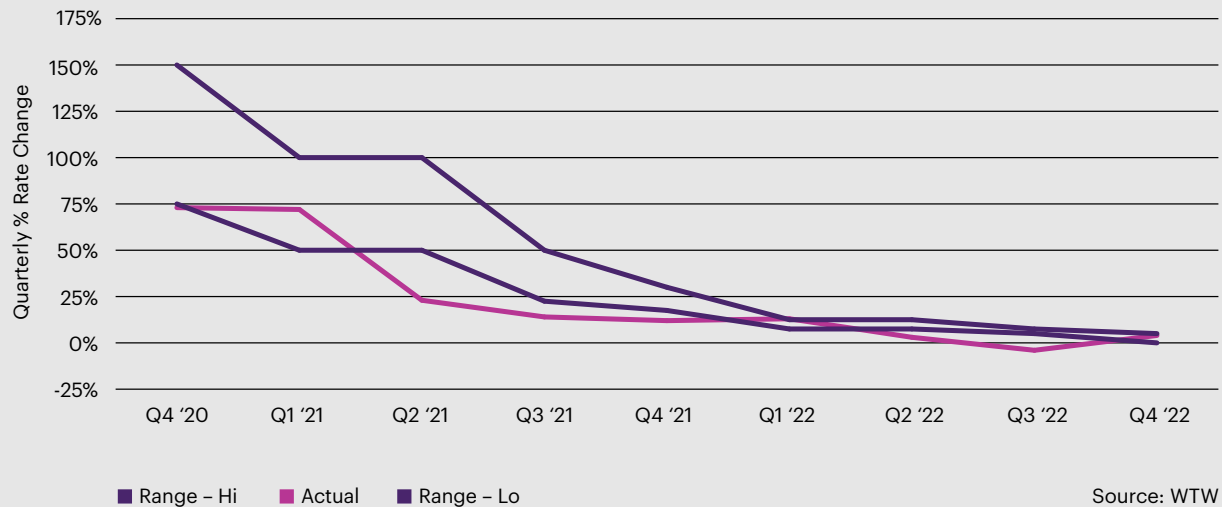
Figure 4. **Lead umbrella rate performance vs. expectations**



## The current landscape rewards insureds who embrace “hard market fundamentals.”

- We described in our initial Marketplace Realities report for 2023 how “forced” program restructuring has curtailed since the peak of the hard liability market in 2020. Many umbrella attachment points have already adjusted to the new normal, however some insurers lagged in their approach to rising claim values and delayed “forced restructuring” by not increasing the average attachment point until 2021 or 2022.
- In evaluating auto liability performance over that timeframe, certain marketplace trends appear across WTW’s client base:
  - Most insureds experienced stable but rising costs, with roughly 4 out of 5 WTW clients making no change to either the limit or retention on their auto liability program from 2020 to 2022 and a three-year cumulative rate change of +24%.
  - When higher primary auto liability limit attachments (to umbrella) were required, insureds that embraced hard marketplace dynamics excelled — WTW’s clients that increased their own risk taking alongside the higher primary limits purchase beat the marketplace average by 4%, albeit assuming a higher loss volatility.
  - Meanwhile, insureds that made no retention adjustment were penalized with a fixed-cost surcharge of 21% on average.

Figure 5. Excess liability rate performance vs. expectations



- Even when no primary limit adjustment was necessary, a subset of WTW clients proactively increased their risk-taking during the seemingly unending hard auto liability marketplace and reduced their exposure to the ongoing, unfavorable (re)insurance trends. In doing so, these insureds “beat” the marketplace by 12% and minimized their overhead premium spend.
- While we would not suggest blindly increasing retention levels to avoid unfavorable insurance marketplace trends, this rearview analysis reveals a clear opportunity for insureds with confidence in their controls and predictable loss experience – now is the time to reconsider your approach to auto liability risk retention, particularly when faced with demands for higher primary limits.



## Workers' compensation costs in today's inflationary environment

In today's inflationary environment, there is concern that medical inflation could rise at similar levels as CPI, impacting workers compensation rates and pricing. The [National Council on Compensation Insurance \(NCCI\)](#) has published a recent review of medical cost Inflation and identified two factors driving changes in medical claims costs: the price of medical services and utilization (the mix and number of services provided to an injured worker). NCCI's most recent medical data shows that drug costs are declining, physician costs are up slightly, and facility costs are rising in the WC system.

Between 2012 and 2021, countrywide WC medical costs increased at 2% per year. For 2022, CMS actuary projects the PHC (Personal Health Care Index which is a mix of the CPI-M & PPI) to run higher at 3.7%, and beyond 2022, something in the 2.5% to 3% range.

## Breaking this further down:

### Facility services

- Facilities were the largest contributor to WC medical cost changes.
- WC medical costs increased 2.0% annually on average from 2012 to 2021 and more than 60% of that growth came from facilities.

### Physician services

- Physician-paid costs per claim grew moderately from 2012 to 2021 at about 1.5% per year.
- Payments for physician services generate approximately 40% of WC medical costs.

While medical inflation will continue to be a concern for insureds and insurers alike, these figures mark a steady increase in costs over time, rather than a headline-grabbing +9% inflation figure seen elsewhere. To the extent that medical inflation continues to increase at rates higher than the last decade, it appears more favorable interest rates and ongoing profitability levels in the industry should sufficiently offset these types of rising costs — we expect ongoing favorable trends for workers' compensation as a result.







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# International casualty



## Rate predictions

International casualty:  
**Flat**

**The marketplace remains stable overall despite account-specific experiences, rate modification on related lines of business, and some outside pressure, including financial, social and wage inflation. Capacity remains broadly available from an array of carriers who are financially strong and deliver from a wealth of resources.**

### Key takeaway

The international casualty marketplace remains a steady environment, with ample competition available for multinational insureds to find adequate capacity for risk transfer.

- With a carrier working to retain incumbent business, insureds will not necessarily need to market their programs to benefit from enhancements to terms.
- International casualty carriers have established underwriting teams across the U.S. and Europe who can provide competitive terms to U.S.-based multinationals, offering buyers some alternative approaches to underwriting as well as increased competition.
- Claim statistics offer evidence of less frequency or severity as compared to what can be seen in the U.S. for domestic casualty lines, which supports international casualty carriers' profitability.



**Global lines of business which deliver local policies require significant administration, and that forms a significant portion of total cost.**

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**While locally issued policies deliver regulatory compliance, admitted claim handling and compliance with any in-country contracts, the cost of delivering and servicing policies across various geographies can be significant.**

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- Decisions about where to ask a carrier to issue admitted coverage should consider a broad array of factors, including the size of their local subsidiary and the likelihood of contract requirements, in addition to how they'd like to see claims handled.
- The administration portion of multinational program cost will remain fairly constant, resulting in a certain amount of cost inelasticity, even as exposures fluctuate year on year.
- Multi-year arrangements remain broadly available in the market, which can help insureds manage longer-term procurement budgets.

**Alignment with related LOBs is a critical element of renewal strategy.**

- Insureds with any element of international risks will likely have three casualty renewals to monitor (U.S., umbrella and international) and should remain closely connected throughout the renewal process to prevent gaps and to leverage premium spend. Coordination among the renewals is critical, especially on issues, such as occurrence and suit locations and coverage territory, as well as attachment strategy regarding excess limits.
- Related lines of business will continue to impact international casualty renewals; however, recent data is showing that buyers can anticipate a stable landscape benefiting from carrier confidence and healthy competition.
- Insureds can capture opportunities for leverage regarding pricing and terms by partnering with a select number of carriers who can support multiple lines of coverage.
- U.S. casualty and international casualty both function as primary coverage with the excess and umbrella layers offering higher limits to both. Recent renewal trends across the portfolio reinforce the notion that attachment points for the international casualty is not often a reflection of loss activity, but more often an indicator of how best to spend premium, and by what limits an insured may need to evidence outside the U.S.
- There are a few notable coverage terms which are shaped by early preparation and a focus on exposure data.

- Communicable disease concerns are loosening a bit as our economies continue to regain traction. While exclusions remain fairly common, particularly in the hospitality industry, the policy language is still inconsistent across the market. If provided sufficient detailed information, underwriters may limit or remove the exclusionary language.
- Following federal sanctions imposed in recent months in eastern Europe, global and regional carriers are restricting or eliminating coverage in Russia and Belarus and taking a closer look at their exposure to war risk coverage overall. Coverage from global programs is also a challenge for buyers' subsidiaries in Ukraine, given the unstable landscape. In these cases, insureds should seek independent coverage in the local market, with additional focus to secure excess/DIC limits from the global programs.
- PFAS issues (per & poly-fluoroalkyl substances) are increasingly visible, particularly for insureds in the manufacturing and retail space, and certain insureds are being asked to complete coverage questionnaires to avoid exclusionary language. Insureds can improve their results by offering carriers some detail about their product mix and a description of any risk management steps they're taking to mitigate product risks.

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# Middle market



## Rate predictions

### Favorable risks

**Property**  
**+10% to +20%**

**General liability**  
**Flat to +5%**

**Auto**  
**+5% to +10%**

**Workers  
compensation**  
**-5% to flat**

**Umbrella**  
**Flat to +10%**

**Excess**  
**Flat to +5%**

### Challenging risks

**Property**  
**+30% to +50%**

**General liability**  
**+5% to +10%**

**Auto**  
**+10% to +15%**

**Workers  
compensation**  
**+5% to +10%**

**Umbrella**  
**+10% to +20%**

**Excess**  
**+10% to +20%**

## Key takeaway

In 2022, Middle market clients began to see stabilization from a capacity and rate standpoint. While we still foresee a more promising casualty landscape, we entered 2023 with significant headwinds in the property market given unprecedented CAT events, and we expect this trend to persist through the year. Portfolio and profitability management are taking priority over new business growth for middle market carriers. This coupled with high retention goals is contributing to a continued bifurcated marketplace with challenging risks experiencing the most volatility. Social inflation and accurate property valuations continue to be a main concern for insurance carriers, which is driving greater scrutiny in the underwriting process and on capacity deployment for both property and casualty.

## Marketplace overview

- Carriers have high retention and growth goals and are being aggressive to keep accounts out of the market. Marketing efforts on clean or desirable accounts (e.g., financial institutions, technology, commercial real estate) are resulting in significant rate reductions for insureds.
- While middle market is an established segment within the broker and carrier community, additional markets continue to enter the space.
- The insureds that continue to experience hard market pressures either fall within specific industry segments or have significant losses and/or heavy CAT exposures. The tougher classes of business continue to be habitational real estate, transportation, healthcare, social services, hospitality, food and foundries. Proactive measures on risk control will play a key role for accounts in these categories.
- Property rates have increased at a steeper pace than anticipated at the beginning of the year, particularly for CAT-exposed, challenged occupancies or schedules with valuation concerns. The consensus among insurers is that their clients will continue to pay more for less coverage. Renewal outcomes for these risks can be particularly uncertain when facultative reinsurance is needed.
- Additional capacity is being reinstated by umbrella and excess markets to gain a competitive edge.



## Property

- Higher frequency, more severe natural catastrophes and mounting losses from secondary unmodeled perils (such as wildfires, floods and convective storms) have caused strain on insurer profitability. Convective storm deductibles are being added in states that previously did not have them, or these deductibles are being increased.
- Property valuations have been a concern for markets given inflation and supply chain concerns. Corrective action is being taken via rate, increased values and coverage wording, such as specific limits or margin clauses (e.g., OLLE). For accounts where valuation was historically untouched, the corrections are more dramatic.
- Market pressures emanating from 1/1 treaty reinsurance renewals have led to volatility in the market, making CAT exposures extremely difficult to place (named storm, earthquake, flood, wildfires). CAT-exposed risks are realizing increases in price and retentions as well as restricted limits.
- A proactive strategy on valuation, accurate COPE, capacity and program structure will help brokers and their clients navigate these challenges. This should include a focus on both outstanding risk control recommendations and coordination of prospective carrier visits.

- Contingent business income continues to see tighter underwriting guidelines and reduced limits.
- Water damage coverage is experiencing higher deductibles and lowered sub-limits, and water damage mitigation is a focus.
- Tougher property risks that were written on a 100% single-carrier basis are being pushed to shared/layered programs due to their risk profile and the market's reluctance to deploy full capacity.

## General liability

- There is a heightened concern surrounding human trafficking exposures for hospitality and real estate accounts.
- Habitational real estate is an extremely challenged class necessitating E&S support with more frequency. Most admitted carriers will not consider a habitational schedule due to expected loss activity.
- Sexual abuse and molestation coverage continues to see capacity reductions and scrutinized underwriting, particularly given revival laws in several states.
- Some markets are no longer considering uncapped per-location aggregates for certain industries, such as real estate.

- PFAS exclusions are becoming more prevalent and increased scrutiny is expected. Some carriers are willing to remove with confirmation of no exposure; however, others are taking a more stringent approach. This is an emerging topic and carriers are concerned regarding the potential for class-action suits and the cost to defend.
- Social inflation has continued to make it difficult for markets to accurately project losses, leading them to take an all-lines approach on accounts rather than have a liability-heavy portfolio.

## Automobile

- Mono-line auto risks are exceedingly challenging to place and should always be leveraged with other lines of business.
- Hired and non-owned auto continues to be heavily underwritten, and higher exposure accounts are less desirable.
- Rate need has continued as losses in the industry have increased, despite fewer drivers being on the road in recent years.
- The introduction of telematics in fleets has become a risk management norm for insureds.

## Workers compensation

- Carriers continue to view workers compensation as a profitable line and are looking to balance their books of business by writing more of this business.
- Remote working has created questions surrounding accurate payroll reporting, especially in monopolistic states because coverage must be purchased through the state pools.
- Carriers are requesting details surrounding return to work policies as they impact rating, terrorism capacity and risk control. More underwriting scrutiny is being placed on accounts with exposures in tougher jurisdictions.
- Auto accidents have more often become the cause of severe WC claims over the past few years.

## Umbrella and excess liability

- Additional capacity is being reinstated by umbrella and excess markets to gain a competitive edge.
- Higher attachment points are being required by lead markets on both general liability and auto policies for higher risk industries. In these scenarios, buffer layers are being introduced more often.
- Capacity for lead umbrellas has stabilized and further reductions in limits have become less common.
- Supported leads tend to be more competitive as carriers leverage the primary lines with their umbrella capacity. In these competitive scenarios, insureds have been able to secure increased umbrella limits undoing retractions that may have happened in recent years.
- Risk purchasing groups remain inconsistent with increased underwriting, appetite changes, reduced capacity, large increases and market participation changes.
- Clients continue to review contractual requirements and limits purchased.
- Abuse and molestation, traumatic brain injury, wildfire, assault and battery and sex trafficking exclusions are being added, or coverage and capacity have been limited, especially where exposure exists.
- The introduction of telematics in fleets has become a risk management norm for insureds.

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## Rate predictions

### Casualty

General liability,  
low/moderate risks  
**-5% to +5%**

General liability,  
high hazard risks:  
**Flat to +10%**

Automobile liability:  
**+3% to +7%**

Umbrella/excess liability, low/  
moderate risks:  
**-5% to +5%**

Umbrella/excess liability,  
high hazard risks:  
**-5% to +5%**

### Property

Property,  
cat-exposed  
**+15% to +25%**

Property,  
cat-free:  
**+5% to +10%**



## Key takeaway

**Casualty:** The Canadian casualty marketplace has entered a state of growing stability on rate expectation, predictability in limit deployment and revived competition. However, anticipation to enter a soft marketplace will continue to be tempered by mindset changes in litigation and rising challenges from global macroeconomic factors that influence the Canadian underwriting landscape at higher degrees than in previous years.

**Property:** The heightened rate environment over the past 21 quarters has resulted in additional capacity entering the Canadian marketplace that is driving competition and creating rate stability as insurers look to increase their lines on existing accounts and write new business. .

## Casualty

### General liability

- 2023 continues to provide more predictability in limit deployment.
- Insurers are showing a steady market appetite with renewed competition for new business or writing business they were once at risk for.
- There is a reduction in submission flow at carrier desk.
- New marketplace entrants are further driving competition, rate suppression and opportunities.
- There is a focus on refining coverage language to clarify intent of coverage.

- There's a limited use of brokerage manuscripts, especially on new business.
- Insurers continue to apply restrictions for any exposures in Russia, Ukraine and Belarus.
- Average claims also continue to cost more to adjudicate. Focus will remain on diligence across the entire claim process with attention on expenses.

## Automobile liability

- Combined loss ratio remains < 100% but can be influenced by carrier's U.S. book (300%).
- Fleets with < 500 units and clean loss records can expect lower rate increases.
- Emphasis is on fleet management, safety protocols and driver guidelines.
- Below average risks can expect desk top risk management review.
- There is a stable market with no market exodus and new entrants as carriers broaden their portfolios of casualty products and solutions.

## Umbrella/excess liability

- Continued use of ventilated structures
- Increase in competition among critical burn layers
- Use of quota share structures on excess layers as method to be competitive at lower attachment points
- Limited increase in larger line sizes being deployed

## Canadian casualty marketplace to remain complex and escalate in competition.

- Successive years of excess marketing strategies across the hard market have led to a downswing in submission flow.
- Limited unseen new business (new-new) to underwrite is creating significant competition around new opportunities brought to market.
- Positive underwriting results are pressured by the entrance of new carriers.

## Changes in Canadian landscape on macroeconomic risks has underwriting approaches pivoting.

- New presence and frequency of extreme weather events are permanently re-shaping coverage certainty and coverage availability (west coast wildfire and earthquake, east coast hurricane patterns).
- Increases in inflation and depression on the Canadian dollar have total limit purchases being reconsidered.
- Heightened awareness on personal rights and geo-political tensions keep stringent underwriting prevalent on risks with significant U.S. and foreign operations.

## Critical factors in the U.S. are playing an indirect role on Canadian underwriting.

- Nuclear verdicts and U.S. litigation activity act to influence underwriting authority as cross border combined loss ratios and North American book profitability are observed.
- Controls from U.S. and foreign ownership of carriers keep underwriting highly disciplined and referral requirements extensive.

## Property

### 1/1/2023 reinsurance treaty renewals are impacting the cost and capacity available for exposures in Nat Cat zones.

- Insurers are looking to reduce capacity and/or increase deductibles in high hazard NatCat zones, flood BC quake zones in particular.

- While NatCat capacity is garnering increased rate, the increased capacity in the market is mitigating larger double-digit increases, especially for risks with clean loss histories; clients with challenging asset profiles and those with poor loss records are seeing larger increases as insurers manage capacity deployed and charge accordingly.
- Domestic capacity is replacing higher priced capacity out of London, hence helping to mitigate rate increases.

### Inflation and valuation remain key concerns for insurers and have a direct impact on how the insurers view the quality of the risk.

- Insurers are still looking for inflationary lift and accuracy of values via valuation; where insurers do not feel confidence in the values reported they will look to apply margin clauses (5-10%).
- New opportunities for insurers are limited where engineering visits are required, or loss control reports and/or engineering information is not available.
- Insurers are also focusing on accuracy of time element; as supply chain disruption still prevails following the global pandemic, insurers are focused on understanding the revenue stream and key suppliers and customers to validate business interruption and contingent business interruption. For insureds in the natural resource industry, insurers are applying business interruption volatility to manage commodity price fluctuation.

## Insurer scrutiny on wordings and coverage continues.

- There is continued pressure to move from manuscript to insurer forms; where insurers agree to the manuscript form, they often require wording amendments and their own endorsements for their participation, which can create non-concurrent coverage among the insurer panel members.
- Insurers are managing overall capacity for contingent business interruption, and further restricting coverage by looking to limit named and/or direct customers and suppliers. Capacity for unnamed customers and suppliers is being capped at low limits, if offered at all.
- Insurers continue to exclude coverage for emerging risks through endorsements, such as for cyber, communicable disease and territorial exclusions.

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# Professional liability lines



Click on the buttons to view each major product line.

# Cyber risk



## Rate predictions

Cyber risk  
**Flat to +10%**

### Key takeaway

Market stabilization is continuing in 2023. This is largely due to fewer companies paying ransoms, a reduction in overall cyber claim activity, and improved controls by insureds. Competition from cyber underwriters is also driving down pricing as markets look to write new business and retain their renewals.

**We are now often seeing flat primary and excess cyber renewals or even 5% to 10% decreases, and capacity continues to broaden.**

- Premium stabilization that began toward the end of 2022 has continued into 2023. While 2022 started with 50% to 150% increases, we are now regularly seeing flat increases or even decreases at renewal. Increases, if any, will be the steepest for those organizations that cannot demonstrate strong cyber risk controls and culture, and overall cyber hygiene.
- Highly regulated industries, such as financial institutions and healthcare, required to have more stringent controls, have seen the most favorable renewals.
- Underwriting decisions are heavily influenced by the security controls a company has in place in conjunction with pricing and attachment points.
- There is strong competition among markets, as we often receive two to three quotes for certain risks. Incumbents are eager to retain business.

- Excess placements are less challenging lately, as increased limits factors (ILFs) are starting to come down due to excess competition. Excess carriers are looking to undercut each other if given the chance.
- Carriers are issuing quotes earlier than they were last year, another indication of renewed competition among markets.
- Capacity is flowing back into the market, and we are returning to \$10 million blocks on towers, rather than \$5 million blocks or unusual quota share arrangements.
- We are starting to test whether some underwriting questions, including supplemental ransomware applications, can be bypassed if security controls are good.

**Although there are finally signs of losses slowing some, ransomware and the potential for other widespread events continue to be a concern.**

- According to [Coveware](#), although the median ransomware payment decreased by 51% in Q2 2022 over the prior quarter, both average and median ransomware payments increased again during Q3 and Q4 of 2022. Threat actors sought to extort money from victims in more than one quarter of all incidents to which IBM's X-Force responded, according to their [2023 Threat Intelligence Index](#).

Figure 1. **North America specific charts**



- During the second half of 2022, the rate of malicious messages rose by 60%, and spam rates increased by over 15% and now constitute 30.6% of all inbound traffic, according to the [Acronis Cyber Protection Operation Center Report](#).
- Certain carriers are still relying on cyber security consultants for technical expertise as well as third-party scanning technologies to highlight potential vulnerabilities.



**Markets are starting to broaden coverage again when it comes to dependent business interruption, but some are still constricting coverages for wrongful collection 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 a number of state biometric laws, we are seeing cyber markets pull back on offering wrongful collection and compliance coverage. There is also concern about the increase in chat bot and meta pixel litigation.
- A limited number of carriers have taken the drastic approach of splitting coverage into either widespread/catastrophic cyber events or limited impact events, which leaves open the possibility of applying co-insurance, sublimits, retentions and timing factors to calibrate the exposures on either side of the split. This was more of a hard market approach, and we haven't seen other markets follow their lead.
- Certain markets have started to quote full limits across the board again, including for dependent system failure, to compete for or retain business.
- The Russia/Ukraine conflict has led many markets to reassess their war and territorial exclusions, and we are seeing various versions of a London-based exclusion providing a little more clarity on the kinds of nation state attacks that would be covered.

