Insurance Marketplace Realities 2024

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Introduction

Executive summary

Watching developments in the property and casualty (P&C) insurance lines over the last couple of years has been like watching a landslide, where a slight change in an unstable environment can cause the higher ground to shift, starting a chain reaction of compounding issues that destabilize the ground below.

In 2022, inflation was the catalyst. For first-party risks, increasing prices on materials and supply chain disruptions had a compounding effect on insurance claims costs. On the casualty side, social inflation continued to lead to disproportionately high claims.

Property reinsurers cut capacity

As reinsurers lost their footing, particularly after Hurricane Ian, they made wholesale cuts in property reinsurance capacity, resulting in both substantial price increases and larger retentions for many retail insurers. Retail insurers began overhauling their property insurance portfolios, reducing capacity and driving a hard property market for consumers that, in many ways, surpassed hard conditions experienced in 2020.

For property insurance, these hard conditions have prevailed throughout 2023. With the combination of inflation, Maui wildfires and convective storms, the industry will close 2023 with more than $100 billion of insured property losses, despite what may end up being a mercifully calm Atlantic hurricane season. A possible silver lining could be that the restructuring of reinsurance treaty retentions throughout the year will leave the capital base poised to generate meaningful returns. If that occurs, additional capital could come into the property insurance marketplace and help mitigate the hard property market in 2024.

This is not, however, to suggest the return of solid footing.

Casualty treaty reinsurers telegraph concerns

Heading into 2024, casualty treaty reinsurers are telegraphing concerns around social inflation and rate adequacy in the liability lines. If investment and reinsurance capacity falls out of the liability lines, the current “moderate” rate environment could be pushed into harder conditions.

From an economic standpoint, news headlines drive a sense of uncertainty amid war in Ukraine, conflict in the Middle East and a slowing Chinese economy. Yet the P&C industry remain well capitalized with $1,018.6 billion in policyholder surplus and increasing yields as of June 14, 2023 according to AM Best. While the markets aren’t yet willing to adopt the cash flow underwriting concepts of the early 1990s, the improved investment yield undoubtedly will continue to help carriers’ bottom lines.

Despite the shifting terrain, in the near term, we don’t expect material or sudden changes in the market – for better or worse. The property market will try to lean into the hard market for as long as possible (which could be increasingly difficult if new money comes into the market on January 1).

With a constricting capital base and current insurers remediating their liability portfolios, the casualty market might attempt to drive rate increases.

The bright spot: Financial lines

On a brighter note, the financial lines, including cyber, appear to be on steady ground in a soft market. It would likely take a couple of considerable claims or a troubled financial market for the financial lines to begin to slip significantly toward a hard market.

Thank you for your interest in this edition of Insurance Marketplace Realities and we look forward to working with you in navigating a dynamic market.

Contact

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

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

Here are some highlights from our 2024 rate forecast predictions:

