North American Energy Casualty

Primary Liability

The Primary Liability marketplace, covering Workers Compensation, General Liability, Auto Liability, continues to find itself in a stable position overall from both a pricing and capacity standpoint in most Natural Resources sectors. This is due to a combination of manageable limits, which have helped to reduce the impact of increased claims severity, an increased focus on risk-transfer attachment points and an abundance of available capacity.

As many Primary Liability insurers have aggressive new-business growth goals overall each year, which we suspect will continue in 2024, clients should have the ability to choose between various options provided by competing insurers, and we predict that this combination of stable market capacity and growth-focus will most likely prevent the Primary Liability market from hardening in any meaningful way in 2024.

Auto Liability

The COVID-19 pandemic had caused a significant backlog of court cases, which is now abating and, as a result, auto liability judgements and settlements continue to come in at pace trending in a troubling direction for both prior years and the 2022-23 policy years. A well-funded plaintiff's bar continues to focus on commercial auto litigation and accident frequency is increasing because of heavy activity and distracted driving. Jurisdictions that used to be considered neutral are now leaning towards being plaintiff-friendly venues for example in places like the Permian Basin. It has been reported that the 2022 Combined Ratio for Commercial Auto insurance rose to 105.4% in 2022, a clear indicator of continued social and economic inflation in the sector. As a result of these aforementioned factors, pressure remains on insurer profitability for Primary US Auto Liability insurers despite seven to eight years of steady rate increases. Incumbent insurers are still requesting mid to high single-digit rate increases on their Auto Liability renewals, with some insurers even seeking low double-digit rises, as they attempt to return to profitability in a continuously challenging environment. We have seen an increase in Hired Auto claims in which the failure of the hired insurer to maintain or certify sufficient insurance limits has resulted in large judgements against the hiring company's corporate programs and attorneys have begun targeting "deeper pockets" in recent years. Looking forward to 2024, we expect incumbent insurance companies to continue to seek rate increases on renewal programs, with an ongoing focus on risk transfer attachment points as well as efforts to "right-size" their portfolios. It is vital that insureds in all sectors highlight controls in place to differentiate their programs in a market challenging environment.

General Liability

Incumbent insurers in the Midstream and Downstream segment are currently seeking low single digit rate increases for General Liability renewals for historically profitable business and in certain cases are offering flat-rated renewals to incumbent insureds. The Offshore Operating segment was severely disrupted with the exit of the a large London-backed US wholesale facility, with many insureds moving to the London market for Primary General Liability coverage. In many cases this has resulted in large premium increases while also increasing the focus on stricter adherence to Marcel Exceptions regarding the Louisiana Oilfield Anti-Indemnity Act. Domestic Onshore Operating capacity remains plentiful, with multiple insurers in both the US and London willing to offer General Liability coverage at competitive pricing for profitable insureds with proper controls in place. The Oilfield Services sector has seen a troubling uptick in the severity of "Action Over" claims amounts and insurers are beginning to scrutinize certain classes within the sector to combat the rising claims costs for litigated workplace injuries. Whilst ample capacity remains in the sector at this time, it does bear monitoring this development as we move into 2024.

Workers' Compensation

Workers' Compensation has remained a consistently profitable line of business for Primary Liability insurers for Midstream/Downstream/Chemicals and Upstream and has subsequently remained stable from a rating standpoint, with flat renewals and potentially small rate decreases offered by incumbent insurers. Oilfield service companies and industrial contractors are receiving larger rate increases if they have negative loss records as the sector is seeing an uptick in the severity of workplace injuries. However, for most energy sectors, Workers Compensation continues to be a major driver of overall profitability which is helping to offset the challenges faced by the US Auto Liability marketplace.

As wage-inflation has been considered during the 2023 renewal cycle, we do not foresee larger payroll exposures impacting renewals again in 2024.

We expect the 2024 year to mirror the current environment, with ample capacity remaining and insurers offering flat renewals and even small decreases on profitable programs for most industry segments.

Excess Liability

Certain classes of Operators saw a somewhat challenging 2023, in many instances facing the difficulties that the other segments saw in the 2019-20 hard market due to the large loss of capacity from the withdrawal of the London-backed wholesale facility mentioned above. In addition to this we also saw the exit from the class of another key insurer, who previously covered all classes of business in the energy sector and this impacted many insureds and forced clients to replace their capacity in their Excess Liability towers. Severe litigated Auto Liability claims continued to erode profitability for both domestic and foreign insurers and an alarming uptick in severity from "Action-Over" workplace injuries has impacted the first US$25 million of Oilfield Service insurers. As mentioned in the Auto Liability section above, insurers are starting to see a concerning uptick in litigated Hired Auto Liability claims, as plaintiff's counsel have begun to focus on hiring companies when a hired auto is involved in a serious accident as they seek "deeper pockets" when filing lawsuits on behalf of injured parties.

Upstream

After a long period of relative prosperity, the Upstream Operator Excess Liability segment lost a major provider of lead capacity which impacted renewal pricing negatively in 2023. Offshore Operators felt the greatest impact, with most renewals moving to the London marketplace for Primary and Lead capacity at an increased cost. Onshore operators who were utilizing the withdrawn wholesale facility were able to find ample capacity both domestically and in London, but the loss of the US$75 million capacity provided by this facility impacted many renewals negatively in 2023. As a result, many domestic markets met their annual new-business budget goals by mid-year, allowing for Upstream insurers to be more selective in the risks they decided to write in the second half of 2023. However, as budgets will have reset in 2024, we do expect the market in both the US and London, where most capacity in the space is offered, to stabilize with the potential for new capacity to enter the market.