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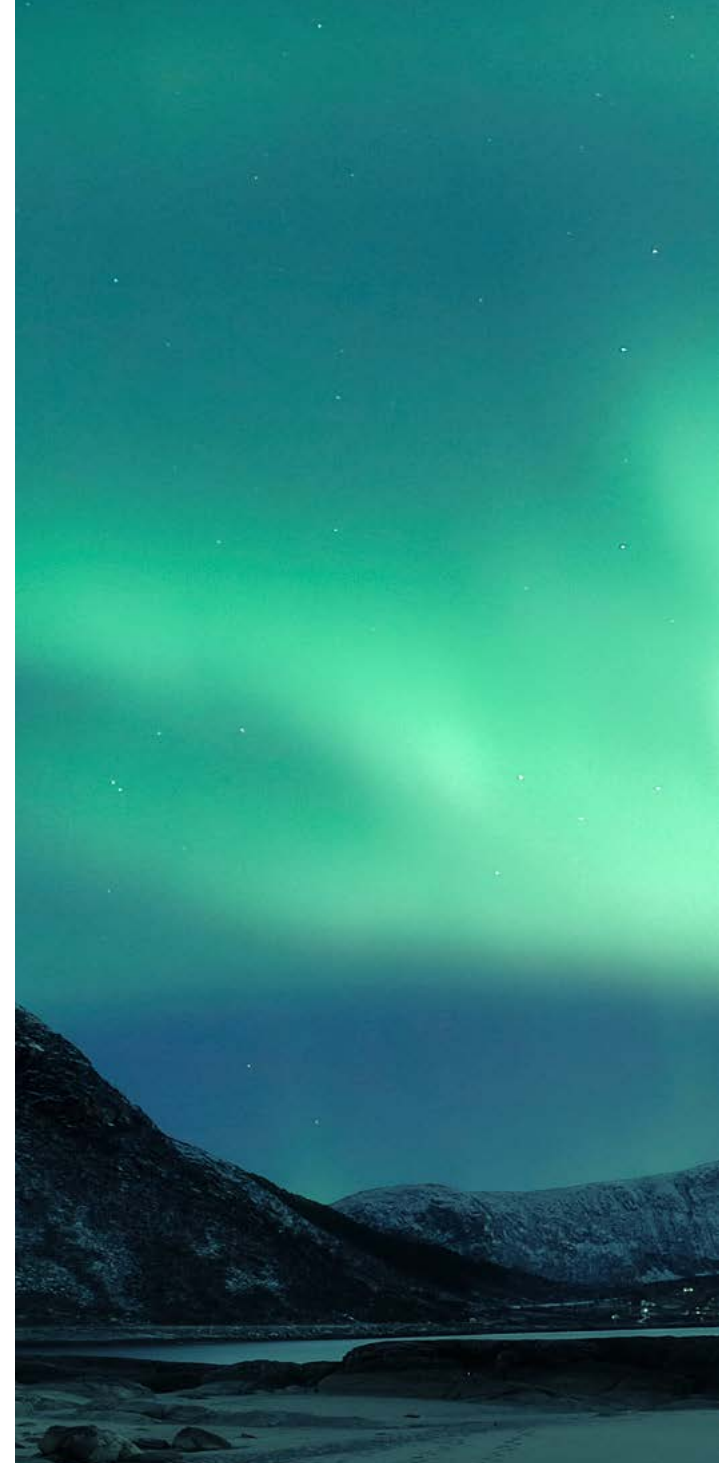
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# Directors and officers liability



## Rate predictions

### Stable risk profiles

Public company —  
primary  
**-10% to flat**

Public company —  
excess layers  
**-15% to -10%**

Private, not-for-profit  
— overall  
**-10% to flat**

Side A/DIC  
**-15% to -10%**

### Challenged risk profiles

Non-U.S. parent,  
U.S. exposures

IPOs and SPACs

Challenged industries

Case-by-case basis; potential increases; may experience limited interest

## Key takeaway

Abundance of capacity and a stabilized securities litigation environment continue to drive competitive market dynamics.

**Broader market conditions have improved since the peak of the hard market in Q3 2020. Moderation has been significant and is expected to continue into 2023.**

- **Impact of newer capacity:**
  - The influx of capacity into the market since late 2020 created competition and yielded rate deceleration throughout 2021 and 2022. In 2023, we have seen flattened-to-reduced D&O premium outcomes.
  - Recent markets initially generated rate relief in the excess layers; however, as markets seek to remain competitive, more carriers, including the more recent markets, are providing alternative primary competition and leverage.
- **Economic uncertainty:** Recovery from the lingering pandemic has yielded economic growth; however, D&O underwriters remain concerned with uncertainties arising from inflation, interest rates, supply chain issues, the scaling back of government subsidies, corporate insolvencies and global hostilities.
- **D&O underwriter focus:** Carriers continue to scrutinize financial strength (especially liquidity); the management of guidance in the context of inflation and heightened interest rates, supply chain and customer demand; industry; claim history; regulatory uncertainty; loss-cost escalation; cyber and privacy; human capital and labor retention; systemic exposures; and conflicting shareholder and political pressures surrounding environmental, social and governance (ESG) practices.
- **Private and non-profit companies:** The moderation of rate increases in 2021 and 2022 has ended, with most insureds seeing flat pricing to modest decreases. High-risk profiles and challenged industries may still see increases to pricing/retentions; however, this will be determined on a case-by-case basis.
  - **Primary:** Insureds with low and/or stable risk profiles are seeing enhanced competition, with a minimum of flat renewals and decreases when marketed. The market for high and/or distressed risk profiles is improving but can still be challenging.
  - **Excess:** For larger risks, excess markets have lowered their increased limits factors (ILFs).
  - **Retentions:** For challenged risks and those with large exposure increases, carriers continue to press for higher retentions. Minimum retentions continue to be scrutinized but have moderated over the past six months. Severity of increases most often depends on prior renewal increases and the need, if any, for continued correction.
  - **Increased deployment:** Carriers are willing to regularly deploy capacity for preferred risks. Additional capacity can be found for more risks. This is having an impact on market conditions more broadly, especially for more desirable risks.
- **Side A:** Competition among insurers for Side A business has been reinvigorated following a protracted period of rate adjustment.
- **Continued rate decreases:** We expect rates to continue decreasing into softer market conditions ahead, including the lowering of ILFs, reflective of more customary pre-hard market ILFs.
- **Challenged risks:** Some risk profiles are still viewed as challenged, including:
  - Non-U.S. parent with U.S. exposures
  - Liquidity-challenged and pre-restructuring/bankruptcy risks
  - Challenged industries, e.g., banking, oil and gas, healthcare, life sciences, higher education, cryptocurrency, cannabis, retail, restaurants, sports/entertainment
  - IPOs and SPACs



## Several trends and exposures bear watching.

- **Silicon Valley Bank and related banking industry D&O risk:** The failures of Silicon Valley Bank and Signature Bank have resulted in claims against them and the possibility of claims against other entities which have suffered setbacks as an indirect result. The biggest potential exposures to the various entities affected or potentially affected are likely to be bankruptcy, securities fraud class actions, FDIC and/or creditor claims, and government investigations. As of this writing, the severity of the phenomenon outside of the banks which were directly involved has mostly dissipated due to government intervention in the backing of deposits. Still, we will monitor developments around bank stability, particularly as to any impact on the economy and markets more broadly.
- **Securities class action (SCA) filing frequency and severity:** SCA filings in 2022 decreased modestly year-on-year to 208 filings, marking the third straight year of diminished filings. Similarly, traditional SCA filings that do not involve M&A or Section 11 allegations (151 in 2022) are also below the 10-year (2013-2022) average of 168. In contrast, average and median settlements have increased year on year, from \$22 million and \$8 million in 2021, respectively, to \$38 million and \$13 million in 2022. Nevertheless, the average settlement is still less than the 10-year (2013-2022) average of \$42.1 million.
- **ESG:** Organizations continue to face pressures to address ESG from operational, cultural and investment perspectives. SEC rules around climate exposure disclosures for public companies were proposed in 2022, rules we do not expect to become final as drafted or without significant litigation challenge. In addition, anti-ESG backlash at state and federal levels have presented conflicting pressures. These exposures have resulted in increased underwriter scrutiny into practices more broadly.
- **Alignment of legal protections and exposures for corporate officers**
  - Expansion of “exculpation” protections to officers: In August 2022, the Delaware General Corporations Law was amended to permit Delaware corporations to provide officers with exculpation protections for personal monetary damages resulting from a breach of fiduciary duty in certain forms of litigation. The modification addresses a previous discrepancy wherein corporate directors could be exculpated from certain breaches of duty, but corporate officers could not. These new protections are subject to limitations that call into question the amendment’s practical impact. For example, like directors, officers would not be subject to exculpation protection in shareholder derivative litigation, perhaps the more customary form of action alleging breach of fiduciary duty against directors and officers.
  - In re McDonald’s Corporation Stockholder Derivative Litigation: In January 2023, the Delaware Court of Chancery held that the Caremark duty of oversight extends to corporate officers as well as directors. The decision is a not-unexpected step toward reconciling the duties and defenses of officers with those of directors. The court itself went so far as to theorize that directors could act preemptively by bringing claims against officers themselves. This, in fact, occurred in a subsequent decision in the same case, issued March 1, 2023, wherein this defense led to the directors’ dismissal. The complexity of these types of actions and defenses could lead to D&O coverage issues, particularly application of the Insured v. Insured exclusion. As a result, companies and their directors and officers may see a need for higher limits, particularly in their Side A DIC towers, which mostly do not have Insured v. Insured exclusions.



- **SEC executive compensation final rules**
  - In 2022, the SEC issued final rules relating to executive compensation. The first rule implemented “pay versus performance” disclosure requirements mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule requires issuers to disclose the relationship between executive compensation actually paid and the company’s financial performance.
  - The second mandated that exchanges establish rules requiring issuers to adopt compensation recovery, or clawback, protocols where incentive compensation was based on erroneously reported financial information which required some level of restatement. Notably, clawback is required without regard to any misconduct or fault on the part of the specific executive officer.
  - Whether adoption of the final rules results in an increase in executive compensation D&O claims in 2023, of course, remains to be seen.
- **IPOs, SPACs:** Initial public offering activity in 2022 was down substantially year on year, from 968 offerings in 2021 to 118 in 2022 (86, or 73 percent of which were SPAC IPOs). A downward trend is expected to continue due to proposed SEC rules and government scrutiny into SPACs and de-SPAC combinations. Yet, related SCA filings persist at high levels relative to offering activity, with 24 SCA filings in 2022, compared with 33 in 2021. We also have observed that several SPACs have been unable to secure acquisition targets with contractual deadlines to do so approaching. Although a small number of lawsuits has been filed in connection with this development when steps had been taken toward an unconsummated combination, we have not observed the phenomenon to be widespread. D&O market conditions for SPAC and de-SPAC combinations remain more challenging compared to traditional public company risks, but they have improved since peak hard market conditions in late 2020.
- **Restructuring/bankruptcy/insolvency:** Chapter 11 bankruptcy filings increased in 2022 over 2021, but only by a modest 1.7%, from 4,836 filings in 2021 to 4,918 in 2022. The figures come in contrast to expectations that an end to government subsidies in 2022, coupled with higher interest rates, inflation, and concerns for slower economic growth, would give rise to increased filings. We continue to monitor these developments, as bankruptcy claims, which impact both private and public companies, can be among the most severe.



- **SEC enforcement actions and whistleblowers awards:**

- In FY 2022, the SEC filed 760 total enforcement actions, a 9 percent increase over the prior year. In its annual report, the SEC noted its focus on “individual accountability,” stating “Individual accountability is a pillar of the SEC’s enforcement program. Similar to prior years, in fiscal year 2022, more than two-thirds of the SEC’s stand-alone enforcement actions involved at least one individual defendant or respondent.”
- In FY 2022, the SEC awarded approximately \$229 million in 103 awards, making FY 2022 the SEC’s second highest year in terms of dollar amounts and number of awards, second only to 2021. Since the beginning of the program, the SEC has paid more than \$1.3 billion in 328 awards to individuals for providing information that led to the success of SEC and other agencies’ enforcement actions.
- D&O coverage for government investigations and proceedings is generally limited. Still, related defense costs and expenses can be quite severe. Consequently, companies and their brokers should evaluate the extent of regulatory coverage that can be secured and, where appropriate, negotiated.

- **Proposed SEC cybersecurity rules:** The SEC unveiled proposed rules in March 2023 designed to improve cybersecurity preparedness on the heels of increased threats against U.S. securities markets. The rules require broker-dealers, clearing agencies, national securities exchanges, among others, to implement written cybersecurity policies and procedures, disclose significant cyber incidents, and maintain cybersecurity records. The proposed rules remain subject to finalization and potential legal challenges. If finalized, the rules could give rise to D&O risks relating to the accuracy and adequacy of such mandated disclosures, as well as costly regulatory compliance.

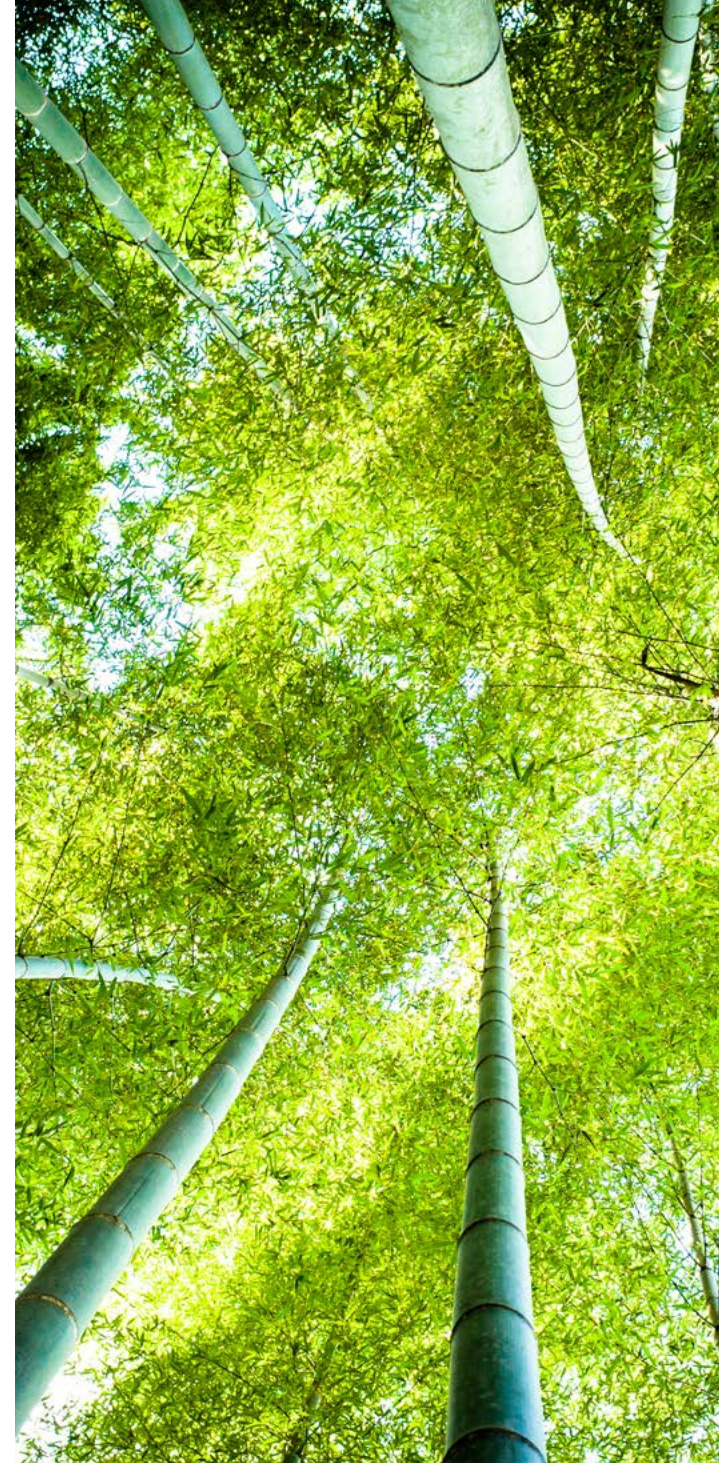
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# Employment practices liability



## Rate predictions

**Domestic and Bermuda markets:**

**Flat to +10%**

### Key takeaway

The EPL market continues to stabilize largely due to competition with markets eager to write new business and maintain their renewals. Significant loss history and/or significant change in exposure factors will still elicit rate increases on the higher end.



### Competition is still strong and keeping the EPL market stable.

- 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 close to or at flat. California continues to be the most problematic jurisdiction. New Jersey, New York and Florida continue to be challenging as well.
- **Retentions:** While most retentions have been “corrected,” loss history and location of employees may still lead to increases in retentions. Markets continue to seek separate retentions for class actions, especially in California, as well as separate retentions for California single-plaintiff claims and for highly compensated employees in certain industries. Some domestic markets are also adding separate retentions for NY, NJ and IL.
- **Limits:** Many domestic markets continue to provide lower limits — \$5 million to \$10 million with some Bermuda markets also looking to cut back to \$15 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. Additional capacity (AIG) has been added in the Bermuda market.
- **Underwriting:** Expect some questions regarding ESG (specifically, diversity, equity and inclusion initiatives), pay equity audits, labor shortages, whether layoffs are being considered and supply chain challenges (depending on the industry).
- **Coverage:** Coverage remains intact; carriers continue to add privacy/biometrics exclusions.

### Artificial intelligence in the workplace may lead to employment practice violations.

- Many companies are using software, including artificial intelligence, and other technologies in hiring and in other employment decisions. The use of these technologies may be helpful for employers in saving time, etc. but they may also discriminate.
- In May 2022, [the EEOC issued guidance for employers](#) to help ensure that the use of artificial intelligence does not violate the Americans with Disabilities Act.
- [A New York City law](#), effective April 15, 2023, will require employers to have an independent bias audit conducted on their automated employment decision tools. Otherwise, they will face penalties.
- Other states, such as, D.C., Massachusetts, Illinois, New Jersey, [also have proposed legislation](#).



## ESG, pay equity legislation and changes in the economy could impact employment claims.

- In the employment context, focus on the “S” in ESG will continue into 2023. Specifically, the focus will be on diversity, equity and inclusion initiatives within organizations. Employees are using social media to push their organizations to implement ESG policies, particularly around pay equity, gender and racial equality and sexual harassment. Insureds should continue to expect questions from underwriters regarding their diversity, equity and inclusion initiatives, particularly racial equity and pay equity.
- 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. Insureds should expect questions from underwriters regarding status of pay equity audits and compliance with transparency laws.
- Rising costs and potential recession are leading many employers to consider layoffs, which can potentially lead to an increase in employment claims. The tech industry has been experiencing some major layoffs over the past few months, and **61% of companies have indicated they will likely have layoffs in 2023**. Additionally, please see WTW's article on tech industry layoffs and employment practices liability implications [here](#).

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# Errors and omissions



## Rate predictions

**Large law firms:**  
**+5% to +10%**

**Mid-size law firms:**  
**Flat to +10%**

**Management consulting firms:**  
**+10% to +20%**

### Key takeaway

As insurers continue to correct rates to better align with long-term loss experience trends, legacy markets' pricing has been impacted, and new carriers are being attracted to the E&O space. We expect additional adjustments as the year unfolds.

## Lawyers

- The market is beginning to stabilize. Although carriers continue to seek rate, most are reaching rate adequacy and moderating their premium targets, depending on the size of the firm, areas of practice and claim history. Some insurers are increasing their claim inflation factor due to the rising cost of defense and the upward trend of settlements.
- Markets have been seeing significant claim penetration beyond primary layers, which is impacting one or more excess layers. These excess insurers are still working to correct their premiums, but not as aggressively as in the past several quarters. Many excess markets are using recalibrated models which are pushing up increased limits factors. This has resulted in a compounding effect on year-over-year rate increases when combined with primary layers price correction.
- There are several new law firm professional liability markets with experienced underwriters that are creating competition on both the primary and excess levels. New markets tend to enter at or near the top of rate cycles.
- Carriers are continuing to push for higher retentions and using a firm's revenue as a basis to do so.
- Underwriters are paying particular attention to:
  - Financial stability of law firms, including the potential influence of inflation/recession on law firm economics
  - Remote work environment's impact on law firm's abilities to properly supervise/impose risk management controls
  - Managing client selection and lateral hire exposures

## Consulting firms

- Underwriters have continuing concerns with consultants working with clients in the tobacco and opioid industries, particularly with consultants potentially crossing the line into proposing or operationally supporting high-risk strategies for regulated or high-risk products.
- Similar to law firm underwriters, consultant underwriters are paying close attention to insureds that are working with governments under sanctions, and they have plans in place to address these situations.
- Several markets that offer consultant E&O coverage believe it has been underpriced for several years, and they are still striving for rate adequacy. This is due in part to the increased severity in consultant claims.

## 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 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 marketplaces:

- 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

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# Fidelity/crime



## Rate predictions

Fidelity/crime  
**Flat to +2.5%**

**While commercial and financial institution crime losses are trending differently, the frequency of external theft and fraud has surpassed internal theft and fraud for both classes of business.**

- For commercial risks, internal theft and fraud continue to be more costly, often because the perpetrators have inside knowledge on how to avoid detection or bypass certain controls.
- For financial institutions, external theft and fraud leads the way in terms of both frequency and severity. These include losses where securities fraud has been detected, commonly in the form of mortgage or loan fraud.

### Key takeaway

A product to keep your eye on! Although premiums have historically been inconsequential compared to other financial and executive (FINEX) lines, the loss trends are nothing to bat an eye at.