Casualty

General liability
+1 to +4%

Automobile liability
+4% to +7%

Workers compensation
-3% to -1%

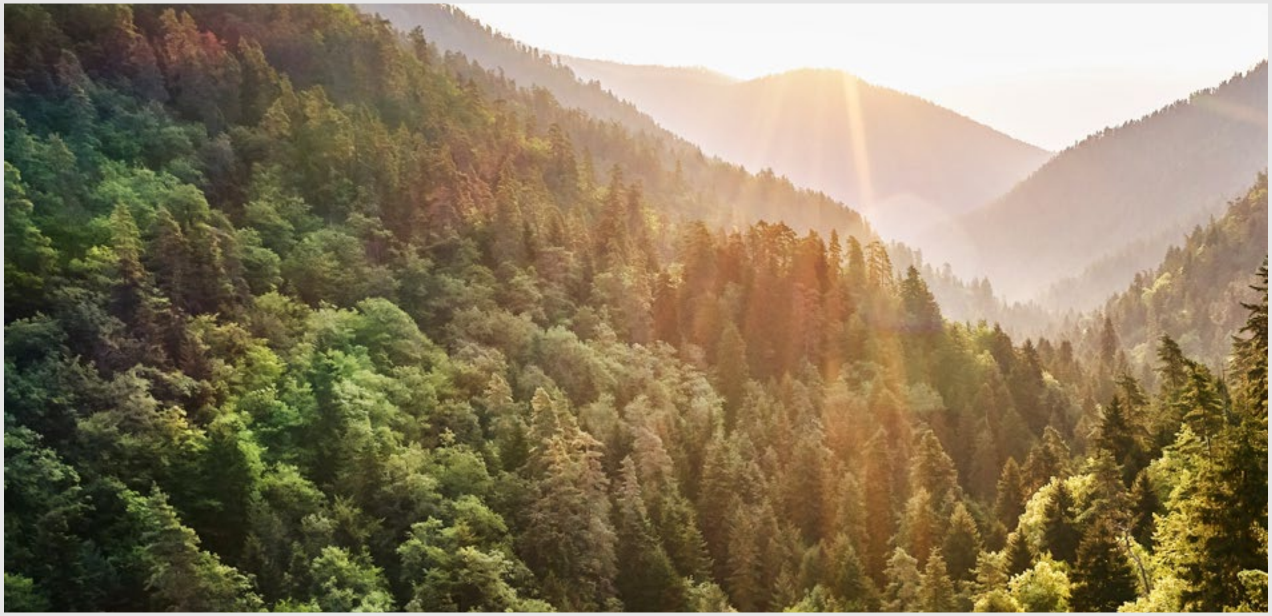
Excess workers compensation
-2% to +5%

Umbrella liability
+4% to +8%*

Excess liability
+2% to +7%*

- Primary and excess liability structures have evolved significantly since 2015 because of nuclear and mega verdicts. As insurer balance sheets were impacted by severity in losses and subsequent premium needs, both clients and insurers needed to change limits and structures to absorb the impact.

* For challenged risk classes, particularly heavy auto accounts, expected renewal rates will be higher.



Property

Non-CAT exposed
Flat to +10%
CAT exposed
+10% to +25%

- Insurers remain fully focused on valuations to demonstrate to their reinsurers that their portfolio data is robust, accurate and represents inflation adjusted replacement cost valuation when deploying capacity.

Highlights continued:

Cyber

-5% to +5%

- While market stabilization has continued in 2023, organizations should continue to focus on improved cyber security hygiene to offset a potential market shift due to ever-expanding cyber threats.

D&O

Public company – Primary:

-10% to flat

Excess/Side A DIC (public company):

-15% to -10%

Excess/Side A DIC (private company):

-10% to flat

- Availability of abundant capacity continues to drive competitive market dynamics, but where insureds had experienced material premium relief in previous renewal cycles, the extent of decreases may begin to taper off.

Terrorism and political violence

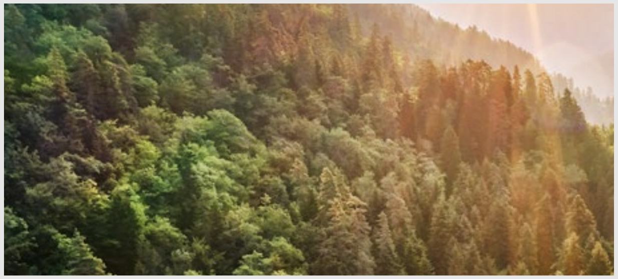
Terrorism and sabotage:

+5% to +20%

Political violence:

+15% to +40%

- Rates continue to be impacted by major events in Chile, Hong Kong, South Africa and Ukraine. However, Q1 to Q3 2023 loss ratios have been much lower compared with more recent years.
- Insurers continuing to pay some of the largest losses in the market's history due to the crisis in Ukraine affecting the political violence market and other correlating war and political classes, but some loss settlements are coming in lower than initial reserves.
- Multiple geopolitical and socioeconomic concerns on the risk radar for insurers: Ongoing Russia-Ukraine Conflict, Taiwan Cross-Strait relations, potential global or regional recessions in 2023, global energy crisis, and increasing social inequality gap.
- Some insurers mandating newer cyber exclusions with new "data" exclusionary language in addition to more traditionally "cyber-attack" focused language.



Surety

Flat to +10%

- The global construction industry continues to face downward pressure as high inflation and tightening monetary policies limit investment growth. We expect a protracted economic decline in China will have strong global implications. Global construction output is expected to expand 2.6% (2.1% excluding China) in 2024.
- Commercial surety pricing remains flat except for bank deposit bonds, which are experiencing upward pressure of 10%+. Availability of the bonds remains limited with most sureties focusing on the largest of the banks. Many surety companies have exited the product line.
- Digitization remains a major trend in the industry with greater regulatory impact as governments and insurance companies attempt to minimize cost, improve operational efficiencies, minimize fraud and ensure inclusive access.

