North American energy casualty: A tale of two markets — oilfield services

Primary liability

A tale of two markets...oilfield services...and everyone else

Due to a combination of manageable primary limits (which has helped to reduce the impact of increased U.S. liability claims severity), a sharper focus on risk-transfer attachment points and an abundance of available capacity, the primary liability marketplace (workers compensation, general liability & auto liability) continues to find itself in a relatively stable position overall from both a pricing and capacity standpoint in many of the natural resources sectors in 2024. After experiencing a challenging 2023 with a major loss in primary capacity, the upstream segment appears to have stabilized as we move into 2024. Midstream, downstream, power/renewables and chemical accounts continue to find themselves in a stable position regarding market capacity year-over-year, as ample capacity exists to provide competition which will offset an underlying need for larger rate increases in U.S. casualty. As was the case in 2023, the new-business growth goals and ample overall primary liability capacity should keep rates within low single digit increases for workers compensation and general liability as those lines of business remain profitable for most individual sectors. Auto liability remains a major concern for U.S. natural resources liability insurers, and early 2024 indications are leaning towards many carriers seeking low double-digit rate increases to offset the impact of claims inflation on their portfolios.

As we move into 2024, an area of concern that bears watching is capacity availability and subsequent renewal pricing within the oilfield services (OFS) segment, as that sector is quickly experiencing capacity and limit challenges stemming from both general liability and auto liability losses that continue to plague insureds within the industry. The OFS segment was historically one of the most competitive U.S. liability markets with ample capacity in recent years, but in 2024 OFS capacity appears to be decreasing as certain primary carriers have started to reconsider the viability of continuing to insure OFS companies as they struggle for profitability. Insureds with challenging loss histories and/or larger auto fleets are seeing more pressure on retentions and rates when capacity can be found because of increased claims inflation and litigated claims from workforce injuries and auto accidents.

Auto liability

Despite eight consecutive years of high single-digit or low double-digit rate increases for almost all clients in the energy sector, auto liability remains a large issue for most primary liability insurers and continues to be a major area of concern. While a lower ($1 million or $2 million) combined single limit helps manage severity, the industry continues to see an alarming uptick in litigated auto claims and settlements continue to increase, oftentimes outpacing rate increases from the prior year. As the pandemic-induced backlog of court cases continues to decrease, auto liability judgements and settlements continue to trend in a troubling direction in both prior years and in the 2022-23 policy years as combined ratios have once again climbed over 100%. A well-funded plaintiff's bar continues to focus on commercial auto litigation, and accident frequency continues to trend upwards for many insured in the energy industry which does not bode well for auto liability rates. Jurisdictions that used to be considered neutral are now becoming plaintiff-friendly venues in places like the Permian Basin, where activity is concentrated and frequency of losses is high, and areas such as Louisiana and South Texas continue to be challenging. The industry does not expect the 2023 auto liability combined ratio be profitable despite eight years of steady rate increases, as Fitch Ratings* predicts the commercial auto insurance combined ratio to exceed

106% in 2023[1]. Despite seeing a tapering of rate increase needs in 2022 and 2023 (where many carriers were offering 5-7% rate increases for profitable business), 2024 auto liability rates appear to be trending upwards, with certain incumbent insurers seeking double-digit rate increases on their auto liability renewals as they attempt to return to profitability in a continuously challenging environment. Hired auto claims in which the failure of a client-hired carrier 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. In addition to larger rate increase asks, we expect insurers to continue to focus on risk transfer attachment points as well in efforts to 'right-size' their portfolios.

OFS companies with larger fleets are seeing more intense scrutiny when their accounts are being underwritten in 2024 as losses within this segment appear to be greater than other segments in the oil patch. As this segment is generally more sensitive to increasing retentions and posting collateral for large deductible loss picks, it is vital that hiring driver criteria, fleet safety practices/training and telematics/drive camera usage are highlighted to carriers to differentiate risk.

General liability

Incumbent insurers in the midstream/downstream, power/renewables and chemical segments 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 as capacity remains stable year-over-year. After a very challenging 2023, offshore operating has seen an increase in general liability (and lead umbrella) capacity with the return of the JH Blades facility, which will increase competition and put pressure on 2023 rating for insureds who moved into the London primary general liability marketplace. We do expect all carriers offering offshore liability capacity to continue their focus on operator's stricter adherence to Marcel Exceptions regarding the Louisiana Oilfield Anti-Indemnity Act due to an increase in litigated claims severity for contractor injuries. Domestic onshore operating capacity has also increased with the return of the JH Blades facility, with multiple carriers in both the U.S. and London willing to offer general liability coverage at competitive pricing for profitable insureds with proper controls in place. The combination of an increase in capacity and an expected profitable year for most primary onshore operating carriers leads us to believe that the market will be competitive in 2024 for onshore companies.

As stated above, the OFS sector continues to see a troubling uptick in the severity of 'action-over' claims amounts and carriers are beginning to scrutinize certain classes within the sector to combat the rising claims costs for litigated workplace injuries. In addition to the challenges faced by OFS companies due to fleet sizes, locations and claims severity in auto liability, the increase in litigated claims for workforce injuries has put tremendous pressure on primary carriers as well, as general liability profitability is no longer offsetting the profitability challenges stemming from auto liability losses. As a result, incumbent general liability rate increases are beginning to rise higher in this sector and carriers are increasing scrutiny on controls in place for accounts who have sustained losses over the last few years. Insureds in this sector should focus on workplace safety initiatives and programs to differentiate themselves from competition as claims inflation is becoming a major issue in the OFS sector and carriers are beginning to exercise more caution during the underwriting process.