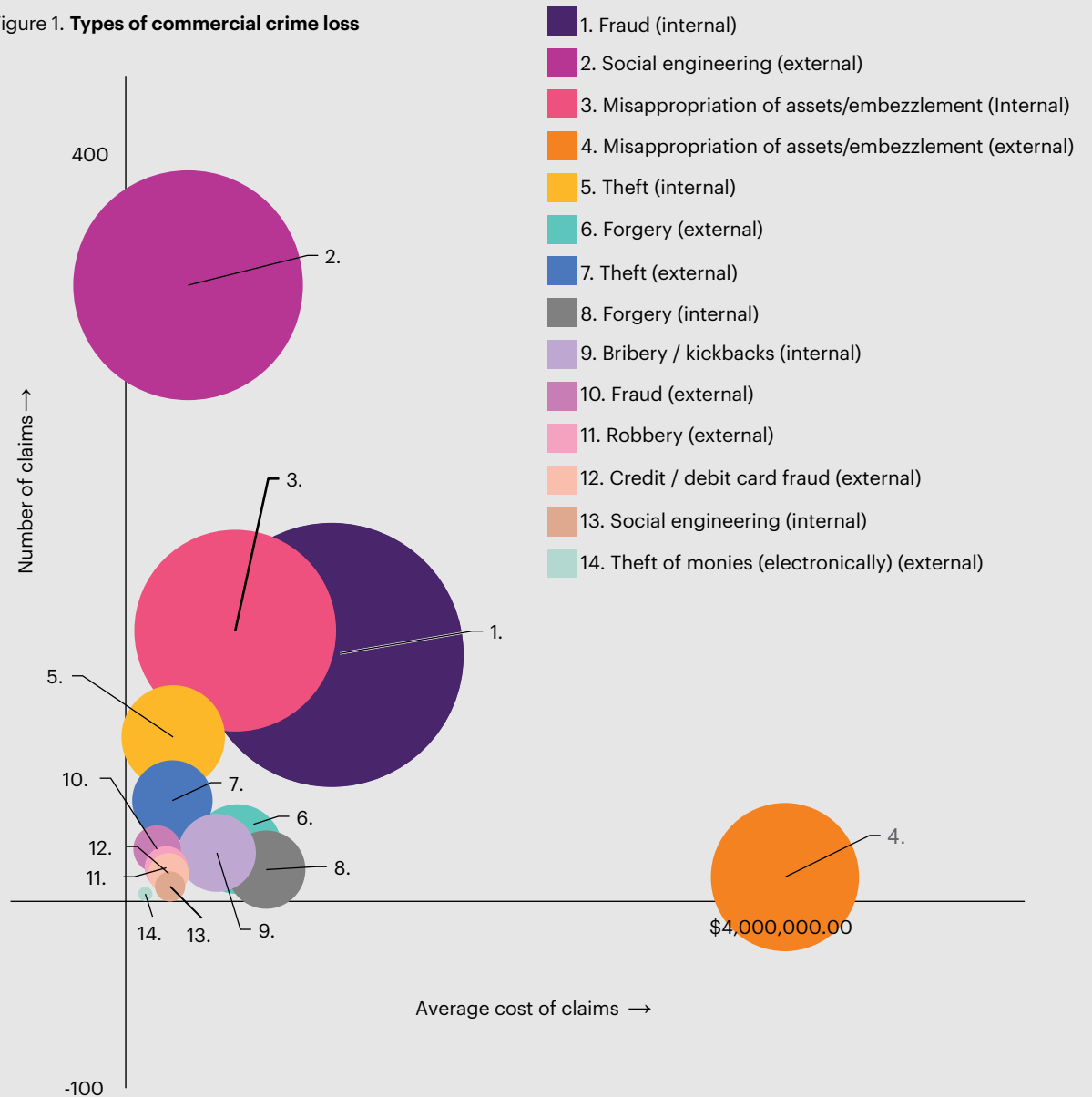
## Social engineering is a crime of particular concern for any business.

- Whether through falsification of suppliers' invoices, clients' payment instructions or impersonation of executives, social engineering losses have increased significantly in recent years.
- For commercial risks, social engineering claims are leading the way in terms of loss frequency. Although the average cost remains benign, the cumulative cost of these loss events is sizable.
- For financial institution risks, social engineering losses have generally not materialized in a meaningful way.

**The average financial institution crime loss is \$2.9 million, while the average commercial crime loss is \$1.02 million.**

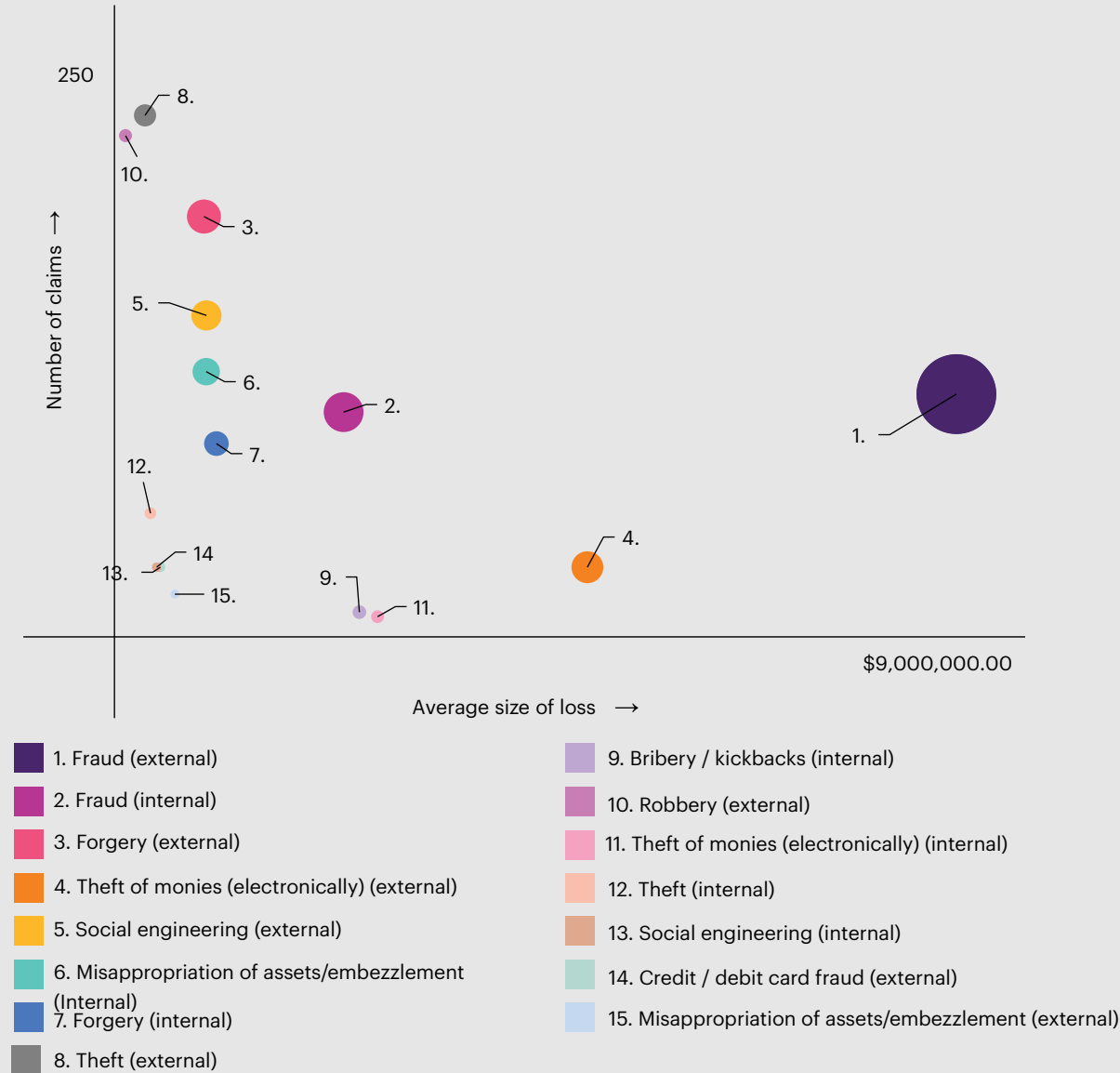
- For both commercial crime and financial institution crime, there is an inverse relationship between claim frequency and claim severity, meaning, most claims are settled for under \$500,000 while ~5% percentage of claims exceed \$5 million in cost.
- The median size crime loss for both commercial and financial institution risks hover at ~\$170,000; however, that isn't to say that we don't see crime losses with significant scale. The largest single commercial crime loss is \$55 million, while the largest single financial institution crime loss is \$961 million.

Figure 1. **Types of commercial crime loss**



Source: WTW Claim analysis report 2023 Commercial crime

Figure 2. Types of FI crime loss



Source: WTW Claim analysis report 2023 Financial institutions crime

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# Fiduciary liability



## Rate predictions

**Small public/nonprofit (defined contribution pension plan assets up to \$50M)**

**Flat to +10%**

**Mid-sized public/nonprofit (plans asset \$50M to \$500M)**

**Flat to +15%**

**Large public/nonprofit (plan assets above \$500M)**

**Flat to +30%**

**Financial institutions**

**-15% to +20%**

### Key takeaway

Despite conflicting positive and negative risk developments and some carriers remaining wary, a few carriers with increased appetites are leading to improved market conditions. Premiums have continued to level off, with more renewals on the lower end of ranges. As the previously limited market for primary fiduciary continues to expand, we expect to see more flat renewals. Class action retentions remain mostly in a seven-figure range, mostly between \$1 million and \$2.5 million, with some above or below that range depending on size of assets in the relevant defined contribution plan.



## Underwriters continue to be more wary of fiduciary risks than they were four years ago, but there has been considerable stabilization.

- **Underwriting focus:** Despite conflicting positive and negative indications, a recent increase in the number of markets interested in writing primary fiduciary liability policies has contributed to the flattening of premium increases.
- 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 (some carriers don't want to quote plans with assets above \$1 billion).
- Even smaller plans can cause concern because a few smaller plaintiff firms have targeted them. Insurers regularly seek detailed information about fund fees, record keeping costs, investment performance, share class, vendor vetting process and plan governance, causing some insureds to seek assistance from their vendors in filling out applications.
- A wave of class actions filed by one law firm against sponsors whose 401k plans include BlackRock target date funds caused some carriers to focus on this exposure in their underwriting, although the BlackRock funds in question have been highly rated, and Morningstar.com published an [article](#) criticizing the lawsuits. However, the fact that the first two decisions in these cases have been dismissals has helped to calm the concerns of many insurers.

- **Carriers like to see:**
  - Frequent RFPs/benchmarking
  - No revenue sharing
  - No retail share classes
  - Few actively managed funds, and not as qualified default investment alternative
  - Limited merger & acquisition activity
- **Retentions/sub-limits:** Insurers continue to be more focused on retentions than on premiums. First-dollar coverage has become virtually 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. Some carriers have attempted 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 sub-limit of liability or exclude entirely prohibited transactions/excessive fees coverage, but there are sufficient alternatives available. Marketplace results will vary with plan asset size, plan governance and claim history, but it can be a challenge to get credit for positive risk factors.

- **Coverage breadth seeing some expansions:** Other than increasing retentions, carriers have not generally been restricting coverage. It should be noted, however, that terms can vary substantially. Several carriers have become receptive to offering coverage enhancing endorsements.
- **Is the market improving?** Yes. 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 alternatives (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 may be higher or lower depending 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 avoid increases entirely. We expect to see flat renewals continuing to be common. Price per million of coverage can vary substantially among risk classifications, notably those involving plans with proprietary funds.

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

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- 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 now often seeing flat or reduced premiums on renewal.
- 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 was the result of a wave of excessive fee cases in these sectors in recent years. However, the lull in university suits has been helpful in that sector, while hospital systems remain challenged.
- Underwriters continue to focus 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 it can be challenging to get credit for best practices.

## Broader economic challenges could pose risks to benefit plans.

- 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.
- Cutbacks in benefits (particularly retiree medical benefits) and/or workforces may lead to claims and potentially large class actions.
- Entities that still sponsor defined benefit pension plans and saw their funding status improve substantially during 2021, have more recently seen declines in funding levels.

## Litigation

- **In 2022, excessive fee claim frequency returned almost to 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. Excessive fee class action frequency hit a sudden peak in 2020 with almost 100 cases filed, then dropped 40% in 2021, then rose again in 2022 to 88 cases, with more than 100 cases ongoing. Several recent excessive fee settlements (not involving investments in defendant-sponsored proprietary funds) have been more modest (between \$1 million and \$5 million, mostly on the lower end) than previously. In the initial aftermath of the U.S. Supreme Court's pro-plaintiff Northwestern University decision, few excessive fee cases were dismissed, but a recent positive

precedent from the Sixth, Seventh and Eighth Circuits (CommonSpirit Health, Oshkosh and MidAmerican Energy Co. respectively, discussed below) have led to an increase in motions to dismiss being granted, particularly in those circuits.

- **Other types of class actions persist:** Although fewer suits against defined benefit plans alleging reduced benefits due to the use of outdated mortality table assumptions were filed in 2022, such cases 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 remained virtually nonexistent for the last several years, but private companies with employee stock ownership plans (ESOPs) can still see claims:** In the continuing aftermath of the U.S. Supreme Court's decision in *Fifth Third Bank v. Dudenhoeffer*, very few employer stock drop class actions have been filed, and those few continue to be dismissed and affirmed on appeal. Nonetheless, carriers remain concerned about employer stock in plans; they will often exclude ESOPs or include elevated retentions. Meanwhile, private plaintiffs and the DOL sometimes bring claims against private companies with employer stock plans, mostly in response to valuation issues in connection with establishing or shutting down such plans. In 2022 the DOL reached settlements and recovered money for participants in a few ESOPs, including a \$6.3 million recovery. See, e.g. <https://www.dol.gov/newsroom/releases/ebsa/ebsa20221219> and also <https://www.dol.gov/newsroom/releases/ebsa/ebsa20221027>

- **Risks post the Dobbs decision:** Following the U.S. Supreme Court decision in [Dobbs v. Jackson Women’s Health Organization](#), overturning *Roe v. Wade*, some companies implemented protocols to assist employees in gaining access to healthcare services they may not be able to obtain in their own states. Fiduciary risks can arise as to possible violations of newly implemented state laws and related civil and criminal investigations and proceedings, raising questions concerning the scope of ERISA preemption. Some employee participants might complain about benefit cutbacks, while others might complain about discrimination. Plan sponsors may also face challenges complying with ERISA’s technical requirements in connection with plan changes and creation. However, it should be noted that these potential claims do not seem to have materialized to date.

## Enforcement

- **Department of Labor enforcement results dipped in 2022:** While enforcement and compliance actions brought by the DOL resulted in \$1.4 billion being recovered in 2022, that number was down from the 2021 total of \$2.4 billion. The DOL’s primary stated areas of focus continue to be delinquent contribution attribution and cybersecurity. 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. On the delinquent contribution front, the DOL has proposed [changes](#) to the Voluntary Corrections Program to allow for self-corrections for plans not currently under investigation.

## DOL rulemaking

- **The Department of Labor’s proposed new rule regarding environmental, social and governance (ESG) investing achieved final rule status, despite opposition:** On October 14, 2021, the Department of Labor (DOL) published for comment in the *Federal Register* a [new rule](#) to modify the previous administration’s 2020 rule that was perceived as discouraging retirement plans from investing in ESG-related investment options by putting a burden on fiduciaries to justify such investments. As the [DOL explained](#) in the Supplemental Information provided when they published the rule, the change was “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.”
- On November 22, 2022, the DOL published the final rule and a summary fact sheet. The [official press release](#) was entitled: “U.S. Department of Labor Announces Final Rule to Remove Barriers to Considering Environmental, Social, Governance Factors in Plan Investments.” The final rule retained the core principle that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries.
- The new rule applies the same fiduciary standards to the selection and monitoring of a qualified default investment alternative (QDIA) as applied to other designated investment alternatives.
- Days before the rule was about to go into effect (on January 30, 2023), 25 state attorneys general and three private plaintiffs sued to block the rule as beyond the DOL’s authority. Thereafter additional litigation was filed, and on March 1, 2023, Congress passed legislation under the Congressional Review Act to block the rule.
- On March 20, 2023, President Biden issued the first veto of his presidency in order to keep the new rule in effect. On Thursday, March 23, a vote of 219 for and 200 against in the House of Representatives failed to reach the two-thirds majority required to override the veto.
- **Employee Benefits Security Administration (EBSA) request for information from interested parties:** In relation to climate risk specifically, EBSA/DOL was considering going further than the ESG investing standard discussed above and asked for public input on how to implement a [5/20/21 Executive Order](#) to protect pension plans from such risks. Under consideration were mandatory disclosures on Form 5500s or elsewhere concerning plan investment policies, climate-related metrics of service providers, plan fiduciary awareness of climate-related financial risk and much more. Responses were due by May 16, 2022. Evidently most of the comments were negative and EBSA/DOL has not taken any further action.





- **DOL interpretation of “investment advice” vacated by district court:** In a [release](#) from April 2021 the DOL published its interpretation that advice concerning whether to roll over assets from an employee benefit plan to an IRA (with an anticipation of an ongoing future advisory relationship) can be considered as meeting the test of whether an advisor fulfills the “regular basis” requirement to create fiduciary status. In a [decision](#) in *American Securities Ass’n v. United States Dep’t of Labor* (No. 8:22-CV-330-VMC-CPT, 2023 WL 1967573 (M.D. Fla. Feb. 13, 2023)), the district court found the DOL interpretation to be arbitrary and capricious, reasoning that any post-rollover advice would not be fiduciary advice relating to an ERISA retirement plan.

### Legislation

- **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 have been joining PEPs. Employers participating in PEPs will want to make sure that they have adequate appropriate insurance.
- **SECURE ACT 2.0:** Securing A Strong Retirement Act (SECURE 2.0, Senate Finance Committee’s official summary [here](#)) was signed into law on December 29, 2022, with parts taking effect immediately and others being phased in over time.
- The law expands automatic enrollment, as well as opportunities for making “catch up” contributions.
- Among other things, SECURE 2.0 also enhances the retirement plan start-up credit, making it easier for small businesses to sponsor a retirement plan. The legislation further increases the required minimum distribution age to 75 and it allows employers to match employee student loan repayments with retirement account contributions. Contrary to expectations, however, the final version of the law does not allow non-profit 403(b) plans to offer collective investment trusts (CITs), which often have lower fee structures than mutual funds, as options.
- Fiduciaries will have to educate themselves about the new playing field and facilitate passing on the benefits to their plan participants. Plaintiff class action lawyers will be prepared to second guess plan fiduciaries.
- **COVID-19 relief legislation: The American Rescue Plan Act** (the Act), which was passed in March of 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. Many underfunded multiemployer plans have been funded as a result of the Act, including most notably the [Central States Teamsters Pension Fund](#) to the tune of \$36 billion.

## Aftermath of the U.S. Supreme Court's decision in the Northwestern University excessive fee case

- On January 24, 2022 the U.S. Supreme Court issued its eagerly awaited decision in the Northwestern University excessive fee case, [finding for the plaintiffs, vacating the dismissal, remanding the case back to the Seventh Circuit.](#)
- The Seventh 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 Seventh Circuit's uniquely extreme position on the "investment choice" defense.
- Initially, after the Northwestern University decision, district courts became even more reluctant to dismiss cases on initial motion. More recently, however, the Sixth Circuit affirmed the dismissal of the excessive fee class action against [CommonSpirit Health](#), the Seventh Circuit affirmed the dismissal of the class action against [Oshkosh Corporation](#), and the Eighth Circuit affirmed the dismissal of a class action against [MidAmerican Energy Co.](#) The courts in all these cases stated that the Northwestern decision did not remove the requirement for courts to act as gatekeepers as to whether pleading standards are met in the first instance. The CommonSpirit and Oshkosh courts quoted the most pro-defense sentence

from the Northwestern decision, which pointed out 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."

- All three circuit courts found that plaintiffs, despite having pointed to other allegedly comparable but better plans and investments, had failed to establish that they were in fact comparable and indicative of likely imprudence. The Seventh Circuit cited the Sixth Circuit's detailed decision with approval, a trend which may continue in other jurisdictions. Also, within the Sixth and Seventh Circuits there have been submissions of supplemental authority and [motions for reconsideration](#) filed by defendants whose motions to dismiss were previously denied. For more detail, see these articles about the [CommonSpirit Health](#) and [Oshkosh](#) decisions.

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# Financial Institutions — FINEX



## Rate predictions

**D&O**  
Publicly traded financial institutions  
**Primary: -5% to +2.5%**  
**Excess/Side A: -10% to flat**

**D&O/E&O**  
Asset managers (excluding private equity/  
general partnership liability)  
**-5% to flat**

**D&O**  
Private financial institutions  
**-10% to flat**

**Insurance company professional liability  
(ICPL)**  
**Flat to +10%**

**Bankers professional liability (BPL)**  
**Flat to +5%**



## Key takeaway

Competition among insurers persists across all lines for financial institutions (FIs) resulting in rate stabilization and for certain classes of business, rate decreases. However, turbulence in the financial markets and the confidence crisis in the regional bank sector, both precipitated by the abrupt failure of two U.S. banks, may lead to upward rate pressure and potential reduction in capacity for banks.

### Market dynamics continue to be very competitive, globally, with robust capacity and healthier portfolios as insurers strive to meet growth targets.

- With the highest number of insurers in the management and professional liability space that we have seen in years, and unchanged or reduced demand for insurance, the market remains ripe for a competitive environment in 2023. However, we may see moderation in rate reductions in the second half of this year if rates continue downward through Q2 2023.
- In our last report in December 2022, we projected softening conditions through H1 2023, with potentially some flattening in Q2 2023. Our predictions have played out; however, we expect any flattening to likely not occur until after Q2 2023, unless turbulence in the banking sector and market volatility spike sooner.
- The competitive environment cuts across the U.S., Bermuda and U.K. markets, as well as the European market. The U.K. markets and syndicates and Bermuda markets are eager to participate on more U.S. programs.
- IPO and SPAC volumes were down significantly in 2022, from the 2021 frenzy, and volume has continued to fall in Q1 2023. This was a source of strong new business in 2021 for insurers, and that pipeline of new opportunities has largely dried up. There are some hopeful outlooks that there is a turnaround for IPOs later in 2023 when, and if, the market stabilizes, and we see companies who had postponed IPOs revisit these.
- Premium cost savings are generally not being used to purchase higher D&O or E&O limits, but in some cases, they may be, such as in M&A

and post-IPO programs where it was not cost-effective to have purchased higher limits at the time of the listing. Premium savings may be reallocated toward cyber coverage, where the market is now more favorable. Premium savings may also be used to offset rate increases on other coverage lines (i.e., property).

- We have seen an uptick in claim volume in Q1 2023 suggesting that the lull in claim activity from the pandemic is in the rearview mirror.

### The unexpected failure of two U.S. banks, voluntary shutdown of a bank and takeover of a large global bank all within a few weeks, have a widespread effect on financial markets.

- While the banking crisis from March 2023 has stabilized, it is fair to ask if the worst is behind us; was the crisis limited to a few banks with unique business models; and how will these events disrupt the global economy on a longer-term basis? Investors and analysts, as well as insurance underwriters have sharp eyes on the Q1 2023 earnings of banks to shed light on the impact of the banking system turmoil.
- Following the U.S. bank failures are fears about bank concentration in commercial real estate (CRE) among regional and smaller banks. The concerns center on the refinancing cliff as refinancing rates will be higher given the higher interest rate environment coupled with tighter lending standards and continued elevated vacancy rates. Underwriters are scrutinizing CRE exposure in banks' loan portfolios and investment portfolios of asset managers and want to understand the exposure and differentiation across CRE sectors.

- Some insurers have intimated that they expect rate stabilization in the FI D&O and BPL market, at least for banks. It is premature to determine how the banking turbulence and CRE performance will continue to unfold, and therefore, too early to tell how the insurance markets will respond, but it is likely that those insurers not impacted by the failed banks, will continue to drive competition.
- It seems increasingly likely that the banking crisis will push the U.S. into a mild recession. The recent bank failures highlight the toll of the Fed's aggressive interest rate hikes on both the banks and their customers. It has heightened scrutiny by investors and regulators of the magnitude of unrealized losses of held-to-maturity securities. If interest rates continue to rise to combat inflation and banks tighten lending conditions, this may become more of a systemic event and not just a banking event. D&O underwriters are concerned with macroeconomic uncertainties arising from inflation, interest rates, corporate insolvencies and global hostilities, such as the Russia/Ukraine war, as well as sector concentration in loan and investment portfolios.