Major product lines

Click on the buttons to view each major product line.

Property

Domestic casualty

International casualty

Middle market

Canada

Property

Rate predictions

Non-CAT exposed	CAT exposed
Flat to +10%	**+10% to +25%**

Key takeaway

Insurers remain fully focused on valuations to demonstrate to their reinsurers that their portfolio data is robust, accurate and represents inflation adjusted replacement cost valuation when deploying capacity.

Absent any major CAT events, individual risk characteristics including higher risk occupancies (i.e., frame habitational, food, etc.), accounts with moderate to heavy loss activity and/or accounts requiring maximum market available CAT limits may trend higher than expected average range.

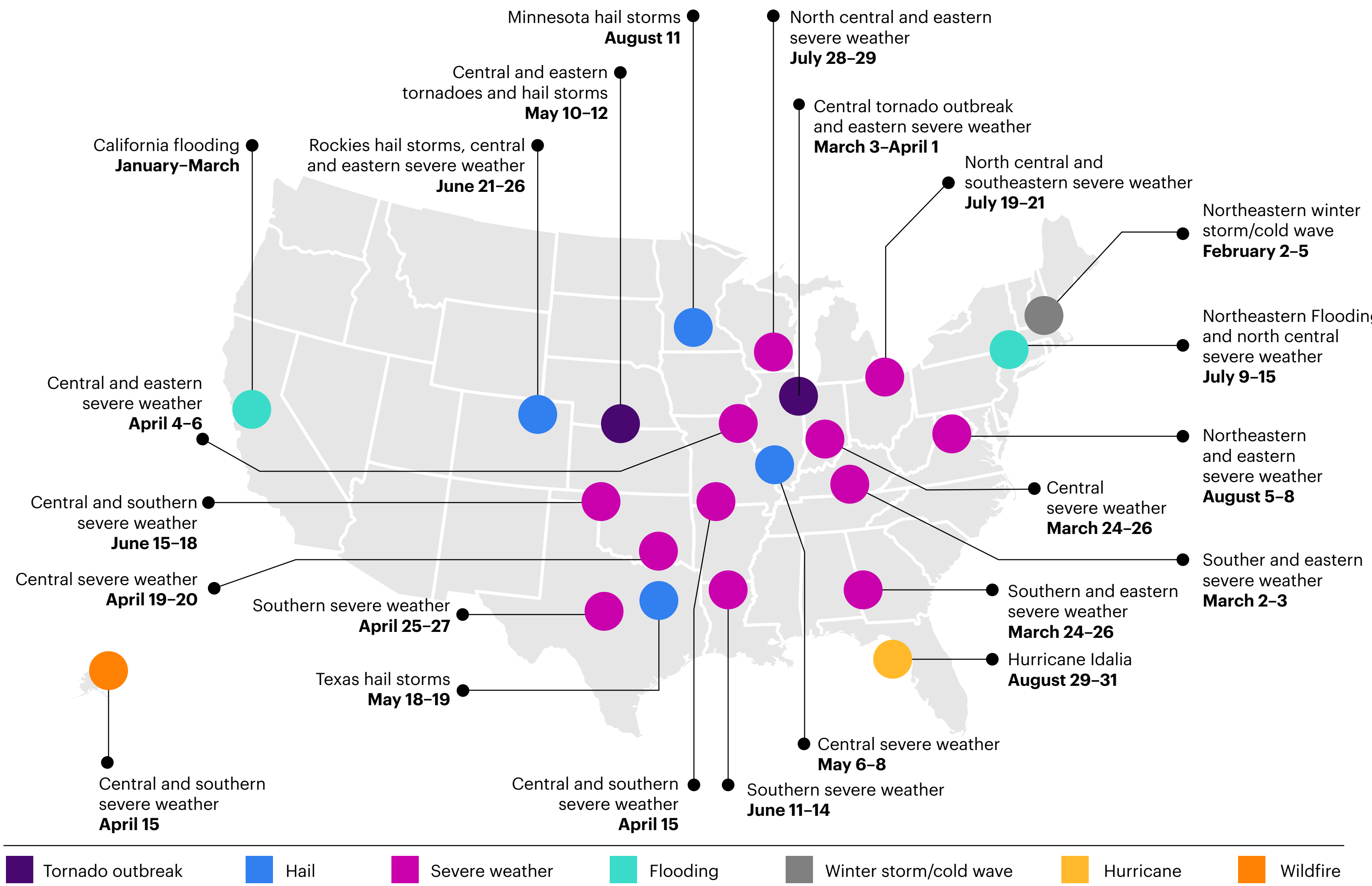
The direct property marketplace will continue to experience property catastrophe reinsurance challenges as insurers and insureds look to adopt buying decisions based on current market conditions.