Workers' compensation

Workers' compensation has remained a consistently profitable line of business for primary liability insurers for midstream, downstream, chemicals, power/renewables and upstream and has subsequently remained stable from a rating standpoint, with carriers seeking small rate increases (up to 5%) on renewals in an effort to subsidize loss activity on other primary lines of business. However, due to the combination of capacity and profitability (plus rising wage inflation year-over-year), carriers are settling for 'flat' renewals (or close to 'flat') in 205.

OFS companies and industrial contractors are seeing larger rate increases if they have negative loss records as the sector is seeing an uptick in severity of workplace injuries. Carriers are putting pressure on retentions and pricing for clients with losses in this segment, as the industry is seeing an uptick in a workers compensation claim turning into a litigated general liability 'action-over' claim.

[1] https://www.fitchratings.com/research/insurance/us-commercial-auto-insurance-profits-struggle-amid-inflation-litigation-27-09-2023

Market outlook: Excess liability

Claims inflation has continued to have the largest impact on excess liability, as the continued 'frequency of severity' on an increased number of litigated claims has put tremendous pressure on lead umbrella liability carriers. As settlements continue to increase in size and scale, and nuclear verdicts continue to occur more frequently when claims are actually tried, carriers in all segments are increasing their scrutiny on limits deployed and premium charged in order to continue offering a sustainable lead umbrella product.

While the onshore and offshore operating segments appear to have stabilized, OFS companies, specifically those with larger fleets or losses, are facing some of the capacity issues that impacted the upstream segment in 2023. Severe litigated auto liability claims continued to erode profitability for both domestic and foreign carriers and an alarming uptick in severity from 'action-over' workplace injuries has impacted the first $25 million of OFS insurers. As mentioned in the auto liability section, 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.

OFS: The biggest challenge

The OFS segment continues to see the largest uptick in general liability/excess liability claims due to 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 an increase in severe auto liability claims, which is impacting insurers who provide excess liability capacity in the first $25 million of programs. Much like auto liability settlement amounts in years past, 'action-over' awards are now impacting lead umbrellas (and excess liability layers) where carriers used to 'feel safe' from any type of frequency event. The result of a continued erosion of profitability due to the double-edged sword of action-over/auto liability has been a constraint in lead umbrella capacity for this segment.

One of the last remaining (and extremely prominent) providers in the sector to offer $25 million lead umbrellas reduced their capacity in 2023 $10 million which increased costs for many insureds who renewed in the second half of the year. The same carrier has now decided to no longer offer lead umbrellas to OFS clients with over 250 autos in 2024, which has impacted larger OFS companies as they seek out umbrella coverage.

Another prominent primary/excess liability carrier is no longer offering lead umbrella coverage to any OFS companies due to sustaining too many portfolio losses and others still offering capacity are taking a much closer look and heavily scrutinizing their current OFS portfolios. Carriers still willing to write both primary and lead umbrellas are offering lower limits for larger clients, as we are seeing what used to be $10 million offerings starting to trend downwards to $5 million offerings.

Attachments are also under pressure as well, as carriers are seeking assistance from facultative reinsurance markets to increase their umbrella attachments on auto liability in this sector. Due to the combination of an increase in the frequency and severity of claims in both the general liability and auto liability segments of this class, this sector bears monitoring as 2024 progresses. While capacity remains in the sector (especially for insureds with smaller fleets and profitable loss histories), it is vital that clients differentiate themselves and highlight workplace and auto safety practices and hiring criteria.

Excess liability capacity above the lead umbrella remains stable year-over-year, with many companies in both the U.S. and London offering more limit than most insureds require.

Upstream

2023 was a very challenging year for the upstream segment (much more so for the offshore segment than for onshore) due to the exit of the Markel-backed JH Blades GL/$75 million excess facility. Pricing was negatively impacted for most Blades clients and 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 JH Blades facility were able to find ample capacity both domestically and in London, but the loss of the $75 million facility impacted many renewals negatively in 2023.

As we move into 2024, it appears that JH Blades has put together a new facility (currently GL/lead $10 million) and we expect that this will increase competition in the upstream space and will put pressure on 2023 rating metrics. Many companies in the industry were long-term Blades clients, so it will be interesting to see the impact of the facility's return on 2023 renewals who moved carriers. While we do not expect a monumental shift in pricing, we do feel the increase of capacity will be beneficial for insureds with profitable loss histories and will put pressure on incumbent markets.

Excess liability capacity above lead umbrellas remains at record levels both domestically and in London (and Bermuda for clients buying large liability towers) and while we do expect rate increases in the mid-single digits in Q1 and Q2, we do feel that rates will taper down as the year progresses.

Midstream & 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 carriers 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 the marketplace began to flatten in the second half of 2023. We do feel that smaller midstream programs will see more of a rate increase need than larger programs.

Market summary

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 shifting in an upwards direction for most segments outside of modest rate increase asks.

OFS clients (especially larger clients or clients with negative claims histories) need to begin the renewal process early. It is vital to communicate with incumbent markets early in the process to understand if a renewal will be negatively impacted, allowing enough time to seek alternative options. It is vital to differentiate OFS accounts via underwriting meetings to highlight proactive risk management practices to combat rising loss severity and 'loss fatigue'.

Excess liability capacity appears to have mostly stabilized for most segments (including upstream) 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 outside of OFS segments. Insureds should continue to differentiate their risks and proactively highlight risk management practices during the renewal process.

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 for most segments, the underlying issues that were a direct cause of the hard market in prior years still exists and does not appear to be going away anytime soon.

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. Litigated claims frequency continues to trend upwards and settlement amounts continue to rise each year, as plaintiff firms clearly understand commercial insurance lawsuits is quickly becoming a 'cottage industry'.

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. Claims inflation does not appear to be abating, and pricing and limits deployed are under pressure as a result, especially regarding lead umbrella capacity.

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; they 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.

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.

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