### FI D&O rates have trended downward but remain more stable than commercial D&O rates.

- While there are certain situations of material rate decreases for FI D&O, the rates are, on average, more stable than commercial D&O rates with the upward and downward rate swings more muted for FIs.
- We expect D&O rates to continue decreasing, particularly on excess and Side A, with reinvigorated insurer appetites, recognizing that, as the turmoil in the banking sector and impacts of the failed banks continue to unfold, this will likely have an influence on the rate temperature of at least some insurers. We will monitor developments in pricing, retentions and terms, as well as claim activity and trends across all FIs.
- D&O capacity for digital asset risks continues to be challenged, and there has been a pause for some insurers because of the FTX fallout. That said, there is interest in the marketplace from both established and niche digital asset markets, but those insurers have a more cautious approach in their limit deployment. While there is an appetite from some insurers, premiums and retentions are typically elevated as this is still an emerging sector with significant price volatility and a lack of consistent regulatory clarity and guidance.

- The M&A environment for FIs in 2023 remains difficult with the uncertain macroeconomic environment and impact of rising interest rates on financing. Increased regulatory scrutiny of bank M&A has resulted in significantly delayed closing timelines, and we can expect regulators to scrutinize capital and liquidity more closely. That said, more FIs are focused on core businesses and identified growth areas and are carving out those non-core businesses. Should we see more FI M&A activity, D&O tail coverage pricing has gotten more favorable from a year ago.

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

- **Asset managers:** Rates have stabilized with most programs experiencing flat to modest premium decreases. Several new insurers have entered the asset management D&O/E&O space, creating meaningful competition on renewal programs, though mostly on an excess basis. Asset management, particularly registered investment advisors and registered funds, continues to be the most desirable subset of the financial services sector; however, interest in private equity, BDCs, and risks with material cryptocurrency exposure remains limited. Coverage remains stable, though some insurers

are reassessing the scope of cost of corrections coverage following a series of significant trade error losses. Market volatility arising from the recent failures of U.S. banks may give rise to more trade errors and investor (and perhaps regulatory) claims. While U.S. regional bank ETF returns have been pulled lower, money market funds have benefited from the deposit outflows from regional banks as that has fueled record inflows into money market funds. Underwriters are focused on understanding the effects of banking system stress on investment portfolios, investments directly or indirectly impacted by rising interest rates (e.g., treasury holdings, real estate), and communications and disclosures to investors around these areas.

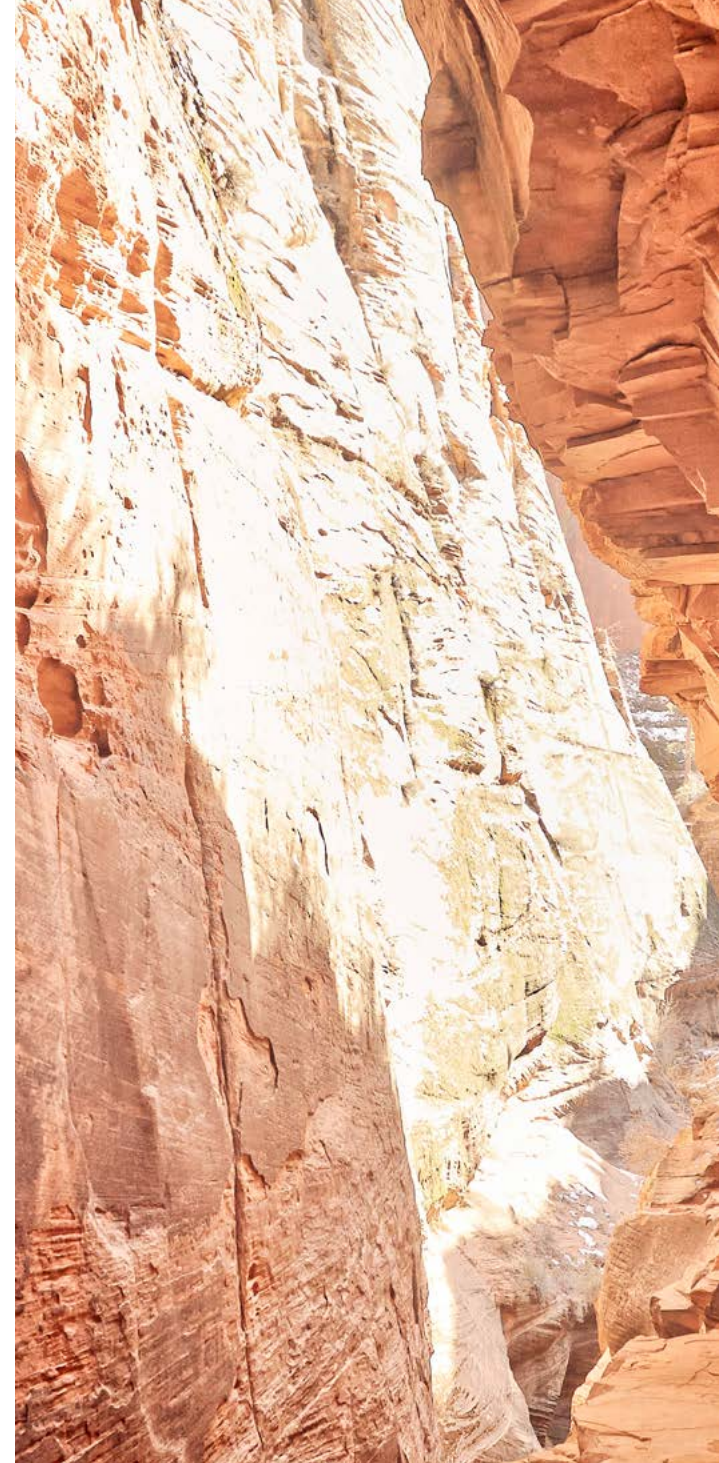
- **Insurance companies:** Rates have stabilized following several years of significant rate increases, and in certain circumstances, rate decreases are achievable through a marketing effort. There remain few viable primary insurers looking to write new business today. Competition for excess ICPL — particularly when blended with other coverages — improved dramatically in 2022. We expect this trend to continue, as several new insurers began quoting on an excess basis or returned to the market after taking a step back and reevaluating their strategy. Retention increases are less common because most primary insurers have remediated their portfolios and materially adjusted retentions over the past couple of years. There continues to be upward pressure on retentions for sales and marketing coverage.

- **Banks:** Rates and retentions have stabilized with most programs experiencing flat to modest rate increases. In certain circumstances, rate decreases are achievable through a marketing effort when pricing and retentions are adequate for the risk exposures. Aggressive growth targets at insurers have resulted in increased competition, particularly on the excess, which has helped to minimize rate increases. However, in light of recent U.S. bank failures and turmoil in the banking system, insurers are more closely monitoring their bank portfolios, and this may result in a change in appetite or upward pressure on rates. Insurers are also monitoring those sectors that are concentrated with certain banks. Banks can expect an increased focus from BPL (and D&O) underwriters on deposit mix and outflows, funding sources, liquidity and capital management, commercial real estate exposure within loan portfolios, investment portfolios, tightening in lending, credit quality and response to volatility in the bank sector.

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# Speciality lines and solutions

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# Aerospace



## Rate predictions

**Airlines:**  
**-10% to flat**

**Airline hull war:**  
**+100%**

**Airline excess war liability:**  
**+50%**

**Airports and municipalities:**  
**+7.5% to +15%**

**Airline excess war liability:**  
**+50%**

**Products manufacturers and service providers:**  
**+10% to +15%**

**Aircraft lessors/banks:**  
**+10% to +15% and flat for hull war**

**General aviation:**  
**Flat to +15% for hull/liability and up to +100% for hull war**



## Key takeaway

Insurers continue to take a measured wait-and-see approach to the impact of Russia's confiscation of aircraft, and we don't expect to see this manifest until some time in 2024. In the meantime, insurers are incurring increased reinsurance costs, an inflationary economy, and increasing jury awards that continue to keep rates trending upward especially for loss-driven accounts. Those risks that are profitable in the market can achieve flat renewals and, in some cases, experience rate reductions. However, after significant increases in the war market in 2022, we're starting to see the increases wane as enough capacity is available to thwart continued increases like those seen in 2022.

## Airlines

**Below-average claim activity and plenty of capacity mean that underwriters are under pressure to continue giving rate decreases. However, there could be some significant headwinds.**

- Claim activity has been below \$1 billion the last three years but should start trending up as demand continues to rebound from postpandemic lows.
- Underwriters are concerned about supply chain issues and repair costs escalating.
- Claim inflation is due to liability awards.
- Capacity has been increasing mostly with new entrants rather than existing players expanding.

### Reinsurance costs could have an impact on available capacity.

- All eyes will be on the reinsurance market in the first half of the year as major renewals come up in the April-through-June time frame.
- Will war losses spill into the H&L market? It's still too early to be totally confident that they won't.
- Deterioration of Boeing Max losses continued to hammer the market in 2022.
- Reinsurance renewals could mean some scaled-back lines for some underwriters.

## Hull war and excess war liability market

- New capacity was able to keep the rate increases somewhat in check in 2022 after the withdrawals of some major players.
- The quantum of the Russian war losses is still a big unknown but not likely to get worse.
- There has been some press lately that a deal could be struck, but it's a big hurdle to get around the sanctions.
- Restricted coverage and limits should be able to maintain capacity and stabilize pricing.
- The events in Sudan will cause further pain for the hull war underwriters.



## Aircraft lessors/banks

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**Hard market conditions prevail with elevated emphasis on geographic aggregation of assets, but the reflation of the hull war sub-class which led to the disproportional cost increases seen during the past 12 months has led us to expect the market to hold premium at these levels.**

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We expect the impact of sanctions on Russia to result in an unprecedented aviation market claim, with insurers being exposed to previously unquantified hull exposures and with expectations for total industry losses ranging from \$10 billion to \$20 billion. While the uncertainty of the overall loss magnitude continues, risk perception has already shifted for both direct and reinsurance markets, and the renewal of aviation insurers' own reinsurance protections will worsen the market conditions in 2023.

- Combined impact of the Ukraine crisis and airline assets held in Russia is expected to have a far-reaching impact on this class.
- The majority of claims has been formally submitted to the market and, as widely reported, some lessors have opted to start legal proceedings against insurers.

- The market remains unable to deliver a consolidated coverage position; similarly for the majority, reserves remain to be set by insurers and reinsurers.
- Geographic aggregation of assets, sanctions and geopolitics all remain in major focus among (re) insurer senior management and are expected to result in coverage limitations.
- Market capacity withdrawals have continued with limited new entrants; insurers continue to review application of sub-limit(s) and cover limitations to manage their own aggregation exposures.
- Reinsurance and retro markets are strictly curtailing coverage and significantly increasing pricing; similarly, direct insurers are expected to reduce offered shares resulting in demand/supply imbalance and higher client pricing.
- For hull war sub-class, confiscation etc. (paragraph (e) perils of wording) sub-limits and specific country aggregates offered options to moderate pricing; in parallel, non-confiscation options are becoming more expensive as insurers continue to seek the reflation of this market.

## Product manufacturers and service providers

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**Pressure remains on the aviation insurance market to improve its position on all lines of business.**

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This is mainly due to rising reinsurance cost/claim inflation and the continued possibility of up to a \$10 billion payout to lessors as respects Russia's nationalization of approximately 400 leased aircraft. Despite all the headwinds for insurers, capacity remains available, but that could change any time. Our advice to our clients renewing in the coming months remains the same, i.e., to engage with their team early to get terms and support secured, as it is very challenging to anticipate the direction the market will take and when a shift might occur.

- Insurers are pushing for premium increases (+10%-15%); however, at the moment, capacity remains readily available for accounts with no new losses or claims deterioration.
- A few insurers see this as an opportunistic moment to seize larger shares on desirable risks in anticipation of the market hardening.
- War coverage remains a challenge, and we continue to see coverage restrictions being imposed, especially regarding hull war and war liability writebacks.

## General aviation

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**Underwriters pushing for an uplift in rates, remain focused on 12-month model specific SIM pilot training and look to maintain and grow their portfolios.**

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### **Inflation and increased costs for both reinsurance and claims are major concerns for underwriters.**

- Underwriters are facing increased reinsurance costs as well as new underwriting restrictions as they renew their individual reinsurance programs throughout the year.
- Underwriters continue to cite inflation and increased claim awards as additional drivers for uplift in rates going forward.
- Supply chain constraints and labor shortages continue to increase the cost of repairs and of aircraft down time, effectively increasing the total cost of claims.

New and existing markets look to deploy more capacity, putting pressure on underwriters to offer more competitive pricing on larger quota share placements.

- That being said, hull war rates are increasing by up to 100% or higher.
- In respect of hull war and war liability coverages, we are seeing some capacity restrictions as well as aggregates being imposed going forward.

- Regarding coverage changes, underwriters are including geographical exclusions in respect of Russia, Ukraine and Belarus, and hull values are being reviewed by both clients and underwriters at renewal.

Environmental, social and governmental (ESG) stances of carriers continue 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.

### **Airports and municipalities**

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#### **Aircraft and passenger traffic continues to rebound in a post-COVID era, driving increased exposures on site.**

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Also, large and unique verdicts continue to keep the social inflation and nuclear verdicts fresh in carriers' sights, leading to a general sense that pricing remains inadequate.

- Though rating increases continue, we have seen a shift to individual account assessment with more significant changes in appetite, structure and rating if there is an unfavorable loss history.
- Coverage adjustments to non-aviation excess limits have occurred in the past few years and are less significant moving forward.
- All markets are still seeking what they determine to be adequate rates.
- Vertical placements (quota-share) are a good solution to engage capacity on larger limit accounts and establish a more stable program for the future.

## Space

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**The space insurance market has stabilized and has embraced a more disciplined underwriting approach.**

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- Risk differentiation is now based on limit requirements and technology-based risk variations.
- Ample capacity is available for risks with performance heritage, but not first-flight or unproven technologies.
- Premium rates have remained stable over 2021 – 2023, with rate reductions only on risks with significant technical heritage.
- The market's annual premium income target remains \$750 million, but it has only achieved ~\$600 million (in 2022).
- However, due to fewer and smaller claims, both 2021 and 2022 were still profitable years for the market.
- New insurers/capacity have come into the market to replace capacity that exited following the market hardening in 2019-2020.

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# Alternative risk transfer (ART)



## Rate predictions

**Structured programs:**  
**Flat to +10%**

**Parametric nat cat:**  
**-5% to +10%**

**Parametric weather programs:**  
**Flat to +10%**

**Portfolio programs:**  
**+25% to +40% over 3  
years (7-12% annually)**

**Captive stop loss:**  
**Flat to +5%**

### Key takeaway

Pricing in the ART market is generally stable due to embedded risk financing. Structured and parametric solutions will drive the ART market in 2023. Portfolio/integrated risk products renewing in 2023 face the impact of cumulative changes in the market since binding three years ago. Insurer bandwidth will become challenging.

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**Many alternative risk insurers now must carefully manage bandwidth due to an onslaught of inquiries. ART deals supported by robust analytics and negotiated over realistic timeframes continue to fare better.**

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### Structured solutions

- In primary layers, many insureds now face premium to limit ratios that exceed 50%. This is forcing the exploration of programs that embed significant risk financing elements.
- With an unprecedented volume of inquiries, many insurers must diligently manage their pipelines to triage opportunities and focus resources.
  - While capacity remains available, the turn-around time on these deals is now stretching to 6 to 10 weeks.
- With many insurers having met 2023 goals in Q1, capacity and pricing are likely to become entrepreneurial as the year progresses.
- For those clients with existing programs, expansion into other lines of business leverages built up capital to drive efficiencies across a program.

### Parametric solutions

- Many parametric markets paid claims in 2023 (tropical cyclones, wildfire, hail, flooding, etc.).
- This has two principal effects.
  - Clients have seen firsthand the simplicity and speed of claim payments serving to reinforce the original decisions to adopt the approach.
  - Losses are likely to drive some premium increases in 2023.
- Innovation continues to occur in this market as insurers embed parametric features into more traditional lines, embrace new data sources, and address challenging risks such as cyber and pandemics.
- Application to ESG risks continues to drive adoption as well as increasing participation of client's captives.

### Fronting solutions

- As insureds face vastly increased premium demands coupled with budget constraints, decisions to step outside the market are becoming more frequent. Fronting is now being aggressively deployed to address such risks as cyber, where contracts require evidence of coverage. For investment-grade insureds, collateral "efficient" programs are becoming more popular, i.e., collateral is not required at inception, only if a claim is filed.

### Captive solutions

- 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 programs

- Portfolio/integrated risk products are attracting less attention; however, they do continue to perform favorably when compared to many monoline equivalent programs. Underwriters do continue to focus on their structured solutions books.

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# Architects and engineers



## Rate predictions

<b>Professional liability:</b> <b>5% to +15%</b>	<b>Project-specific professional liability:</b> <b>+25% or more</b>	
<b>General liability/ package :</b> <b>Flat to +5%</b>	<b>Auto:</b> <b>5% to +15%</b>	<b>WC:</b> <b>Flat to +5%</b>
<b>Management liability:</b> <b>Flat to 10%</b>	<b>Umbrella:</b> <b>5% to +15%</b>	<b>Cyber:</b> <b>5% to +25%</b>

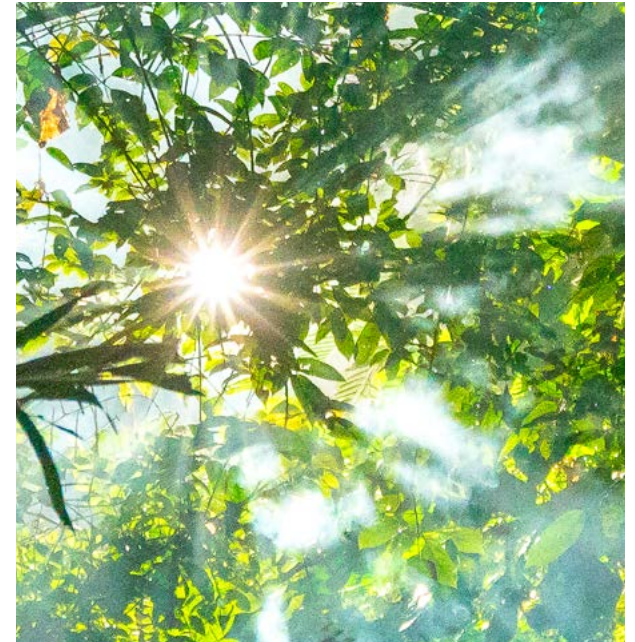


## Key takeaway

Adverse severity claim trends reported by most professional liability (PL) carriers continue without any signs of improvement. Social inflation is being cited as the primary driver. PL claims are taking longer and costing more to resolve. Depending on area of practice, project types and loss history, firms can expect PL rate increases in the 5% to 15% range. Firms may also feel pressure to take on higher deductibles and self-insured retentions. In addition, some PL carriers have reduced their available capacity to as low as \$5 million limits, resulting in the need for some design firms to look to excess markets to meet their higher limit requirements — which come at additional cost.

### **Continued volatility in the A&E professional liability marketplace is expected in 2023, most notably in the form of rate increases, capacity constraints and a reduction in PL carrier's appetite for specific risks.**

- While some A&E PL insurers are indicating premium increases across their entire book of business to offset claim severity trends, certain insurers are taking a strategic underwriting approach that will target high-risk projects or specific market segments. Third-party bodily injury claims on large infrastructure projects remain a difficult risk to manage, and some carriers have reduced their appetite for risks that take on these exposures.
- While restriction in capacity was limited to select insurers in 2022, additional carriers are starting to follow suit to limit their exposure to increased claim severity trends. Most carriers are offering A&E PL limits up to \$5 million; however, the number of carriers providing coverage up to \$10 million is limited. Decreased capacity has created a need for additional limits through excess carriers at an additional cost.
- Firms can expect an increase in cost to insure single projects by securing specific job excess (SJX) coverage and/or project specific professional liability (PSPL). Consult with your insurance broker to determine all options and potential costs well in advance of start of construction.
- Some A&E PL insurers are concerned about the constriction in the PSPL market on large projects as a result of increased claim activity surrounding design-build exposures — specifically public infrastructure projects with fixed price contracts and third-party BI exposures. In the event PSPL coverage is not available or is cost prohibitive, these project exposures would bring heightened exposures to the A&E PL insurers' underlying PL policies.
- Design firms can expect a greater 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.





## Claim severity trends continue and are the primary driver for rate increases in 2023.

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### Insurers note social inflation, including rising claim costs, a backlog of litigation, length of time to settle, supply chain disruptions and the rise in bodily injury claims as primary factors.

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- For more information, the [WTW A&E Professional Liability Carrier Survey Report](#) on emerging claim trends and risks in the design profession is based on an extensive survey of senior claim managers from eleven leading A&E PL carriers.
- Claim severity continues in 2023. Social inflation continues to be recognized as a leading contributor to the increase in claim severity fueled by aggressive plaintiffs' bar and concerning trend of litigation financing.
- The cost and time to settle a PL claim are increasing, with most noting it takes on average two to three years or more to settle a matter.
- Third-party bodily injury claims and design-build/alternative project delivery are the two leading factors behind a continuing trend of severity claims on roads and highway/infrastructure projects.
- Design firms need to maintain a strong focus on risk management. WTW A&E has created several risk management education programs to help our clients address these emerging risks and minimize their exposure to costly claims and client disputes, including our Four Cornerstones webinar and OnDemand programs, which will be included as a four-part series for ACEC in 2023.