- 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.
- Inflationary pressures are increasing PMLs for insurers and, with CAT reinsurance rates recast at higher than recently historical rates, insurers remain diligent in balancing net exposures against robust demand for insurance capacity.
- Insurer/reinsurer focus on limiting catastrophic loss risk coupled with combined ratio profitability and Central Bank monetary policy continues to exacerbate imbalance of supply and demand.
- The consensus of a "new normal" solidifies a trend of hyperfocus on rate adequacy and underwriting/combined ratio profit.
- New reinsurance capacity through capital market investment has remained largely on the sidelines due to more attractive and guaranteed investment returns in the current interest rate/return environment.
- Monetary/interest rate policy from the U.S. Federal Reserve is seen to remain restrictive for the foreseeable future, thus keeping rates elevated until inflation has been brought in line with goals. This higher interest rate environment is steering potential capital market investments away from insurance/reinsurance.

Catastrophe risk — What is the new normal?

- As the definition of natural catastrophe risk continues to be broadened from the traditional perils of earthquake, flood and windstorm in high hazard zones, a heightened concern from underwriters incorporates such secondary perils as severe convective storms, wildfires and freeze into the new definition.
- Events such as Hurricane Dora influencing wildfires in Maui, and a 5.1 earthquake occurring during Tropical Storm Hilary in southern California, highlight the potential for multiple perils to occur simultaneously.
- The 2023 Atlantic hurricane season has already seen the emergence of six hurricanes, with three of them being major hurricanes (Category 3 or above).
- CAT losses and severe convective storm losses predominantly in the U.S. have contributed to one of the worst halves in history in terms of catastrophic losses.
- Experts estimate that severe convective storm losses in the U.S. so far in 2023 total close to $40 billion to $50 billion, with further adverse loss development possible.
- In 2023 (as of September 11), there have been 23 confirmed U.S. weather/climate disaster events with losses exceeding $1 billion. These events include 2 flooding events, 18 severe storm events, 1 tropical cyclone event, 1 wildfire event, and 1 winter storm event. The 1980 – 2022 annual average is 8.1 events (CPI-adjusted); the annual average for the most recent five years (2018 – 2022) is 18.0 events (CPI-adjusted).