Oilfield services

The Oilfield Services segment has been more challenging in the last 12 months due to a large uptick in General Liability/Excess Liability claims driven by an increase in severity in both judgements and settlements for workplace injury lawsuits. An increase in activity in concentrated areas such as the Permian Basin has also led to a rise in severe Auto Liability claims, which is impacting insurers who provide Excess Liability capacity in the first US$25 million of programs. In addition to this, one of the last remaining providers in the sector to offer US$25 million Lead Umbrellas, reduced their capacity mid-year to US$10 million which increased costs for many insureds who renewed in the second half of 2023. The combination of an increase in claims in both the General Liability and Auto Liability segments of this class has put continued pressure on both attachment points and renewal pricing as well as the limits offered. While ample capacity remains in the sector, it is vital that clients differentiate themselves and highlight workplace and auto safety practices and hiring criteria to obtain the best possible terms.

Midstream and Downstream

The Midstream and Downstream segments have both seen an uptick in third-party contracting claims, where large judgements and settlements have penetrated the agreed liability insurance limits and have impacted corporate programs. Despite an uptick in severe losses in 2023, capacity overall remains stable for Downstream and has increased for Midstream companies during the last 12 months, with risk-transfer attachment levels remaining consistent year-over-year. Certain insurers have begun to focus on third-party hauling company limits being both requested and evidenced, as claims against hiring companies have begun to increase. Despite these challenges, we do not foresee the market changing considerably in 2024 for clients with clean loss histories, as rating levels began to flatten in the second half of 2023.

Market concerns

Claims trends

While North American Energy Excess Liability pricing appears to have plateaued to an acceptable level for insurers in most segments and capacity remains stable, the underlying issues that were a direct cause of the hard market in prior years still exists.

The perceived anti-corporate sentiment of juries over the last few years remains a prevalent concern for insurers and the normalization of larger awards and settlements bears monitoring. Desensitized jury pools and a highly organized plaintiffs' bar are impacting both jury awards and settlement amounts.

Large jury verdicts for Auto Liability continue to put pressure on Excess Liability pricing and without the intervention of statutory laws to limit future liability, we expect that this trend will continue. An increase in judgements and settlements regarding workplace injury-related lawsuits is also a concern for markets as we move forward.

Continued underwriting focus on fleet safety programs

As a result of the increase in Auto Liability settlements, insurers are paying closer attention to buyers' fleet safety programs. It is strongly recommended that buyers provide details of their auto safety programs in submissions and renewal presentations to differentiate themselves from their peer companies. Clients should also continue to focus on driver criteria improvement and consistency in applying standards for company vehicle use and polices. Driver training, consistent MVR reviews, telemetric devices in vehicles as well as in-cabin cameras in heavy tractors can assist in differentiating

risks for both primary Auto and, more importantly, Excess Liability markets. However, if buyers are not actively enforcing in-force company fleet safety procedures, plaintiffs' counsel have argued that lack of enforcement can increase the company's negligence in a lawsuit.

PFAS

Much like the environmental marketplace, many Excess Liability insurers have begun to focus further attention to PFAS (Perfluoroalkyl and Polyfluoroalkyl substances), also known as "forever chemicals". PFAS exclusions have become more prevalent in the London Excess Liability market and are beginning to appear on both U.S. and Bermuda policies. While many companies do not have any PFAS exposure, insurers have been focusing their attention on fire suppression methods and associated chemical use. Buyers should expect inquiries into PFAS exposure as they head into renewals, especially those with terminal, plant or large fixed-asset exposures.

Contractual requirements for third-party on-site contractors and hired trucking firms.

While many companies in the energy sector utilize "tiered-limit requirements" for evidenced Excess Liability contractual limits, the increase in claims settlements and awards are beginning to outpace these historical limit requirements. Hiring companies' insurance programs are beginning to become more exposed to large workplace injuries or hired-trucking accidents, and clients should focus on revisiting these "tiered limit" requirements that seemed acceptable for the past 10-15 years to offset exposure to their liability programs as the hiring or partially negligent party.

Conclusion: A positive outlook

Primary Liability capacity remains extremely stable and insurers are continuously looking to expand their books of business in the energy sector. Buyers with clean loss records are seeing very favorable results when marketing efforts are conducted, and favorable early renewal negotiations can be agreed with incumbent markets. As a result, outside of Auto Liability, we do not foresee the market changing in an upwards direction for most segments and Oilfield Services clients should continue to highlight proactive risk management practices to combat rising loss severity.

Excess Liability capacity appears to have largely stabilized for most segments and while there are still underlying concerns about loss severity in all sectors, we do not expect to see the market shift in a troubling direction in 2024. Insureds should continue to differentiate their risks and proactively highlight risk management practices during the renewal process.

Blake Koen is Managing Director — Natural Resources and Global Client Advocate, WTW Houston.
blake.koen@wtwco.com