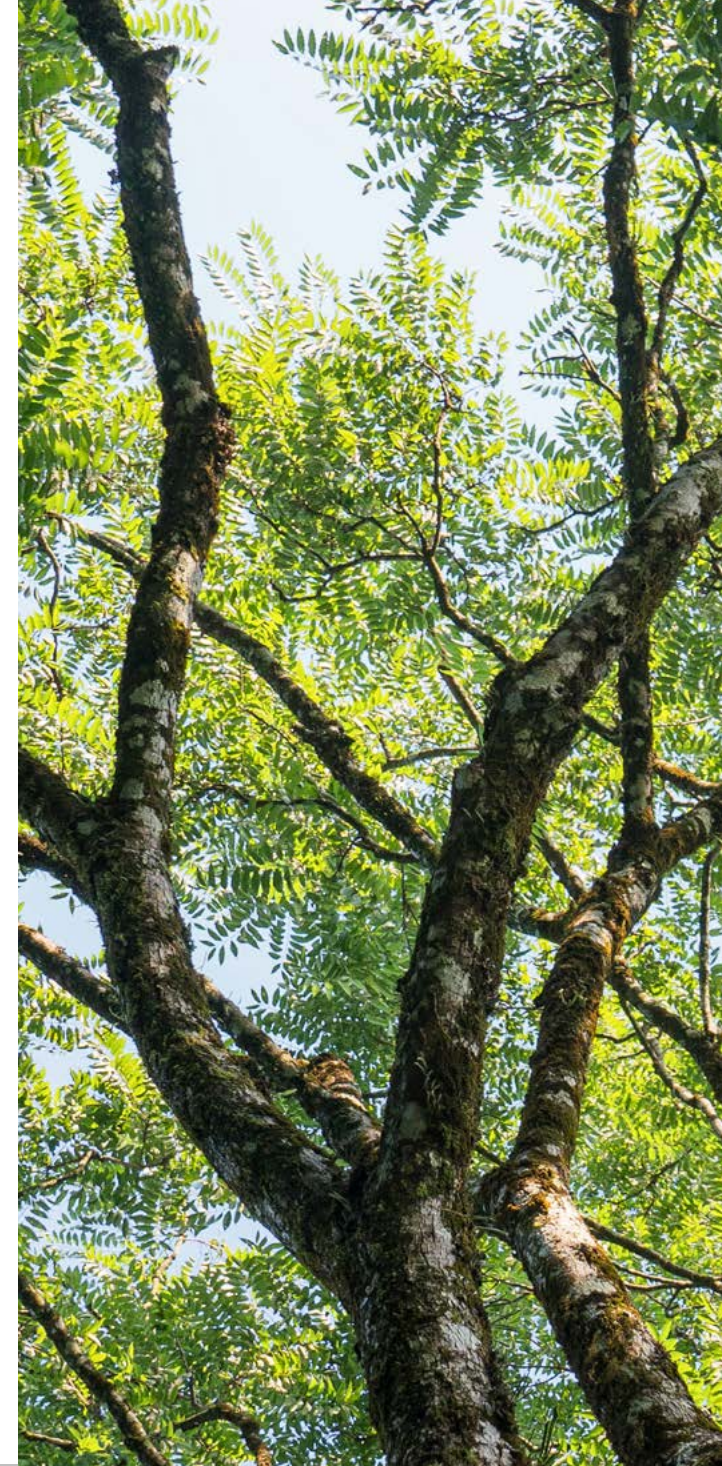
- For more information on our WTW A&E education offerings, please visit the [WTW A&E Education Center](#) on our website where you can find webinars, OnDemand programs or view our education offerings, including our Talk To Me About A&E podcast

### The A&E cyber insurance market sees signs of relief.

- While the cyber market is still in its infancy, the large rate increases that were driven by high claim frequency and severity have started to stabilize.
- The continued claim activity has kept underwriting scrutiny high; however, firms with proper protocols in place have seen favorable renewals.
- Start the renewal process early and review underwriting trends with your broker to ensure you have the proper protocols in place.
- To help our clients manage the evolving risks associated with cyber liability, WTW A&E has created a Cyber Risk Resource Center to provide thought leadership to the design community and help you stay in front of these emerging risks.

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## Key takeaway

While there is now less consistency in insurance rate movements than in the previous period, some difficult areas remain. Property markets particularly remain challenging, and this is reflected in increasing use of captives as vehicles to assume greater levels of risk retention. We continue to see additional consideration given to emerging risks and risks not previously financed through captives, such as cyber risks.

**Captives have been undergoing a resurgence in interest over the last two to three years, supported by an increase in formations during 2022 particularly. There is continuing involvement in specialty lines and the creation of diverse portfolios of risk rather than in a monoline approach.**

- Total captives worldwide rose from 6,074 in 2021 to 6,191 in 2022 — an increase of almost 2% ([Business Insurance Captive Managers and Domiciles March 2023](#)).
- Data and analytics capabilities are key enablers of change.
  - These tools are facilitating advances in quantification of both individual risks and

portfolios of risks, including multiple lines of business.

- Captives may be able to cover emerging risks based on advanced analytical capabilities before traditional insurance markets have realized the 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.
- 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

- All but one of the 10 largest U.S. captive domiciles reported an increased number of licensed captives in 2022.
- Reports of captive formations in the 1st quarter of 2023 remain strong.
- There is more interest in property captive programs given the difficulties in the property commercial market.
- Mature captives with sufficient capital and surplus continue to be further utilized as excess capacity in all lines of business to combat pricing and reduced capacity in the commercial market.
- Optimization and diversification of the captive's portfolio of risks supported by analytics continue to drive innovation.
- Captive investment portfolios are being monitored and re-evaluated due to unrealized losses and their impact on capital and surplus. Additionally, with increased yields on investment portfolios, sensitivities are heightened around maintaining an insurance vehicle rather than an investment vehicle.

## Americas offshore

- The key Atlantic and Caribbean domiciles of Bermuda and the Cayman Islands have seen renewed growth in the number of new captive insurance licenses issued.
- **Through December 2022**, there were 18 new captive licenses issued in Bermuda compared to eight in the prior year and six in 2020. Cayman saw 33 new licenses issued during 2022, compared to 37 in 2021 and 32 in 2020.
- New activity remains largely focused on business from North America, but there is a marked increase in interest globally with these domiciles tending to be favored for captives involved in large and complex global programs.
- Cayman has a growing number of reinsurers being formed writing diverse risks. Outside of regular captive business there is a particular focus on the formation of life and annuity reinsurance entities. **During 2022**, the 670 international insurance companies of all types in Cayman wrote \$23 billion in premium and ended the year with a total asset value of \$74 billion.
- While Bermuda's core business remains focused on large and complex global programs, growth of segregated accounts (cell) business remains very strong, targeting somewhat smaller clients and solutions for individual programs as opposed to portfolios of risk.
- WTW has handled some Side A D&O business on a funded basis through Meridian Insurance Limited, its Separate Accounts (cell) company, but easing in this market may slow further growth.
- International employee benefit captives continue to grow in importance and, aside from the savings they may generate, they can help in creating a greater diversified portfolio view of risk.

- **In Bermuda**, there were an additional 62 new licenses issued during 2022 in the non-captive classes. These included 22 restricted special purpose insurers and 9 Class E life insurers. We are also seeing increasing numbers of startup platforms based on blockchain (and similar) technologies where the proposition focuses on greater contract standardization and immediate settlements, all of which are automated.
  - The use of such technologies includes such lines as marine cargo, travel cancellation, crypto currency theft — where complex manuscript policies are not necessary.
  - Such solutions are being considered in the captive market, but the trend is in the early stages of development.

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# Construction



## Rate predictions

### Favorable risks

**General liability:**  
**+5% to +10%**

**Auto liability and  
physical damage:**  
**+5% to +15%**

**Workers  
compensation:**  
**Flat to +5%**

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

**Excess:**  
**+5% to +20%**

**Non high hazard NATCAT  
project builder's risk**  
**+5% to +15%**

**High hazard NATCAT  
project builder's risk**  
**+25%**

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

**Professional liability:**  
**Flat to +10%**

**Contractors  
pollution liability:**  
**+5% to +10%**

**Subcontractor  
default insurance:**  
**Flat to +10%**

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

## Key takeaway

Although rate decreases on renewals are still rare, we are experiencing positive trends in renewal pricing for contractors that we expect to persist throughout 2023. However, such factors as economic slowdown, interest rate hikes and, most recently, uncertainty in the banking sector will pose significant challenges to contractors during the year. It is imperative to keep up with current economic trends as financial volatility will be of concern impacting new project development.

### Interest rate hikes have drawn additional investment to the insurance industry.

- Interest rates and insurance are correlated, meaning changes in interest rates can impact the profitability in the insurance marketplace depending on the specific circumstances and context.
- Insurance companies invest their collected premium to produce additional investment income which can be used to pay claims and expenses. Due to regulated investing requirements, insurance companies make substantial investments in such fixed-income securities as bonds and treasury notes. There is also the issue of bond premiums having an inverse relationship with interest rates, so if an insurance company needs to liquidate their bonds the yield could be reduced.
- In contrast, reinvestment risk is introduced when interest rates rise. Insurers that have previously invested premiums in low-yielding, fixed-income securities may be missing additional profitability on higher-yielding securities, while they wait for their current assets to mature. As a result, insurance companies' investment income may be deferred so premium savings may not be immediately realized.
- Interest rates also have an impact on the calculation used to model the value of future claim payments. Reserve amounts calculated at present value are lower when interest rates are higher, resulting in lower reserve requirements and additional profit for insurance companies.

### Renewal outcomes continue to trend in a positive direction.

- Capacity is coming back into the marketplace both from established carriers and new capital. This increase in supply is driving a modest market improvement. The umbrella/excess market is closing in on \$1 billion in capacity; up from historic lows below \$700 million in 2021.
- Contractors continue to experience a two-tier market in which best-in-class risks receive favorable renewal results that outperform the average construction risk. However, the second-tier contractor renewal results can be less predictable and disproportionately inflate average renewal results for the construction industry.
- Although there is greater capacity in the market, particularly for well-performing insureds, incumbent partners are often willing to make compromises on pricing and terms to retain valuable clients and deter a marketing effort.
  - Familiarity plays a lead role in underwriting flexibility when analyzing insureds' exposures. Therefore, incumbents have an advantage in retaining long-term clients.

## Many of the driving factors that preceded the hard market remain.

- Nuclear verdicts brought on by social inflation are becoming more common. Additionally, a recent study by the [Institute for Legal Reform](#) found that over the last decade, the median nuclear verdict in the U.S. increased by 27.5%, greatly outpacing inflation.
- While the median verdict is \$20 million, the average verdict is much higher at \$76 million due to outsized mega nuclear verdicts becoming increasingly severe (WTW's Q4 2022 State of the Market).
  - A report in the Wall Street Journal noted a 300% rise in the frequency of verdicts \$20 million or more in 2019 from the annual average from 2001 to 2010.
- According to WTW's Q4 2022 State of the Market, 71% of millennials feel that big corporations put profits ahead of safety and should be punished accordingly.
- A rise in wealth disparity has seen attorneys and juries in geographies with prevalent income inequality award higher verdicts by pursuing the deepest available pockets in an incident.
- Attorneys continue to aggressively pursue lawsuits, sometimes funded by third parties. These plaintiff attorneys are also getting better at presenting quantifiable damage models that are more challenging to counter.
  - Courts are still working through their mounting backlogs on the heels of the COVID-19 pandemic.
  - There is fear that a large quantity of nuclear verdicts could still be on the horizon from incidents that took place over the last several years.
- 2022's industry combined ratio is forecasted to be 100.6%, up from 2021's 99.6%.

## Mixed results are expected for construction activity for 2023 as investments become more selective.

- There is concern that macroeconomic factors such as rising interest rates and an overall decrease in consumer confidence could impact construction starts. However, each project will be impacted by microeconomic factors and may not follow the general trend.
- Infrastructure bill spending is expected to gradually "hit the street" in the second half of 2023. Civil contractors anticipate increased project opportunities to end the year and kick off 2024. Actual rollout plans of bill are still forthcoming making some contractors uncomfortable.
- Non-residential construction is expected to slow down as contractors catch up to their backlogs that were delayed by COVID-19.
  - A rise in interest rates is also slowing residential starts and closings, leading more residential homebuilders to consider layoffs as former buyers choose to walk away from their down deposits.
- While the projects themselves are larger in scale, much of the higher contract values are being driven by significant increases in both labor and material costs. We anticipate this trend to continue throughout 2023. According to WTW's 2022 Q3 Rate Tracker, contract values have increased approximately 30% year over year.

## Reinsurance renewals will greatly impact the outcomes and timelines for contractors' renewals in 2023.

- Despite reinsurers benefitting from multiple years of compounded price increases, concerns regarding inflation and reserve adequacy during soft market periods will lead to another year of increases in 2023.
- Reinsurance markets are cautious given challenges with financial market volatility and geopolitical tension.
- Increased scrutiny of individual risks has made achievement of consistent renewal outcomes difficult. It is becoming less common that contractors will receive the exact terms and conditions that were offered in the expiring year.
  - The need for underwriter referral has been amplified, causing delays in the renewal process.
  - It is important to give adequate lead time during renewals, especially when introducing new markets to an insured.

## General liability (GL)

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**The labor shortage and supply chain delays have greatly impacted contractors not only in their ability to complete jobs on time, but by artificially inflating exposures with increased payrolls and by pressuring contractors to find alternative building materials, which could give rise to additional claims.**

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- Labor shortage issues persist throughout the construction industry regardless of sector. Contractors are challenged to find adequate skilled labor to perform necessary duties on their jobsite. This can lead to defect claims if work is not done to spec in an attempt to meet strict deadlines.
- Labor shortages and deadlines aren't the only pressures facing contractors. Margins continue to be squeezed as material costs fluctuate, exacerbated by supply chain deviations and delays.
  - As a result, contractors have had to look for alternative materials and suppliers potentially opening them up to defect claims if the material is of inferior quality.
- Another impact of the labor shortage is that contractors need to offer more competitive wages to find both skilled and unskilled workers. Payroll estimates, which are a main exposure base for contractors GL, are seeing growth year over year which impacts total GL premium spend despite the same scope of work being contemplated.
  - Another GL exposure base, subcontracted costs, has also increased for similar reasons.
  - It is unclear whether increased payroll or subcontracted costs represent true additional exposure to the insured, which could be a point of negotiation during renewal.
- High hazard risks (second-tier) routinely experience limited market offerings and flexibility. These risks include street and road, residential, roofing and NY operations among several others. Contractors with a challenging loss history can also find themselves in this second tier.
  - Contractors will need to display a clear commitment to safety and distinguish themselves as best-in-class risks to bring additional markets to the table.
- These contractors with best-in-class reputations can draw further interest from the market, leading underwriters to compete on pricing, coverage and service offerings to win business.
- As the trend of increased underwriting scrutiny continues, organized and complete submission data is paramount to keeping the renewal timeline on track. Referral underwriting has increased as reinsurance treaties have changed, and underwriting guidelines are regularly revisited.
  - This calls for additional lead time on all submissions, which can also give underwriters time to apply various credits if available.
- Working closely with carriers throughout the year can pay dividends at renewal; particularly a carrier's risk control engineering team as they are impactful on the underwriter's impression of the contractor's risk management program and strategy.





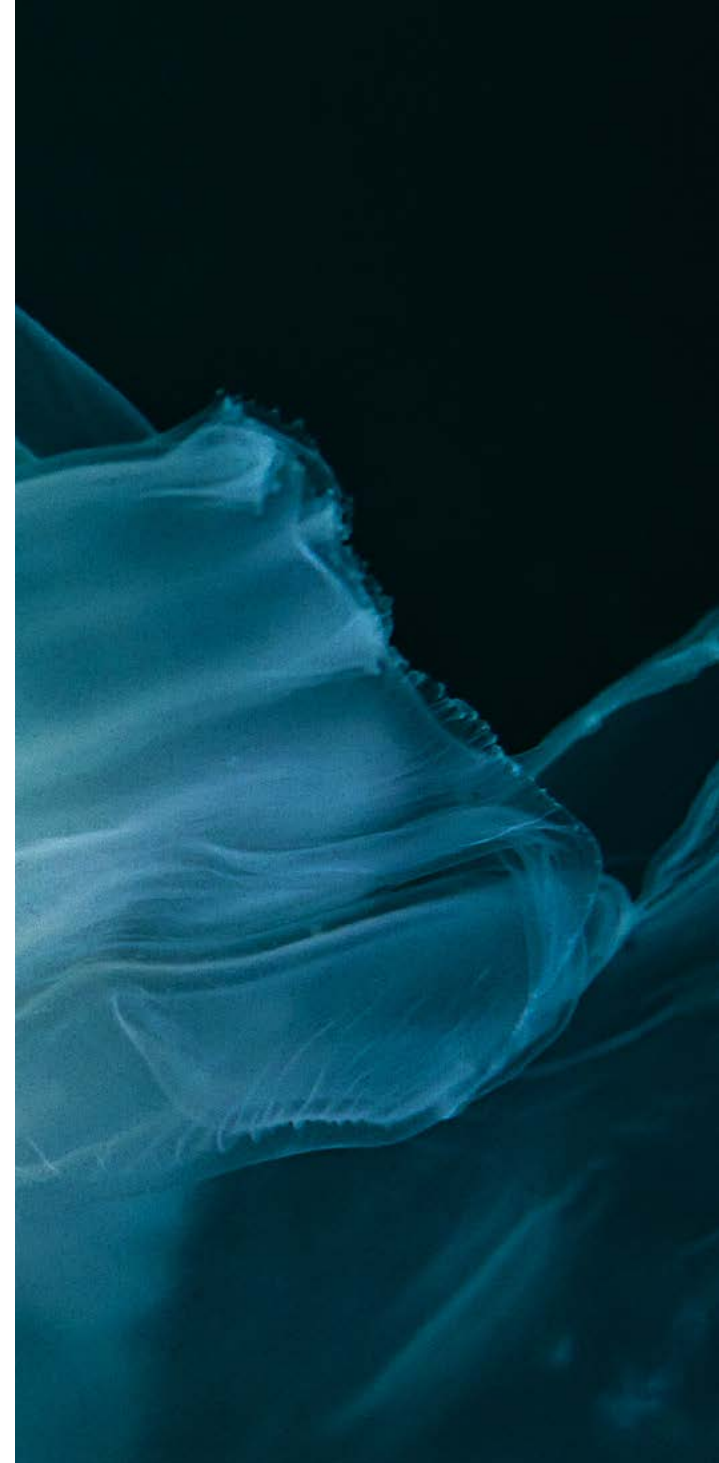
## Auto liability (AL)

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**While rate increases have started to moderate, the auto market continues to suffer from adverse loss experience. Auto accidents are one of the main contributors to nuclear verdicts that often make headlines.**

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- Auto fatalities are a frequent driver of the nuclear verdicts that typically occupy headlines.
  - The National Highway Traffic Safety Administration (NHTSA) projects that an estimated 42,915 people died in motor vehicle traffic crashes in 2021 or an increase of 10% from 2020. This is the highest number of fatalities since 2005, and the highest annual percentage increase in the Fatality Analysis Reporting System's history (WTW's Q4 2022 State of the Casualty Market).
- As the age gap in the construction work force heightens, contractors are being forced to bring on younger and less experienced drivers to keep pace with demand. Having less experienced drivers on the road has led to some insurers looking at limiting coverage to these newer drivers or in some cases charging additional premium.
- The implementation of telematics, specifically the recently introduced cab-facing cameras, can play a key role in auto premium pricing. Contractors that have invested in these technologies have realized increased credits and pricing relief for adopting these added safety measures.
- Fleet size and makeup will continue to be heavily scrutinized by underwriters.
  - More cars on the road have a direct correlation to loss frequency, making fleet size a sticking point for many carriers. The number of units in a fleet can also play a significant role in umbrella attachment points and subsequent excess tower pricing.
  - The fleet makeup will also impact market appetite and pricing. Fleets with a large volume of heavy/extra heavy trucks are seeing reduced interest and higher rate increases compared to similarly sized fleets of PPT/light trucks.
- Supply chain issues as well as cost of materials have had a direct impact on auto liability as the cost to replace auto vehicles and parts continues to rise. A "fender bender" in today's world requires not only the replacement of vehicle bumpers but also the many sensors/cameras built into those bumpers.
  - Repair times for vehicles have increased as well, leading to extended costs for rentals and overall loss of use.
- Looking ahead as vehicle-to-vehicle (V2V) communication capabilities develop, the ability to wirelessly exchange information about the speed and position of surrounding vehicles shows great promise in helping to avoid crashes along with environmental benefits.



## Workers compensation (WC)

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**Workers compensation has been the most consistent and predictable line of business for most contractors. Contractors that display a strong safety culture with positive loss history have been able to achieve advantageous renewal results. This can also relieve some of the pressure on other lines of business during renewal.**

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- Labor shortage issues persist throughout the construction industry regardless of sector. Contractors are pressured to lower hiring standards to acquire and retain unskilled workers specifically.
  - To keep up with demand, contractors have needed to hire younger and less-qualified labor. This could result in increased claim frequency and severity. Risk engineering calls have become the new norm during a marketing effort with underwriters keen to review contractors' health and safety plans.
- Medical cost inflation and comorbidities have been a recurring driver of workers compensation costs, but they are being partially offset by a decrease in the cost of prescription drugs.
  - Payroll increases within construction have also increased overall exposure and subsequently premium.
  - Lost wages are a component of claim costs, which have been exaggerated in the current economy. As a result, contractors with a robust return-to-work program have received more favorable results from underwriters.
- The use of job monitoring technology is becoming commonplace and proving effective when employed correctly.
  - Senior management buy-in is essential in the implementation of new technologies to overcome the natural aversion to change.
- As a line of business, workers compensation boasts the lowest combined ratio of any casualty line at 87% for private carriers in 2021 (Q4 2022 State of the Casualty Market), making it a stabilizing force during renewals when the GL and AL are placed with the same carrier.
  - According to Fitch, the 2022 combined ratio is expected to increase to 92% from the flat combined ratios we have experienced the past few years.

## Umbrella/excess liability

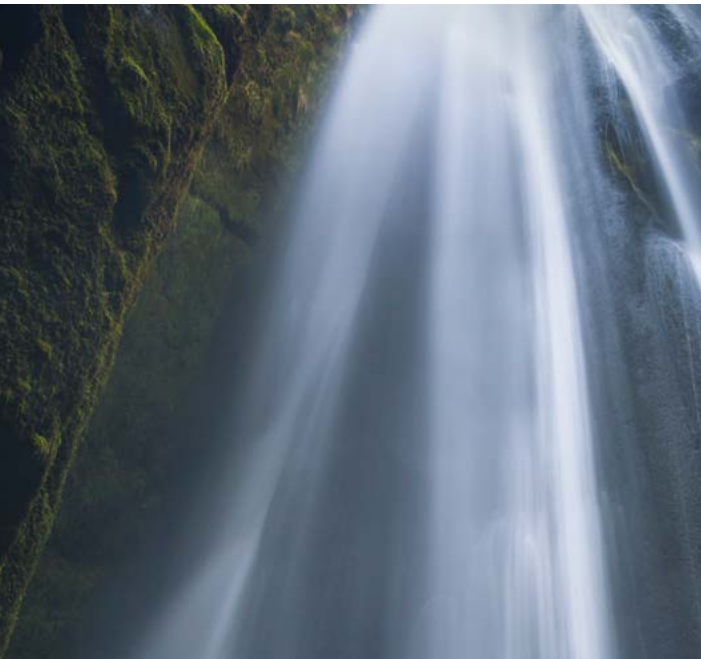
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**Additional capacity has re-emerged in the excess market after years of compounding increases have made the market a more enticing environment to compete for business.**

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- The umbrella marketplace is still largely made up of primary markets that can offer lead capacity. Often, the lead umbrella/excess pricing can dictate what carrier is most competitive in a marketing process.
  - There has been a trend with primary underwriters being granted the authority to offer their own lead umbrellas as opposed to being beholden to a separate internal underwriting division.
- Although the market is still very slim, there is growing interest in unsupported lead umbrellas now that umbrella rates have experienced significant growth in the last few renewal cycles.
- With further market competition, there has been a return to rate relativity pricing rather than “rogue pricing” where excess layers dictate their own renewal needs versus following the underlying layer.
- Increasing attachment points have profound impacts on the excess tower pricing. For example, a risk with a \$2 million CSL on AL versus a \$1 million CSL gives excess underwriters more comfort in lower layers, leading to overall premium savings when subsequent layers are focused on layer relativity. There is also more market capacity available at higher attachment points in general.
  - Increasing attachment points can also force underwriters to take another look at their rating rather than offering renewal terms based on last year's pricing.
- The London and Bermuda markets have become increasingly more price-competitive at historically lower attachment points.
- Contractors who operate in challenged industries or have perceived high hazard exposures — including PFAS, wildfire, residential and New York operations — are experiencing higher rate increases, capacity challenges, and are often forced to take on higher retentions and reduced coverage (WTW's Global Construction Rate Trend Report Q1 March 2023).