Figure 1: **U.S. 2023 Billion-dollar weather and climate disasters**

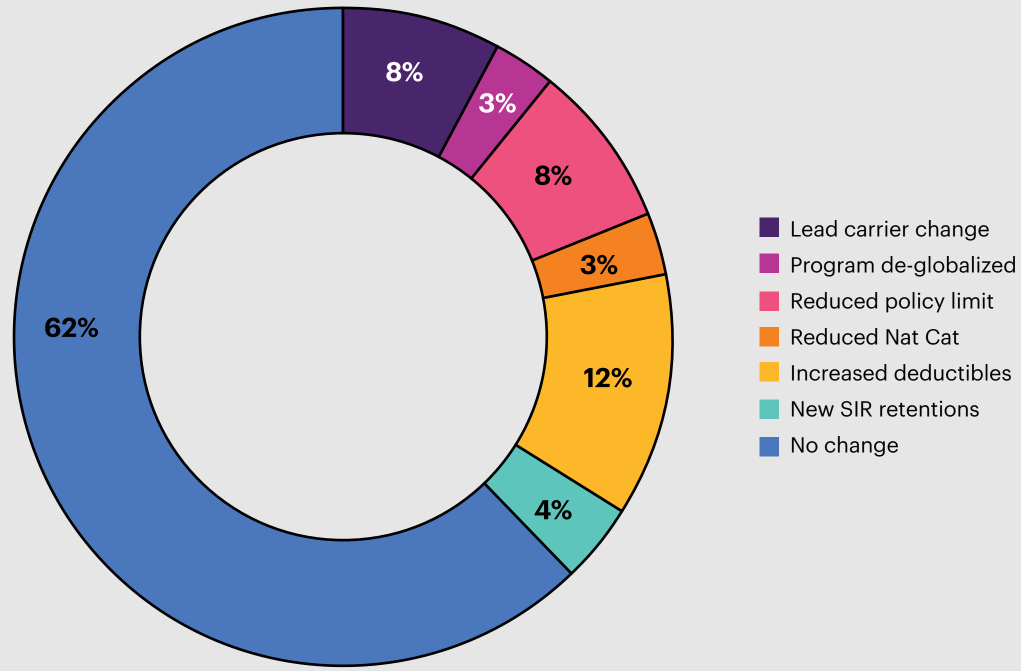


This map denotes the approximate location for each of the 23 separate billion-dollar weather and climate disasters that impacted the United States through August 2023
Source: https://www.ncei.noaa.gov/

As pricing continues to increase and capacity shortages persist, a philosophical shift from traditional risk transfer to a more holistic risk financing approach emerges.

- Alternative risk transfer options to limit the trading of dollars are becoming more viable (captive, structured and/or parametric solutions).
- 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 and forcing insureds to look at retaining the risk.
- Maximum deductibles on catastrophe risks are being heavily scrutinized if being offered at all, which results in more retained risk for the insured.
- Florida minimum deductibles and percentage deductibles are being highly scrutinized with pressure to increase beyond the traditional 5% threshold.
- Insureds are pulling all levers to balance their total cost of risk against risk transfer (self-insurance, limit reduction, increased retentions).
- As insurers and reinsurers alike struggle to model and price given the expanding definition of CAT, increased costs will presumably be passed on to insureds.

Figure 2. **Program changes Q1 — Q2 2023**



Source: WTW internal data

Quarterly average rate trends: January 2020 — June 30, 2023

As the property market continues to be challenging, we recommend that all key stakeholders are aware of the continued challenges and inconsistencies in rate versus the average. Budgetary expectations may fluctuate based on availability of capacity, underwriting guidelines and market conditions.

Figure 3. **Quarterly average rate trends: January 2020 — June 30, 2023**

Source: WTW internal data

Insurers remain fully focused on valuations to demonstrate to their reinsurers that their portfolio data is robust, accurate and balanced when deploying capacity.

Index	2017	2018	2019	2020	2021	2022	2023*
ENR — Building cost index	3.3%	3.3%	1.74%	3.96%	13.94%	9.4%	2.9%
FM global — U.S. industrial buildings average	1.2%	5.2%	1.73%	1.42%	18.40%	11.1%	5.3%
RS Means — 30 city average	4.0%	5.5%	2.05%	1.71%	15.83%	12.1%	1.9%
Marshall & Swift — U.S. average	2.7 to 3.7%	3.2 to 6.0%	0 to 1.3%	3 to 6.1%	16 to 24.5%	11.1%	6.2%

- Even as valuation increases seem to be stabilizing, proper asset valuation will remain the marquee issue and equate to some 90% of all negotiations at renewal.
- Insurers continue to combat undervaluation with the imposition of margin clauses or occurrence limit of liability endorsements (OLLE).
- 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.
- **NOTE:** In order to ensure adequacy of coverage, existing limits and deductibles should be revisited annually as values are adjusted

Industry spotlight

Industry-related factors of note

Financial institutions & professional services

- The confluence of a challenging property insurance market coinciding with tight credit availability have led many borrowers to purchase more limited coverage than loan covenants would normally require. Commercial real estate borrowers in large parts of the U.S. have been particularly hard hit due to compressed operating margins and decreasing market value of the loan collateral property.
- In the case of a catastrophic loss to the loan collateral property, there may be insufficient limits available to repair the property thus impairing the properties revenue stream and making loan payment default more likely. Borrowers with damaged properties in loan payment default may be more willing to allow foreclosure or to "turn the keys back" to the lender. This scenario is especially more likely in the case of non-recourse commercial real estate loans.
- WTW has been advising bank and other non-bank lending institutions to more closely scrutinize the level of property insurance coverages that their borrowers are procuring. In addition, WTW has been assisting lending institution insureds with a suite of specialty coverage products to include the following:
  - Mortgage impairment coverage policies: Provides lenders with loan portfolio wide coverage to recover their financial interest in properties in the case of loss where insufficient borrower coverage is purchased and the lender must foreclose/repossess the damaged property.
  - Lender/force placed coverage policies: Provides lenders with coverage to protect their financial interest in a property or portfolio of properties where the borrower(s) may be current on their loan payments but purchasing deficient property insurance coverage.
  - Foreclosed/repossessed coverage policies: Provides lenders with coverage to insure up to replacement cost of a property or portfolio of properties where the borrower(s) have defaulted on their loan and the lender has taken title of the property.
- The expectation of a prolonged period of tight credit conditions accentuates the need for lenders to adequately protect their balance sheet. To put the magnitude of the issue in context there is an estimated ~$1.5 trillion of commercial real estate loans that will need to be refinanced in the next 18 months. If interest rates indeed stay "higher for longer" we can expect to see an elevated need for these types of coverages.