- Umbrella and excess liability rates overall continued to improve; however, Q4 was influenced by clients in the second exposure tier (two-tier risk). Q4 2022 yielded an average rate lift of +6.1% for lead umbrella and +3.9% for excess liability programs, an increase over Q3 2022's umbrella and excess liability renewal results of 1.0% and -4.4% respectively.
- Certain coverage limitations, such as PFAS, biometric and communicable disease exclusions, are being encouraged at a higher rate. Excess of wrap restrictions and anti-stacking limitations have also persisted.



## Controlled insurance programs (CIPs)

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**The scale and cadence of new construction projects begun in 2022 have continued through the beginning of 2023, suggesting that even though some forecasts are predicting an economic downturn this year, we are not expecting a recession in the building industry any time soon. In step with this thought, carriers remain focused on creating long-term partnerships in support of project-specific programs.**

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### Project values are escalating.

- While supply chains are returning to a more normal state, we expect that it will take time to completely rebound. Materials and hard construction cost will be affected differently based on a project's location, but all signs point toward higher building costs in 2023 over 2022.
- Project/property valuation due to inflation continues to be a factor in CV as interest rates continue to rise. This is resulting in increasing loss estimates and requires new depths of underwriting analysis to properly price an exposure.
- The residual cost increase of materials is driving premiums up even while achieving a competitive rate.

## Markets are invested in providing best-in-class project coverage.

- Direct carriers are beginning to broaden capacity and deductible options to create long-term partnerships in support of project-specific programs and show more creativity and flexibility when the insured desires the same.
- Construction clients are benefiting from the market competitiveness that continues to be a theme. Start the project placement process as early as possible because every player in the process from the primary insurers through each excess insurer will need more time to finalize their pricing and terms as brokers have more flexibility in the marketplace to negotiate optimal pricing.
- Loss control calls with the markets before CIP placement afford carriers more comfort as the client can accordingly answer questions and demonstrate risk management strategies at the sponsor level, proving the transparency and comfort for the carrier to trust in the partnership of insured and insurer.
- Excess carriers remain reluctant to deploy a full \$25 million in limit resulting in multiple quota-share layers for large-limit towers. However, excess markets are becoming more likely to follow terms and conditions of the underlying layers, showing signs of removal of COVID-related exclusions and endorsements that had become the new normal. In addition, new capacity continues to come into the market providing more alternatives as the rate levels attract new investments.

## Projects are beginning to close out.

- Finally, since the onset of COVID-19, we are beginning to see some of the long-haul projects come to completion.
- Expect cost of materials and inflation over the project term to cause increased total values over initial estimates, resulting in additional premium due at closeout. The same holds true for project rates based on payroll, given the higher cost of labor as well.
- For those projects still to be completed, extensions remain extremely difficult to secure at original program pricing and are highly dependent on project experience as well as on remaining work scope and location. If an extension is a known need, it is best to begin the process as soon as possible.

## A small percentage of difficult classes still require more particular marketing efforts.

- With the exception of a limited number of direct insurers, frame, residential and single-family build-to-rent portfolios are still only being supported in the E&S marketplace.
- There are still problematic jurisdictions that continue to force for-rent, commercial-grade projects into the E&S marketplace regardless of construction type. For these placements we are seeing higher rates on both primary and lead, as most carriers consider the lead excess to be a working layer.

## New York controlled insurance programs (CIPs)

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**Insurance carriers continue to shy away from New York CIPs with a limited number of carriers offering up programs with a structure that contains little to no GL risk transfer.**

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### Limited primary market options

- Primary GL limits of 5/10/10 are required in most cases to obtain excess attachment.
- Most programs are structured with GL retentions of \$3 million to \$5 million.
- The GL-only CIP market in NY is nearly nonexistent.

### Excess market remains challenging.

- Excess carriers require a minimum of \$5 million attachment point.
- Very few markets are willing to attach within the first \$10 million of limits.
- Carriers are only willing to put up short limits (\$5 million) within the first \$25 million of coverage.

### NY Labor Law 240(1) continues to take its toll on overall loss experience.

- Carrier claim data reflects increases in frequency and severity over the past few years.
- Average settlement value of claims involving NY Labor Law 240 (1) is \$1 million to \$3 million.
- Alternative dispute resolution has been employed for a NYC project for the first time in many years. The use of ADR on a major upstate project started a few years ago and resulted in reductions in frequency and severity of labor law claims.

## Builders risk

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**The builders risk market has become more challenging of late. With recent industry loss events, including numerous NAT CAT events in 2022, tightening of market conditions and rate increases for all construction types are to be expected. Highly CAT-exposed projects continue to be met with increased underwriter scrutiny, driving increased premiums.**

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The builders risk market generally has sufficient capacity, although this capacity can be restricted based on location/CAT exposure, project size and type of construction. Projects that involve innovative technologies, alternative construction methods or materials (such as modular or CLT) and those exposed to natural disasters may encounter resistance from the marketplace and be subject to more stringent terms and conditions.

- Limited underwriter bandwidth and increased underwriting discipline require longer lead times to quote. Providing comprehensive and accurate underwriting information is essential to obtaining competitive quotes. Insurance carriers seek to collaborate with clients who can showcase exceptional risk management practices, emphasizing best-in-class supply chain efficiencies and on-site safety measures.
- Carriers will continue to navigate difficult treaty renewals this year. Individual company appetite should be closely monitored.



- **Coverage drivers:**

- Water damage and water intrusion — Water damage losses continue to be a major loss driver and a challenge to the market. Increased water damage deductibles can be anticipated, especially on high-rise, residential and wood frame projects. Lower water intrusion sub-limits may be imposed on wood frame projects.
- High CAT-exposed projects remain challenging with rates and deductibles continuing to rise. Carriers are looking to correct market pricing to achieve technical adequacy for pricing related to catastrophic events.
  - a. Damage from hail/tornado/convective storm — Many carriers are pushing for higher deductibles in hail/tornado/convective storm-exposed areas. Mostly in the Midwest and South, we are seeing larger deductibles on both master policies and individual project policies.
  - b. Delay-in-completion coverage requests for CAT-exposed projects continue to be analyzed closely by carriers, particularly in higher exposure zones. We anticipate a potential for larger waiting period deductibles for CAT perils, depending on the opportunity.
- LEG 3 — If and when such wording structure is offered, higher rates and/or deductibles typically apply. Carriers may impose serial loss clauses and/or sublimits applicable to LEG 3.
- Structural renovations and damage to existing property — Underwriting appetite is quite limited on renovation projects that include structural elements. It continues to limit carrier involvement and willingness to cover the existing building value. In cases where existing

property coverage is being requested and/or there are structural components in the project scope, detailed underwriting questions and requests can be expected, such as structural engineering reports, building appraisals, existing condition reports, etc.

- There is growing concern in the marketplace around proper valuation and adequacy of the original policy limit due to supply chain challenges and inflation pressures. Carriers are reluctant to offer significant increases to escalation clauses to this point. The market is dynamic and moving swiftly; therefore, original budgets should be revisited throughout the project life cycle and the limits of liability adjusted as needed.

**Project extensions are becoming more difficult to obtain across the industry.**

- Increased rates and deductibles, in addition to possible restrictions in coverage, can still be anticipated on extensions beyond pre-agreed policy terms. Projects with losses, heavily cat-exposed locations or opportunities backed by reinsurance support should expect more severe restrictions and corrections in rate and overall terms.
- Early engagement with the carriers when an extension is needed remains critical, as well as providing detailed project status information along with ongoing protections in place at the project site.

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

- Large-scale developments/projects are becoming more common. As direct carrier appetite and capacity are limited, the need for multiple carriers on a single risk can lead to premium increases and possible non-concurrent terms and conditions. Many times, London or wholesale/E&S market capacity participation can be expected to complete programs. This is especially true in high CAT exposed areas.
- Adequate lead time for wood frame submissions as well as complete underwriting details is critical — quote turnaround times can take weeks to months depending on project size and complexity.
- **Coverage drivers:**
  - Site security is a requirement for most large 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.
  - 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. Frame renovation capacity is very limited. There is a finite number of carriers willing to participate on these exposures, and insureds should expect to see loss limits and high rates for this exposure. Delay in completion coverage may be difficult to obtain, and existing building coverage is mostly excluded.

## Professional liability

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

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- While some insurers have reduced limits on specific coverage parts or on an overall book portfolio basis, the marketplace continues to see many insurers offer at least \$10 million per risk to insureds, with others able to offer up to \$25 million.
- Total global market capacity for contractor's professional annual practice programs is estimated to be between \$350 million to \$400 million, while project-specific placement estimate is reduced to \$250 million, because many insurers have reserved this capacity for practice or annual clients.

## First-party coverages (including rectification and protective indemnity) can vary greatly from insurer to insurer.

- Insurers are underwriting each risk on a case-by-case basis with a focus on upstream and downstream contractual controls and designer prequalification.
- Depending on a project's delivery method, we are now seeing requests for a percentage of design completion greater than 30%, and a push for no limitations of liability in designers' subcontracts with the insured.

## Many markets are reserving project-specific capacity exclusively for clients who procure annual business.

- Total policy term terms (policy period plus extended reporting period) of 15 years are widely available, although some insurers are starting to limit extended reporting periods to applicable projects' state statute of repose or contractual requirement, whichever is less.
- Design professionals in the architects and engineers industry have seen project capacity leave their marketplace, thereby rendering these placements more difficult to secure on large project placements, especially on design/build infrastructure projects.
- Reduced available capacity for design professionals has adversely affected contractual negotiations that design/build contractors have with owners. This, coupled with the push for limitations of liability from design professionals, is in turn making contractor-purchased project placements more expensive and leading owners to consider procuring owner's protective indemnity.

## Contractors pollution liability

- Clients who previously benefited from longer-term site pollution or contractors pollution project policies with five- or ten-year terms placed at comparatively lower rates are now contending with effective rate increases in the current renewal environment.
- Carriers are looking to achieve effective rate increases commensurate with their loss experience and appetite across their renewal books by using underwriting methods, such as premium increases, shorter policy terms and reduced capacity.
- Contractors pollution liability programs continue to experience rate increases largely due to the market-wide performance of site pollution products, but these increases are kept in check (+5% to +10%) by markets competing for this desirable line of business.
- Site pollution liability programs continue to experience higher rate increases (+5% to +15%) resulting from increased claim activity, remediation costs (fuel and labor), and regulatory uncertainty from emerging exposures (i.e., PFAS).
- Combined environmental + casualty/professional/excess programs have experienced a modest reduction (+5% to +15%) in their rate increases, keeping in line with the slight softening of the casualty market.



## Exposure spotlight

- **PFAS:** As predicted, per- and polyfluoroalkyl substances (PFAS) exposures are being faced by standard lines insurance markets for all lines of coverage, including property and products liability. As environmental regulators are considering the classification of these chemicals as hazardous substances, researchers are racing to develop potential remedial solutions. Meanwhile, carriers are all but eliminating coverage for PFAS onsite pollution (and increasingly on contractors pollution) programs because of increased activity from environmental regulators and third-party lawsuits.
- **ESG (environmental, social and governance):** ESG principles may begin to factor into certain contractor sectors and aspects of projects, including project site waste management, as well as natural resource consumption and conservation.
- **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 or coverage restrictions associated with soil management, historic fill, dewatering and voluntary site investigations.
- **Stormwater:** We are also seeing increased contractors pollution and professional liability claim activity relating to excessive siltation and stormwater run-off from construction sites, with claims brought by project owners, citizen action groups and regulatory agencies.



## Subcontractor default insurance (SDI)

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**SDI carriers continue to add capacity in anticipation of continued growth in demand into 2023 and beyond. Subcontractor financial conditions continue to be impacted by inflationary pressure on materials and labor. As such, subcontractor risk remains a top concern for most contractors, owners and developers. SDI usage continues to grow at a fast pace as firms are looking to the comprehensive coverage provided by SDI programs to ensure operations and projects are protected against subcontractor default.**

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- The SDI marketplace now has eight carriers, including six that we consider actively engaged in the product line. Single limits can now be offered at \$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.
- With the introduction of new capacity and choice, buyers should review current policy terms, conditions and pricing.

- Claims and claim notices continue to grow in the SDI market — with loss multipliers and ground up magnitudes continuing to see an increase.
- 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 open to 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 entrance of a new carrier in 2022, which is offering significant limits, without legacy exposure, provides an additional option for both the near and long term.
- The WTW DIG Center of Excellence continues to offer both general market and individual client educational sessions on SDI and how trends in the market are affecting operational success.

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## Rate predictions

### Downstream

Large premium programs that are well-engineered and well over-subscribed:  
**+5% to +10%**

Other “clean” risks:  
**+10% to +15%**

Loss-affected business:  
**Exponential**

### Upstream

Major E&P programs:  
**+5%**

Offshore contractors:  
**+5% to +7.5%**

Small to medium E&P programs:  
**+7.5% to +12.5%**

Midstream:  
**+15% to +20%**

Offshore construction (platforms):  
**+15% to +25%**

Onshore contractors:  
**+20% to +30%**

Offshore construction (subsea):  
**+30% to +50%**

Loss-affected business:  
**Exponential**

## Key takeaway

**Downstream:** There has been a re-hardening of this market for all but the most sought-after business. It is critical to ensure that declared values are accurate to avoid more punitive rate increases being imposed.

**Upstream:** Buyers are encouraged to start the renewal process early, develop effective underwriting submissions, obtain more than one indication and ensure that insurers have every possible ammunition to drive preferential terms.

### Downstream

#### Negative factors impacting the market in early 2023

- The effect of January 1 reinsurance renewal season: It was not simply the range of rate increases by reinsurers which caused some consternation in the downstream market but also the scale of the retention increases — for some, up to double the same figure for the previous year.
- Recent major losses have wiped out recent profitability: The overall downstream loss total in our database now stands at nearly \$7 billion, a record for this century except for 2005.
- There is no threat to the established market leaders: We are seeing a retrenchment in almost every area of the downstream portfolio.

- Concerns remain over impact of inflation on declared values: There is now a real danger that the market may over-react to submissions that repeat existing value schedules.
- Increased senior management scrutiny has led to less harmonization of placements: Instead, individual underwriters are more concerned about “stepping out of line” and failing to adhere to management directives.

#### Positive factors suggesting an improved position later in 2023

- Current capacity levels have been maintained, so premium income targets are likely to be maintained (or even increased). This in turn is likely to ensure that there will remain a healthy appetite within the market for the most well-regarded business.

- A “new normal” for refinery and other plant volatility has emerged: If oil and gas prices continue to stabilize at the current lower level, then refinery and other plant utilization rates will also begin to follow suit, which in turn should encourage insurers to offer more preferential terms in exchange for increased premium income.
- Excellent overall insurer results: We have seen combined ratios well beneath 100% reported from several key (re)insurers in recent weeks, which should help prompt more aggressive premium income strategies.
- Some attractive programs are still over-placed: Premium attracts capacity, and the market continues to differentiate strongly in favor of the best business. From our own review of our current programs, we can see that there is already some underwriting “slack” that can be taken up by brokers without materially affecting these programs’ current terms.
- The Everen limit increase may add to competitive pressures: At the very least, it represents an alternative that may well secure increased leverage to limit the extent of insurers’ drive toward increased rating levels.
- Pressure to meet premium targets later in the year: Increased reinsurance costs must be paid for somehow, and the market’s appetite for premium income tends to increase as the year progresses and when income targets still need to be met.

## Will the downstream market overplay its hand?

- History suggests that the current hardening dynamic cannot be sustained indefinitely.
- There may come a time when capacity providers require a better return, while buyers may decide that there are now other ways to manage their risk than the simple purchase of insurance.
- Insurers will be hoping that they can rely on their most coveted long-term relationships to ensure that these clients don't walk away from the market.

## Upstream

### Negative factors impacting the market in early 2023

- The impact of the January 1 reinsurance market season: This has had a marked effect on pricing, retentions levels and coverage.
- The deterioration of the loss record at a time of declining premium income: Our WTW Energy Loss Database now shows several 2021 losses which had not been advised to the database this time last year, with 2022 looking to follow the same trend. Furthermore, overall sector global premium income estimates have actually decreased for 2022.
- Large areas of the portfolio remain unprofitable: These include onshore contractors, subsea construction and midstream.
- The market leadership panel remains basically restricted: The withdrawal of the MRS Syndicate last year has only served to restrict the choices of leader even further.

- Concerns over accuracy of values remain: Arbitrarily reducing or maintaining existing values in this economic climate is likely to be counterproductive in two ways; first, it may mean a higher rating increase than normal and second, should a loss materialize, it is equally likely that insurers will apply average (if such a provision exists).
- The impact of continued management control over underwriting strategy: It seems to increasingly be the case that underwriters do not have the same flexibility and ability to make individual underwriting decisions that many in the market have become accustomed to.

### Positive factors suggesting an improved position later in 2023

- Abundant capacity has been maintained: Capacity levels at a continuing record high, with just over \$7 billion of “realistic” market capacity is still available for the most attractive programs.
- High oil prices are likely to lead to increased construction/drilling activity and LOPI values: The additional premium generation resulting from increased drilling and exploration activity will lessen pressures on rating levels.
- The growth of the facultative reinsurance market: The purchase of more facultative reinsurance may enable direct insurers to offer more competitive terms in the future.
- Pressures to maintain premium income levels will remain: Insurers will still need to secure sufficient premium income to pay for their reinsurance costs, in terms of not only their treaties but also any facultative reinsurance purchases.

- History suggests that the current hardening dynamic cannot be sustained indefinitely.
- This is a market which is increasingly differentiating in favor of the most sought-after business.
- It is entirely possible that later in the year the pressure will be to meet premium income targets — if only to pay for expensive reinsurance programs.
- This may allow some buyers and their brokers to drive improved terms from the market in return for increased line sizes and positions on the best programs.

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# Environmental



## Rate predictions

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

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

**Combined environmental + casualty/professional/excess:**  
**+5% to +15%**

### Key takeaway

The 2023 marketplace should experience steady yet cautious growth while continuing to face the headwinds of increased claim frequency and severity, regulatory and economic uncertainty, and emerging exposures. Concurrently, the role of environmental insurance in addressing ESG (environmental, social and governance) risk continues to expand.



## Rates and markets

- Clients who previously benefited from longer-term site pollution or contractors pollution project policies with five- or ten-year terms placed at comparatively lower rates are now contending with effective rate increases in the current renewal environment.
- Carriers are looking to achieve effective rate increases commensurate with their loss experience and appetite across their renewal books by employing underwriting methods, such as premium increases, shorter policy terms and reduced capacity.
- Contractors pollution liability programs continue to experience rate increases largely due to the market-wide performance of site pollution products, but these increases are kept in check (+5% to +10%) by markets competing for this desirable line of business.
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Figure 1. **2023 CPL Effective rate increase**

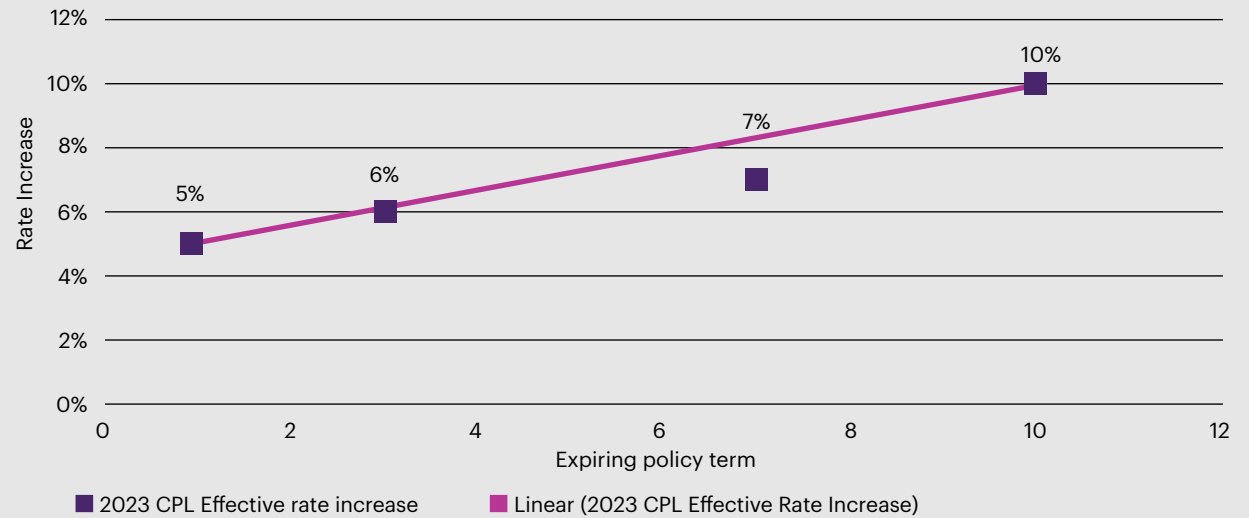
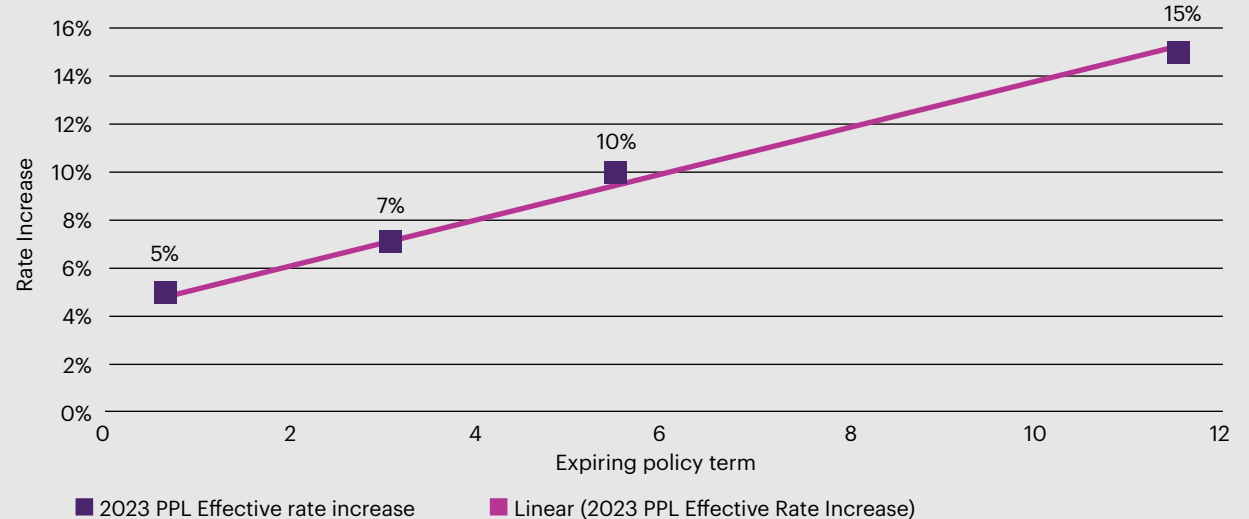


Figure 2. **2023 PLL Effective rate increase**



## What's new?

- **Transportation:** Clients and carriers are focusing on potential environmental risks arising from such transportation exposures as rail and trucking. Clients are evaluating how their coverage would best be structured to respond to both severity and frequency.
- **EtO:** Ethylene oxide (EtO), commonly used as a sterilization agent, continues to emerge as a potential contaminant to watch.
- **ESG:** The role of environmental insurance as a tool to address ESG-related matters continues to 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 continue to evaluate 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 and projects 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.

## Exposure spotlight

- **PFAS:** As predicted, per- and polyfluoroalkyl substances (PFAS) exposures are confronting standard lines insurance markets for all lines of coverage, including property and products liability. As environmental regulators are currently considering the classification of these chemicals as hazardous substances, researchers are racing to develop potential remedial solutions. Meanwhile, carriers are all but eliminating coverage for PFAS on site pollution (and increasingly on contractors pollution) programs because of increased activity from environmental regulators and third-party lawsuits.
- **IAQ (indoor air quality):** IAQ coverage for mold and Legionella has become increasingly subject to sublimits, higher retentions and per-bed/door retentions for healthcare and residential exposures.
- **Redevelopment:** Claim activity related to redevelopment of brownfield properties continues — although carriers try to limit exposure by adding exclusions or coverage restrictions associated with soil management, historic fill, dewatering and voluntary site investigations.
- **Stormwater:** We are also seeing increased contractors pollution and professional liability claim activity relating to excessive siltation and stormwater run-off from construction sites, with claims brought by project owners, citizen action groups and regulatory agencies.

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# Healthcare professional liability



## Rate predictions

**Allied health**

**Flat to +15%**

**Physicians**

**+5% to +15%**

**Senior living:**

**Flat to +10%**

**Hospital**

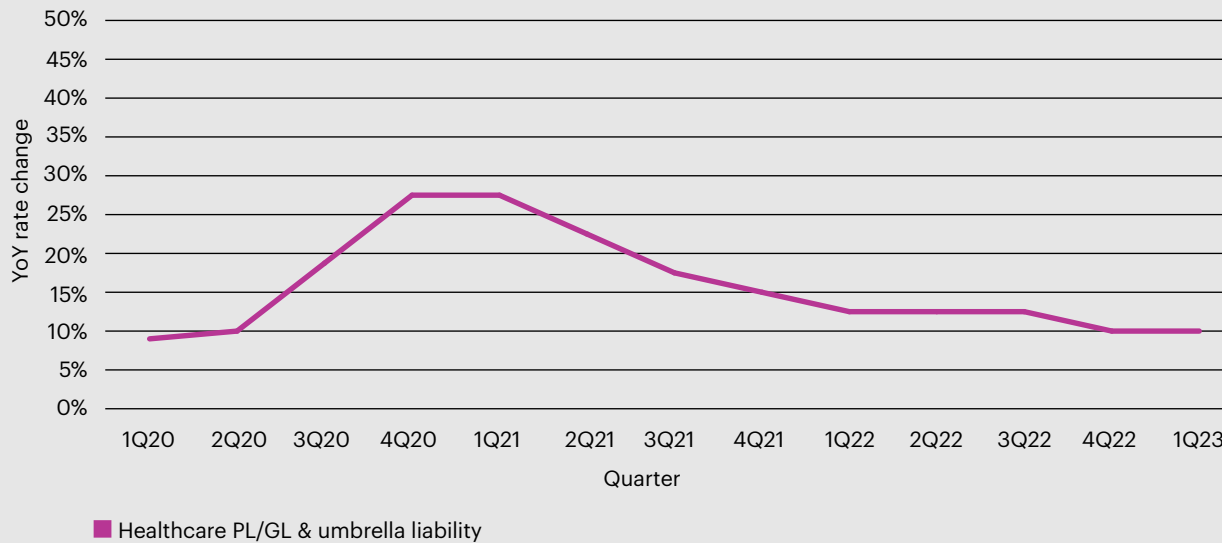
**professional liability**

**+5% to +20%**

### Key takeaway

While overall rate increases appear to be stabilizing, decreases are not expected any time soon. Carriers are indicating they will need consistent rates given the current market trends.

Figure 1. Healthcare rate graph (represents all of the segments of Healthcare)



The medical malpractice market continues to experience challenges driven by systemic risks, such as rolling back of tort reforms in key states (California, New York, Pennsylvania) and increasing severity of claims. Furthermore, antitrust and class action claims continue to be problematic while social inflation and economic inflation add an additional wrinkle to the market dynamic. We are beginning to see batch claims creating additional pressure in the market. Overall rate increases appear to be stabilizing, however rate decreases are not expected in the short term. Carriers are indicating they will need consistent rates and retention increases given the current market trends, especially for health systems, loss-affected accounts, and clients with exposure in challenged venues. Frequently, excess layer increases can outpace lead layer increases due to the larger impact of trend and severity on higher layers.

### The market continues to experience:

- Increases in client retentions
- Sexual abuse
- Capacity crunch (while some of the excess capacity that was lost has been restored with new entrants, carriers continue to deploy their capacity judiciously).
- Communicable disease exclusions, mainly for senior living and certain segments of allied health.

### Mergers and acquisitions

**The number and size of acquisitions declined in 2022, largely due to the pandemic; however, combinations continue to be a common practice in healthcare. While the impact of M&A is debatable, some key points that can impact market response:**

- Does M&A activity impact quality of patient care?
- With continuing workplace shortages, does M&A activity increase worker burn out?
- Does pre-acquisition due diligence provide enough accurate data to adequately underwrite M&A risks?
- Physicians' risks are impacted positively because the use of MSOs help manage the backroom, including loss data, credentialing.



## Nuclear verdicts

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Increasing frequency of substantial and oversized verdicts will continue to cause turbulence in the marketplace by driving further deterioration in the loss environment. According to the Verdict and Summary Survey results, published by **Clark Hill PLC** in August 2022, year-to-date 2022 has already seen 19 verdicts larger than five million with three verdicts above \$50 million.

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- The cost of nuclear verdicts directly impacts the cost of healthcare insurance.
- As verdicts continue to grow, carriers will seek to increase premiums and attachment points.
- Jurors continue to hold defendants accountable to society for perceived unsafe practices.

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# Special contingency risks: kidnap and ransom



## Rate predictions

Special contingency  
**-5% to +10%**

### Key takeaway

The special risks insurance markets have almost uniformly removed all cyber extortion coverage from their policy forms. Markets are also applying for coverage restrictions and exclusions for exposures in Belarus, Russia and Ukraine — albeit to varying degrees.

**The pandemic has so far not had a direct impact on this insurance sector, but it is changing 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 (an alleged kidnap has occurred with a quick ransom), 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 financial impact of COVID-19 could lead to increased security threats and higher rates of criminality globally as groups/individuals become more desperate.



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**Insurers are maintaining coverage restrictions or exclusions for Russia, Ukraine and Belarus.**

- As a result of the crisis in Ukraine and the imposition of sanctions against Russia and against certain elements in Belarus and parts of Ukraine, insurers have introduced coverage exclusions.
- The exclusions apply to programs with historic, actual or anticipated employee headcount or travel exposure in/to those countries.
- The scope of coverage exclusions has varied by insurers, ranging from blanket exclusions across the entire program to exclusions under selected endorsements only.

**Interest in active assailant coverage is growing.**

- In addition to the traditional K&R policies, the special risks market continues to develop and promote policies that respond to a broader 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 (because 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.

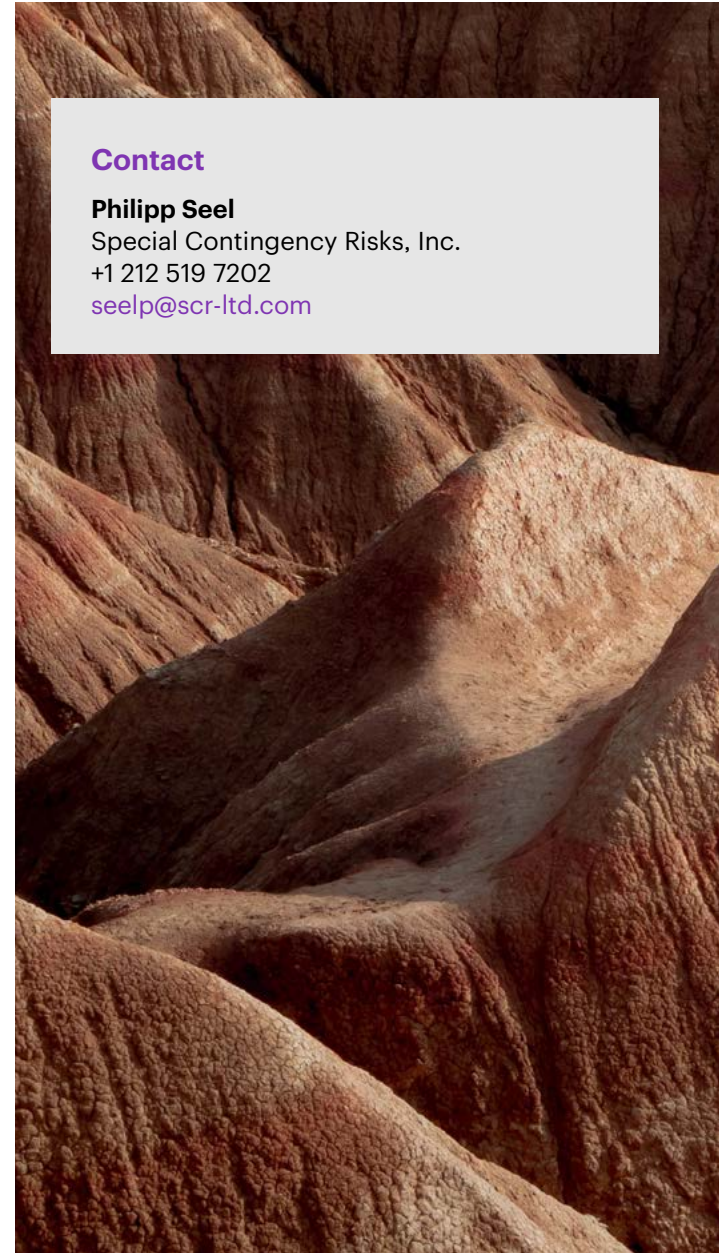
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## Rate predictions

### Favorable risks and loss history

**+5% to +7%**

(for attractive risks, the market may deliver rates close to or at flat)

### Key takeaway

Product and professional liability rate predictions remain in the mid-single digits, largely due to inflationary factors and nuclear verdicts, with a focus on maintaining favorable coverage terms and conditions.

While Berkshire Hathaway recently announced they are withdrawing from the medical product liability space in North America effective July 2023, we do not anticipate a ripple effect in the marketplace, and overall capacity is expected to remain stable. That being said, capacity for certain litigated product classes, such as orthopedic implants and proton pump inhibitors continues to tighten.



**Following are items of concern for insurers; manufacturers and distributors of drug products might expect to see exclusionary language in the market relating to:**

- **Acetaminophen:** Manufacturers and sellers of acetaminophen products, including Costco, CVS, Walgreens, Safeway and Walmart, are in litigation with plaintiffs who are alleging that the defendants failed to warn that prenatal use of acetaminophen products could result in autism spectrum disorder (ASD) or attention-deficit/hyperactivity disorder (ADHD) in infants. As a result, carriers are introducing exclusions for in-utero ingestion of acetaminophen actually or allegedly causing neurodevelopmental disorders.
- **Impurities:** In 2018, potentially carcinogenic nitrosamines were found in products used for treating high blood pressure, diabetes, stomach acid and smoking cessation. This led to a series of costly recalls and product liability claims with the marketplace eventually excluding all nitrosamine-related claims. More recently, similar concerns have arisen with respect to benzene, azido and other product impurities, leading to broader impurities exclusions being added to product liability programs.
- **PFAS:** As with several other sectors, litigation over per- and polyfluoroalkyl substances (PFAS) in the United States is causing concern for life sciences product liability carriers. These forever chemicals are prevalent in cosmetics as well as medical devices and pharmaceutical products. While there is still much unknown about the long-term effects of these chemicals, we are beginning to see PFAS exclusions on liability programs, particularly in the London marketplace.

There were significant opioid settlements throughout 2022. The national combined settlement amount from all manufacturers, distributors, pharmacies, etc. is around \$54 billion and growing.

Wearable technology, automation and artificial intelligence are among the technological advances continuing to impact the medical device landscape. Underwriters are challenged with shifting their understanding of traditional medical device exposures to incorporate the additional risks presented by these new developments.

According to the [FDA](#), there were 2,160 total medical device recalls in 2022 (168 of these were Class I) and 1,321 total drug recalls (83 of these were Class I). While these numbers were down compared to recent years, product safety and associated recalls remain a major concern for medical product manufacturers. Companies should be exploring stand-alone product recall coverage as a potential addition to their insurance portfolio for reputational and balance sheet protection.

With the demand for pharmaceuticals and medical devices continuing to rise, along with the rapid advances in technology and science, this sector is set to see strong growth well into the future. It is critical to the long-term success of life science companies that they can effectively quantify, mitigate and transfer risk wherever it is appropriate.

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# Managed care E&O and D&O



## Rate predictions

### Public MCOs and Blue plans:

**E&O, +10% or more;**  
**D&O, flat to -10%**

### Hybrid entities (accountable care organizations, third-party administrators, revenue cycle management, etc.):

**E&O, +8 to +12%;**  
**D&O, +10% to +15%**

### Private company, other lines of business:

**EPL, flat to +7.5%;**  
**fiduciary, flat to +15%;**  
**crime, flat to +10%**

### Blue plans

**E&O, +10% or more;**  
**D&O, flat to -10%**

### All other MCOs:

**E&O, +5%;**  
**D&O, +5 to +10%**

### Cyber liability:

**MCOs that are excellent risks, -15% to +5%;**  
**For less-than-optimal risks, +5% to +15%**  
(see cyber section in this publication for additional information)

## Key takeaway

E&O and D&O conditions for managed care organizations (MCOs) have stabilized, but systemic risks and concern over mass tort, antitrust and class action claims continue to plague MCOs. Additional pressure comes in the form of economic realities and federal and state health policy changes. Climate, ESG and political considerations also drive rate and underwriting concerns. Those entities that present as very good risks from an underwriting perspective receive better rates though terms and conditions are similar. Managed care E&O and D&O carriers continue to assess their entire portfolios as they consider their exposure to aggregated risk. The explosion of hybrid and provider-owned MCOs has put pressure on capacity. Use of captives has significantly increased because of market conditions. Cyber liability coverage remains difficult related to underwriting, subjectivities, coverage and rate, though the marketplace for MCO cyber liability rate has softened and some entities are seeing reductions in rate.

### **E&O and D&O rate increases have leveled off, but restrictions related to significant risk continue.**

- Forced retention increases based solely on market conditions have slowed. But we are keeping an eye on regulatory retentions based on political and regulatory uncertainty at the federal and state levels, which is adding further complexity to the marketplace in this area.
- Coinsurance and sub-limits related to antitrust and regulatory risk continue to be applied by some markets.
- Related claim language is narrowing significantly as is manuscript exclusionary language applied to prior industry claims.
- Association, cyber and opioid exclusions continue to be applied.
- Rebate exclusions are being added to PBM policies.

- 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.
- Carriers are hesitant to write hybrid accounts that provide non-managed care services to third parties, especially for entities that engage in revenue cycle management and those exposed to bodily injury claims.
- Risk transfer programs must be managed and strategically planned across all lines of coverage to avoid gaps in coverage and to 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 is on the rise. Fronted programs can be negotiated as an alternative to captive programs.
- Coverage for pharmacy benefit managers, those engaged in value-based contracting from the provider side, revenue cycle management and medical services management remains difficult due to limited capacity and restrictive terms and conditions.
- We have not seen any new domestic or offshore carriers enter this space, and no markets have exited.

## No Surprises Act

- The No Surprises Act was intended to reduce the number of “surprise” bills for health plan members, shift the costs of the dispute over costs to the providers and plans, and provide an arbitration form of dispute resolution to facilitate closure and reduce dispute-related costs. The regulatory scheme behind the NSA has been subjected to one court case after another; the result has been a log jam of disputes, rising costs, lobbyists’ battles in Washington and incentives for providers to remain out of network. This raises premiums and results in risks, including defense costs and the possibility of additional risk/exposure. Market response is likely to be restrictions in coverage related to these “claims.”

## Merger and acquisition activity continues to rise.

- Mergers and acquisitions: One continuing industry trend that impacts market response is mergers and acquisitions. The involvement of private equity investments as well as health plan acquisitions and diversifications has driven this trend. The current administration in DC and the chair of the FTC and the antitrust division of the DOJ have made it clear that they intend to examine both pre- and post-M&A activity in healthcare. Due diligence related to risk, exposure and solutions — innovation related to

risk transfer — is required as the combinations create a significant set of risks that are not typically seen or evaluated when looking at the marketplace. However, this scrutiny by antitrust enforcement agencies may lead to further restrictions in coverage, outright exclusions or rate increases for E&O and D&O coverage.

## Dobbs decision is a controversial subject creating a lot of debate.

- The Supreme Court opinion in Dobbs (June 2022) overturning federal constitutional protection for abortion rights has resulted in significant upheaval at the federal and state (even local) levels. This has significant impact on all healthcare entities, payors and providers alike. The marketplace is paying close attention to the political and ideological fights raging throughout the country related to access to reproductive healthcare. MCOs are seen as being at the center of the risk created because of state and federal regulatory, legislative and criminal risks, issues related to discrimination, multijurisdictional plans, reimbursement issues and many other concerns. ERISA, EMTALA, the ACA and many other acts at the federal level and many efforts in the legislatures and courts of the states will be ongoing for some time. This chaos, especially related to a healthcare issue of such importance with significant differences of opinion, creates risk that the underwriters are looking at, especially at the E&O, D&O and EPL lines.



## 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 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. These claims are not limited to monopolies or certain enumerated actions by those with significant market share or groups of entities; they also include a wide variety of unfair and/or deceptive trade practices under federal and state law. 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, and the increase in state laws and regulatory pressure 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 investigations and False Claims Act action, 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 U.K., EU, India) where many MCOs now have business operations.

- **Behavioral health claims:** Behavioral health claims are on the rise, and COVID-19 has compounded the issue. Mental health parity claims, at both the federal and state levels, can be costly to defend, especially the class actions. Demands tend to be for benefit payments, penalties and restitution, which are not covered by managed care E&O policies, but there is usually defense coverage.

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# Marine cargo



## Rate predictions

### U.S. markets

#### Transit

Good loss experience:  
**2.5% to +7.5%**

Marginal to poor loss experience:  
**+10% and higher**

#### Stock throughput

Good loss experience:  
**+5% to 10%**

Marginal to poor loss experience:  
**+15% and higher**

### London markets

#### Transit and stock throughput

Good loss experience:  
**Flat to +5%**

Marginal to poor loss experience:  
**+10% and higher**

## Key takeaway

As we head into 2023, marine insurers continue to push rate; however, not to the extent that was seen between 2018 to 2021. Although continuing to focus on rating, insurers, in some cases, would rather provide some relief in increased rates offered in exchange for change in policy terms and conditions, particularly on accounts with a large CAT profile.

The Russia and Ukraine conflict continues to be a focus for marine insurers. During the 2022 calendar year, Russia, Ukraine and Belarus were addressed differently on an insurer-by-insurer basis. However, as we head into the 2023 calendar year, we are seeing a more consistent approach by insurers, whereby they are excluding these countries and in some cases expanding to include the Black Sea and Sea of Azov.

Following a challenging treaty reinsurance negotiation, reinsurers had imposed the 5 Powers Exclusion clause on insurers. As a result, this exclusionary wording has been or is anticipated to be included.

## 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.
- 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 differentiating insureds from their peers remain crucial to securing favorable terms and conditions.
- Analytical tools should be employed when available to best position clients to optimize their insuring structures (with a focus on retention, CAT limits, aggregates, etc.).

## Navigating supply chain challenges post-COVID-19.

- Deglobalization: Near shoring, “friendshoring” and increased risks of political instability
- Digitalization: Use of telematics/IoT to have better insights into the supply chain
- Inflation: Supply chain costs, including raw materials, labor and transportation and putting increased pressure on suppliers and vendors
- Labor shortages: Aging populations, skill gaps and strikes ensuring continued labor shortages
- Sustainability: Extreme weather making some raw materials harder to harvest or access; floods, fires and storms also impacting logistics chains, while companies under pressure to take ESG into consideration in supply chains
- Geopolitical instability: May cause uncertainty when certain trade lanes are used
- COVID-19: While many businesses are back to near normal operations, COVID-19 still a real threat; any potential new variant possibly resulting in more lockdowns and restrictions that could threaten supply chain

## Cargo and stock throughput markets are challenged by catastrophic losses.

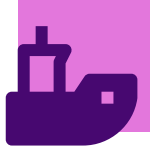
- As we approach Q2 2023, as a result of the property market, stock throughputs are being consistently explored. However, to perform a successful and strategic marketing effort of a stock throughput program, the marketing effort must be well-orchestrated in conjunction with the property program.
- Large industry losses have occurred due to mis-declared cargo causing concern for clients and insurers. In some cases, shipowners have declared general average.
- CAT management continues to be a focus of concern for insurers as they seek to increase deductibles and reduce CAT limits deployed. Additional attention is being paid to CAT definitions, especially with regard to occurrence definitions and “fire following” type buy-backs. In addition, insurers continue to seek the inclusion of straight-line wind in the windstorm definition.

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# Marine hull and liability



## Rate predictions\*

**Domestic hull and machinery:**  
**+5% to +7.5%**

**London/international hull and machinery:**  
**+2.5% to +5%**

**P&I domestic:**  
**+5% to +7.5%**

**P&I with crew/towing domestic:**  
**+7.5% to +10%**

**P&I international club:**  
**+10%**

**Domestic primary marine general:**  
**+5% to +7.5%**

**Domestic excess marine liability:**  
**+7.5% to +10% (more for underlying crew/towing – 1st layer)**

**London marine liability:**  
**+10% to +15%**

**USL&H mutual:**  
**Flat to +5%**

\*All rate projections shown above are subject to good loss record accounts (higher increases for accounts with adverse loss experience).

## Key takeaway

The marine market remains firm with demand for price adjustments across the board — higher end of range for challenging risk exposures.

## Underwriting in the current environment remains challenging

- Marine underwriters that are requiring premium increases for claim inflation (personal injury and increases in raw material cost) and cost of reinsurance are increasing.
- Excess liability underwriters are reducing capacity and requiring ventilation between layers requiring quota share placements and additional market capacity.
- Due to increase in claim costs in the primary/working layer, excess liability attachment points between \$2 million and \$5 million are becoming more prevalent.
- Due to political unrest globally and specifically for the situation in Ukraine/Russia, we expect significant adverse developments in hull war market in carrier capacity, appetite and terms/conditions.
- Underwriters are seeking additional retentions on U.S. Gulf area hull risks due to consistent NATCAT losses.

## International group P&I clubs

- For the February 2023 renewal, IG P&I clubs asked for average minimum general increases of +10%.
- The North and Standard officially merged February 20, 2023 (NorthStandard), which reduces the amount of available P&I club options from 13 to 12.
- With continuing deteriorating levels of large pool claims, high average market combined ratio and lower investment returns, there is nothing to suggest the February 2024 renewal will show much improvement, but it is premature to predict at this time.

## Burdens are increasing on both sides of the negotiating table.

- Underwriters require substantial amounts of data, including loss control engagements.
- Underwriters remain under scrutiny to deliver profits despite fewer investment returns and an increase in claim costs in the current environment, which is negatively impacted from the buyer's perspective.

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# Personal lines



## Rate predictions

Homes under \$1,000,000  
**+8% to +12%**

Homes over \$1,000,000  
**+10% to +14%**

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

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

Auto  
**+10% to +12%**

## Key takeaway

The personal lines insurance market is experiencing a persistently hard market that may extend for several more years. Carriers have found it difficult to outpace inflationary cost trends in a highly regulated marketplace. Most insurance carriers have made it clear that the 2023 focus is disciplined underwriting and an emphasis on profitability over growth. Many of the restrictions we have experienced in California and Florida have extended throughout the west as carriers shed wildfire-exposed risks as well as wind-exposed risks on the east coast. With many of the carriers experiencing their highest loss ratios in decades, we anticipate a vigorous approach to rate increases along all lines of business.

## We anticipate a significant increase in auto premiums across the entire country.

- Hurricane Ian losses have been estimated at between \$41 billion and \$70 billion. Among those losses were up to 358,000 vehicles damaged by floodwaters, according to Carfax.
- Almost all auto carriers are anticipating rate action across the country to the highest levels in over a decade.
- Inflationary pressures should soften as carriers manage their rate expectations and as loss trends normalize.

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## 2022 generated the worst loss ratios in more than 25 years for personal lines.

- Carriers will expand mandates on preventative devices, including automated water shut-off valves, heat and burglar monitoring devices and wind shutters.
- Many carriers are offering discounts and programs to help clients prevent losses and could provide savings on clients' homeowner policies.
- Clients should expect a flight toward higher deductibles and reserve insurance for large-loss situations.

## The capacity-starved industry will look to surplus lines markets to fill the gap of difficult placements across the country.

- Many more carriers have pulled out of the admitted market in high-risk areas altogether, while focusing their capacity in the more flexible excess and surplus lines market.
- Demand for capacity will continue to outpace supply causing a significant compression on rates and coverages.
- In extreme situations clients may need to rely on state-sponsored insurance programs to provide coverage for their homes.



# Political risk



## Rate predictions

### Political risk

**+10% to +45% depending on country mix within portfolio**

#### Key takeaway

February 24 marked the one-year anniversary of the start of the Ukraine/Russia conflict. In response, C-suites at multinationals are reviewing their rest-of-world portfolios and increasingly look to transfer such risks, while the market has hardened considerably.

The Ukraine/Russia conflict brought political risk insurance into sharp focus, particularly its non-cancellable, multi-year terms.

- The conflict brought the non-cancellable nature of PRI into focus as the war peril under marine can be cancellable, and property policies exclude “war and hostile acts.”
- Coverage in political risk policies is non-cancellable by the carrier for the entire policy term (multi-year).
- Policy terms in political risk are multi-year, often three to five years, with some carriers offering a 20-year period.
- We encourage clients to take the longer policy periods to extend the guarantee of coverage and rate.

## China capacity is in demand, but supply has narrowed considerably.

- A common theme regarding multinational companies has been: If what's happened with Ukraine and Russia happens elsewhere (such as Asia-Pacific, which is more financially significant to us), how can we protect these scenarios with political risk insurance?
- A few carriers continue to offer limited capacity, but the supply has decreased considerably per graph.
- Remaining capacity generally excludes companies in the technology and defense sectors.
- WTW encourages the review of exposures across Asia -Pac particularly in an Asia-Pacific maritime dispute scenario which has the potential to be wide reaching.

## Recent election outcomes showcase shift left

- We have witnessed a spate of left-wing election outcomes in Latin America in the last couple of years from, most recently, Colombia, Brazil, Peru, Honduras, Argentina and Chile among others. Some analysts cite frustration from citizens of the governments in the wake of COVID-19, coupled with inflation pressures.
- Peru has seen unrest following the ouster of President Pedro Castillo and some local opposition to mining.
- Colombia elects its first leftist president in Gustavo Petro; Lula returns to Brazil.

- Mexico's investment climate has garnered attention recently with the introduction of a reform bill that may affect foreign investor's interests, particularly in the sectors of mining, energy, construction and rail, in addition to open-source news regarding a port seizure, brewery closure and cancelled airport project.
- Increasingly Latin American-headquartered companies are seeking and taking up political risk insurance.

In our recent Political Risk Index, we examine the question of whether country alliances are changing, noting that, per our matrix and methodology, of the 61 countries mostly in the developing world, half had changed alliances over the past five years.

We encourage clients with exposures abroad to proactively consider political risk-transfer options for their country(ies) of interest before it becomes front page news to guarantee non-cancellable, multi-year cover.

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# Product Recall



## Rate predictions

**Product recall:**  
**Flat to +5%**

### Key takeaway

The large-scale losses have come to fruition; thus, renewals with incumbents have become much more granular when it comes to manufacturing facilities and supplier aggregation. Food is not the only industry facing scrutiny; auto and consumer goods losses are pushing a hardening of the market as reinsurance and general market conditions become unfavorable.



## Large losses continue

- Multiple eye-drop manufacturers have recalled large batches of drops due to contamination causing a drug-resistant infection. The contamination has, thus far, caused three deaths, and more than 12 users have lost their vision.
- Infant formula contamination issues continue: Perrigo Company plc is recalling certain lots of a Gerber infant formula because of possible *Cronobacter sakazakii* contamination.
- A popular consumer goods manufacturer is recalling 1.9 million coolers/cooler backpacks. The U.S. Consumer Product Safety Commission has deemed these backpacks and coolers dangerous because these coolers and cooler cases have magnets that can detach from the product. Since the closures used on these recalled products are faulty, the magnet can easily detach itself inside the cooler, posing a risk of ingestion.

Producers and client teams should prepare their recall clients for a more detailed and extensive recall renewal, as the market will have more pressure to satisfy reinsurance about the diligence paid to the underwriting of their respective books.

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# Senior living and long-term care



## Rate predictions

General and professional liability with favorable loss experience and venue:

**Flat to +15%, higher with adverse loss experience and/or poor venue**

Property with non-challenged occupancies:

**+10 to +20%**

Property with challenged occupancies:

**+25% to +40%++**

Workers compensation:

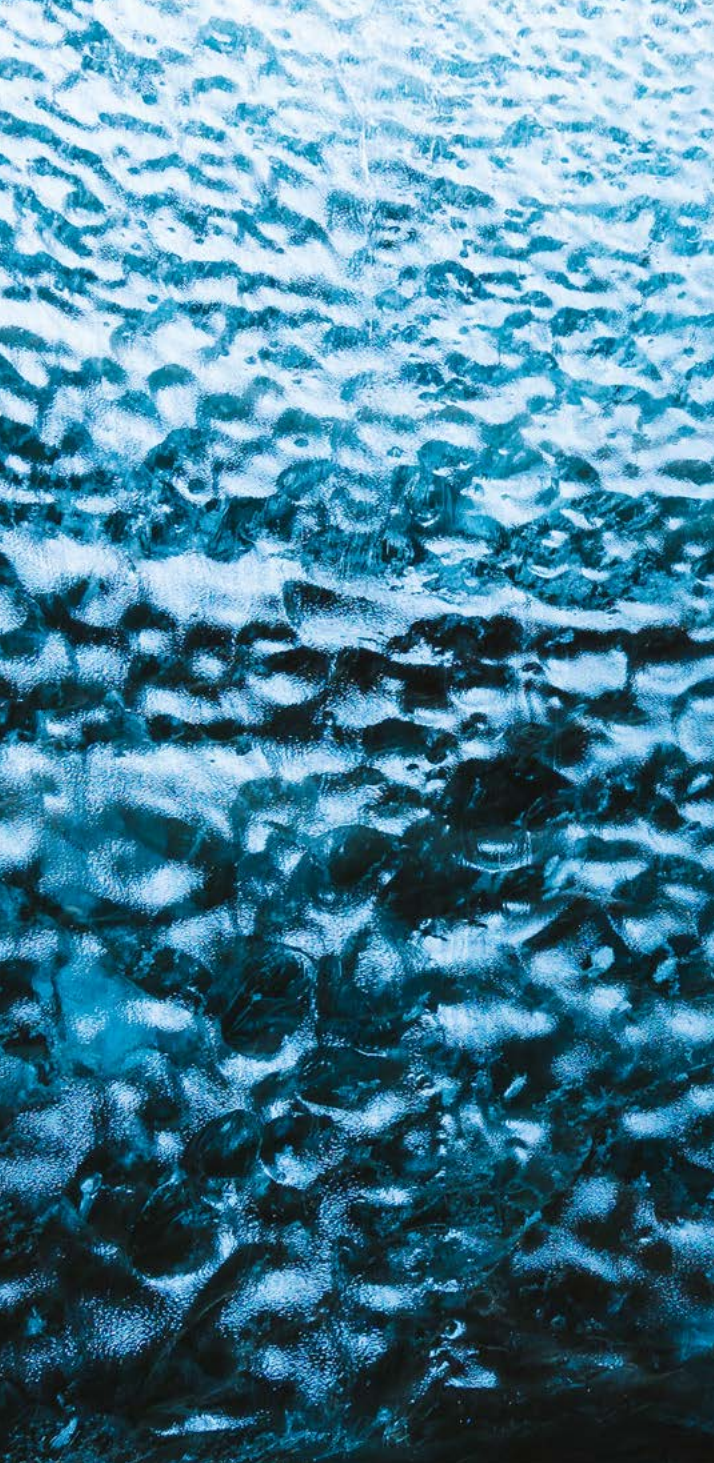
**-5% to +2%**

Auto:

**+5% to +10%+**

### Key takeaway

Property renewals, heavily impacted by catastrophic and non-catastrophic loss experience as well as a very difficult treaty reinsurance renewal on January 1, will be most challenging for owners and operators. Other lines of coverage continue to realize rate stabilization and nominal deceleration in rate increases. However, headwinds caused by economic and social inflationary pressures will continue to adversely influence loss and insurance costs.



## Professional liability and general liability

- Senior living and long-term care liability coverage has continued to stabilize for owners and operators with favorable loss history and venues; however, anticipate higher variability and rate increases for challenging operations.
- Insurers are reluctant to deploy significant capacity in litigious venues such as NY, NJ, CA and FL. Governor Ron DeSantis of FL recently signed into law HB 837 promising sweeping medical malpractice tort reform, although it remains to be seen how effective this will be to control loss costs in that state. Other less desirable venues are Philadelphia, PA and Cook County, IL.
- New capacity from Bowhead, Munich Re and Arch has entered and has only started to slightly affect pricing in a positive way.
- Underwriters have continued incorporating a broader communicable-disease exclusion rather than simply excluding COVID-19. Stand-alone communicable disease liability policies are available, but large capacity is still not available.
- Sexual abuse and molestation coverage grants may be challenging to obtain. While the primary layer may include this coverage, excess markets may not.
- Financial challenges have significantly affected the industry during and after the COVID-19 outbreak. In addition, overall economic and social inflation are heightening factors, further increasing insurer scrutiny.
- Staffing turnover and shortages within the industry have continued. Insurers continue to be very concerned with staffing shortages contributing to loss severity through failure to monitor/appropriate monitoring, unwitnessed falls, late detection of pressure wounds, etc.
- The reopening of courts may potentially impact COVID-19 claim payouts. To date, many incidents have been reported to insurers, while actual claims with payments have been relatively insignificant.
- Clients seeking to differentiate their risks must focus on incident reporting, claim mitigation, policies and procedures. Emphasis on the clinical program management will also have a positive impact, particularly for those with a focus on fall management, elopement, medical management, and infection prevention and control.
- To reduce their total cost of risk, many buyers 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 and other self-insured approaches are used without acceptable fronting or trust arrangements.

## Property

- Ian, a later-season 2022 hurricane, and winter storm Elliott significantly affected many senior living owners and operators. In addition, continued freeze, historic rain, severe convective storms and wildfire losses have driven up insurers' loss ratios adversely impacting profitability.
- January treaty reinsurance renewals were impacted by the reduction in capital and increase in exposures, which in turn has led to the "hardest" reinsurance market in approximately 30 years.
- Valuations continue to be heavily scrutinized, due to significant cost increases evolving from material demand, supply chain issues and labor shortages. Occurrence limits of liability endorsements and margin clauses are frequently considered by insurers to limit their liability in the event of perceived under-valuation of property values.
- It is expected that every account will see continued pressure on rates, accuracy of property valuations, as well as coverage terms and conditions. To contain cost increases, owners and operators are increasing deductibles as well as purchasing less limit to an amount deemed adequate.

- Insurers continue to restrict many coverages previously offered, such as communicable disease and cyber. Additional coverage tightening is occurring on CBI (contingent business interruption), service interruptions, deductibles for freeze claims and convective storms.
- There is continued pressure to move from manuscript to insurer forms.
- Due to the array of occupancy classifications that can apply to this sector, it is imperative to use accurate occupancy classifications for modeling to ensure the most competitive pricing.
- Property programs are being heavily marketed, and numerous options are being requested from insurers, significantly increasing underwriter workload. Insurers are being highly selective, and to drive the best results the comprehensiveness and quality of the renewal submission is critical.

## Workers compensation

- Profitable combined ratio for eight years straight and insurers' reserves are robust — providing a ballast for pricing stability.
- Underwriting concerns continue regarding opioid addiction, the aging workforce, and medical bill and payroll inflation.
- Carriers (including incumbents) continue taking an in-depth look at insureds' COVID-19 and infection control protocols and asking more questions about policies and procedures.

## Auto

- Combined ratios continue over 100% while the volume of vehicles on the road and miles driven continue to increase as the pandemic subsides.
- With the highest economic and social inflation in 40 years, insurance claim costs have continued to rise. Rates and premiums have not kept pace with the rise in claim costs, which results in unprofitable results for insurers.
- 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 may add rate to a community's auto premium if their fleet involves multiple vans and/or buses.

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# Surety



## Rate predictions

Surety:  
**Flat**

### Key takeaway

Surety companies continue to be profitable, and we continue to have adequate capacity to meet our clients' needs. The sureties are cautiously monitoring inflation and other risk factors impacting exposures.



- 2023 will be a challenging year for the surety industry, as the global economic growth slows down (2.1% as compared to a 3.4% growth in 2022) due to high inflation and tightening financial conditions, which will dilute investment growth. In addition, high construction material costs and labor shortages will further constrain the construction industry. Uncertainty in the domestic and global marketplace will create greater demand for surety products, while at the same time making underwriting more invasive. Claims and defaults are not expected to increase, but capacity could be lower than previously available for all but the strongest credit.
- Despite a subdued global construction market, international surety bonding is expected to expand as international owners are recognizing the unique protections and benefits of a surety bond compared to a bank LOC, as well as owners trying to diversify risk away from banks. New opportunities will arise in countries where there is tight liquidity and where the ongoing supply chain challenges negatively impact schedules.
- Technology, retail and financial services will be challenging for surety growth due to contraction in these industries. Energy, traditional and alternative, will continue to be a focus for revenue growth. The cost, demand and supply of surety products for these bonds will push the segments higher.
- Surety underwriting changes can develop quickly and may result in large deviations in program terms. If large loss activity develops in the contract or commercial lines of business, a more rapid change in terms is probable.
- The collapse of Silicon Valley Bank (SVB) may have a global ripple effect. This failure and the failures of two additional banks that followed in March will be felt in many ways. The impact on the excess deposit bonds has led to several surety companies exiting the product altogether, with most other sureties freezing credit for regional and local banks. The largest national banks still have capacity for existing and new obligations, however, with increased scrutiny. Demand for larger limits on the deposit bonds will continue as funds flow to the larger banks. Upward rate pressure is to be expected.
- The talent shortage in surety lingers; however, it is driving hiring and training not experienced in the industry for decades. The newly minted underwriters fill the many open positions and will benefit clients as they mature.

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# Terrorism and political violence



## Rate predictions

### Terrorism and sabotage

**Non-volatile territories**  
**+15% to +20%**

**Some volatility and/or isolated events**  
**+20% to +30%**

**Major volatility and/or widespread risk of major incidents**  
**+30% to + 40%**

### Political violence

**Non-volatile territories**  
**+25% to +35%**

**Some volatility and/or isolated events**  
**+35% to +50%**

**Major volatility and/or widespread risk of major incidents**  
**+50% or higher**

## Key takeaway

Current political/economic conditions and conflicts around the globe are helping drive up pricing for political violence and terrorism insurance.

The crisis in Ukraine, the latest and most significant potential loss to the terrorism and political violence market in years, has ushered in changes mandated by treaty reinsurers.

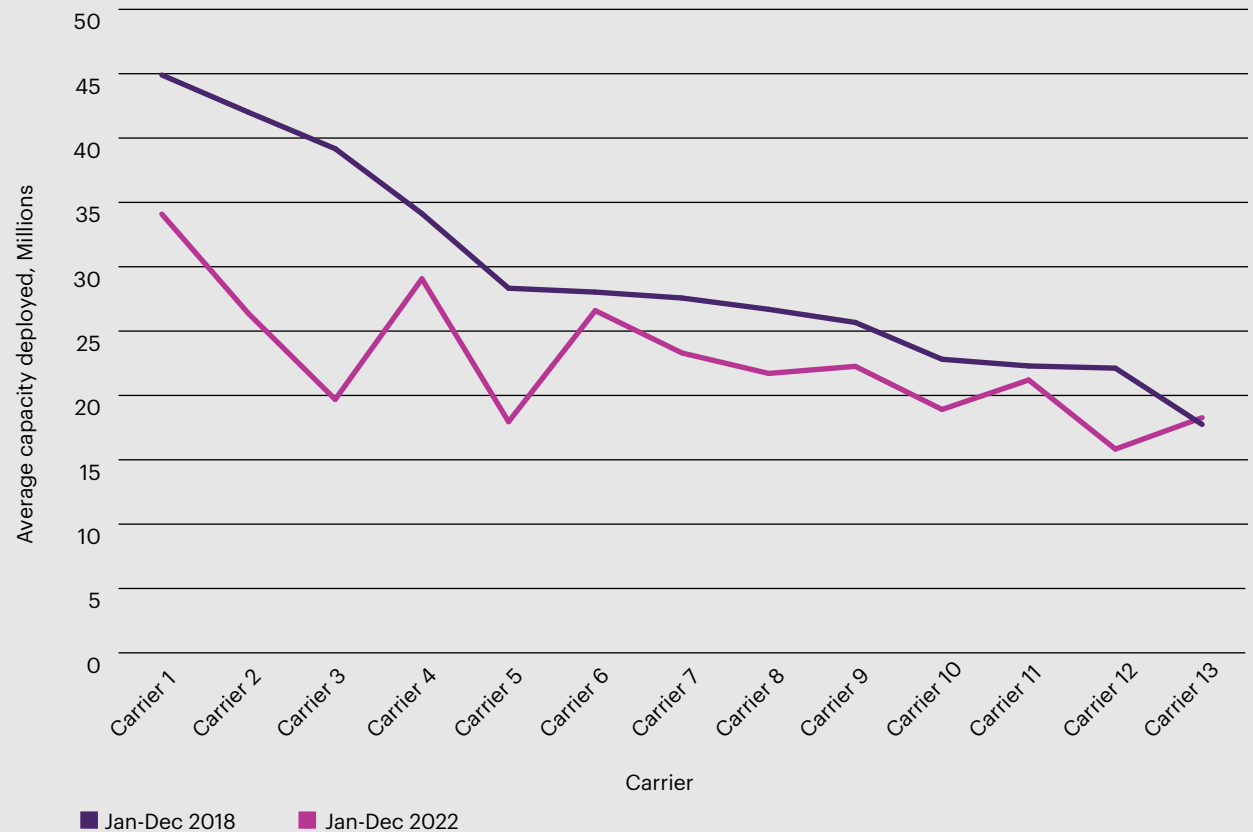
- Facing significant losses, treaty reinsurers have increased rates and insurer retentions, as well as restricted coverage and appetite.
- Coverage changes on treaty reinsurance programs include distance limitations for any one 'occurrence,' increasing the potential for significant increases in retained risk for any dispersed event, such as nationwide civil commotion losses experienced in the United States in 2020.

- At this time, most insurers are not looking to push these reinsurance occurrence clause changes onto clients, but will be factoring these changes into rates.
- Coverage changes directly felt by clients is the retraction in appetite for contingent and non-physical damage coverage, as well as limiting interest for binding multiyear programs.

## Overall market capacity has not dramatically changed but expectation for actual reductions in line size deployment on individual risks

- While the marketplace has remained relatively static in terms of capacity, many insurers are reducing per-risk deployed capacity (see below chart), especially in high-risk territories, heavily aggregated locations, and for policies with wider Political Violence perils.

Figure 1. Average capacity deployed



**A new generation of crisis analytics is being deployed to identify and calculate the human and financial consequences of terrorism and political violence.**

- Risk aggregation models can calculate precise aggregate accumulations and point the way to operational and structural changes to reduce vulnerabilities.
- Global risk analytics can now generate risk scoring for any point on the planet to provide a holistic view of a company's global risk profile and provide warnings about changing risk environments.
- Specific Probable Maximum Loss (PML) estimates can critically evaluate previous insurance decisions and improve market submission

**The deployment of captive insurance vehicles continues to provide access to otherwise unavailable or uncompetitive capacity for terrorism risk.**

- The Terrorism Risk Insurance Program (TRIP) continues to offer support for conventional terrorism events, but also provide critical capacity for more limited coverage, such as for physical damage due to a cyber terrorism event.
- In a market where premium is capacity-driven, the flexible rating mechanisms permitted within a captive structure allow exposures to be priced for risk exposure and divorced from unrelated perils — generating significant cost savings for many clients.

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# Trade credit



## Rate predictions

**Trade credit:**  
**+5% to +10%**

- Loss ratios remain far too low for trade credit insurers, but we expect this to change as we head into a deeper recession in the second half of 2023.
- The bank crises demonstrate a macro impact to a fragile economy, which will lead to more corporate insolvencies.
- The flight to quality in the banking sector is leading to more insured supply chain finance programs.
- A higher focus by corporates on working capital financing needs is heading us into a potential prolonged recession.
- There is significant growth in the trade credit market over 2022 as more companies protect their receivables.

### Key takeaway

All economic signs point to deeper recession in the second half of 2023. Cash flow constraints and access to liquidity will lead to higher insolvencies, and this is expected to bleed into 2024.

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Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for losses relating to the Ukraine crisis. 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 crisis. 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. WTW offers insurance-related services through its appropriately licensed entities in each jurisdiction in which it operates. The Ukraine crisis is a rapidly evolving situation and changes are occurring frequently. WTW 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 WTW contact for more information.

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