Contact

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

Domestic casualty

Rate predictions

General liability	Auto liability	Workers compensation	EXWC
+1% to +4%	+4% to +7%	-3% to -1%	-2% to flat

Umbrella
+4% to +8%
+10% to +15% for heavy auto/large fleet risks

Excess
+2% to +7%
10%+ for heavy auto/large fleet risks

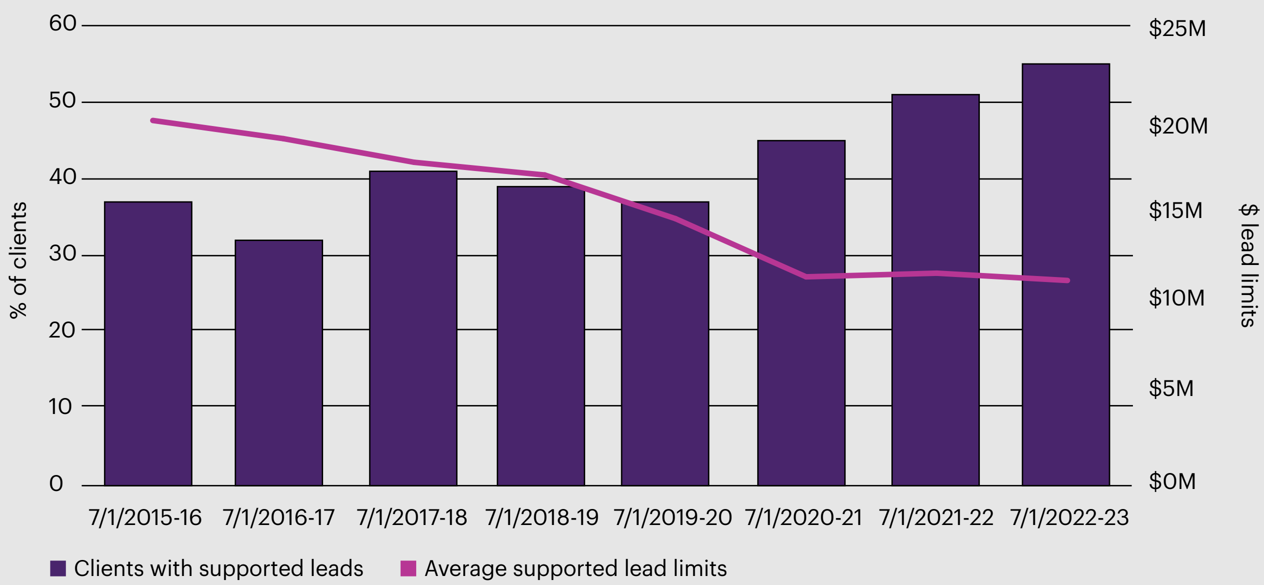
Key takeaway

Primary and excess liability structures have evolved significantly since 2015 because of nuclear and mega verdicts. As insurer balance sheets were impacted by severity in losses and subsequent premium needs, both clients and insurers needed to change limits and structures to absorb the impact.

As the frequency and severity of nuclear verdicts continue to increase, so has the use of supportive lead program augmentation.

In analyzing this trend from 2015 to 2023, WTW has found that 55% of WTW's large and complex clients currently purchase umbrella liability and primary liability from the same carrier (from 37% in 2015), representing a 49% increase in this structure alternative. Congruently, WTW has also found that 44% of supportive lead structures have reduced umbrella limits over the same period, from an average limit of $20.1 million to $11.2 million today.

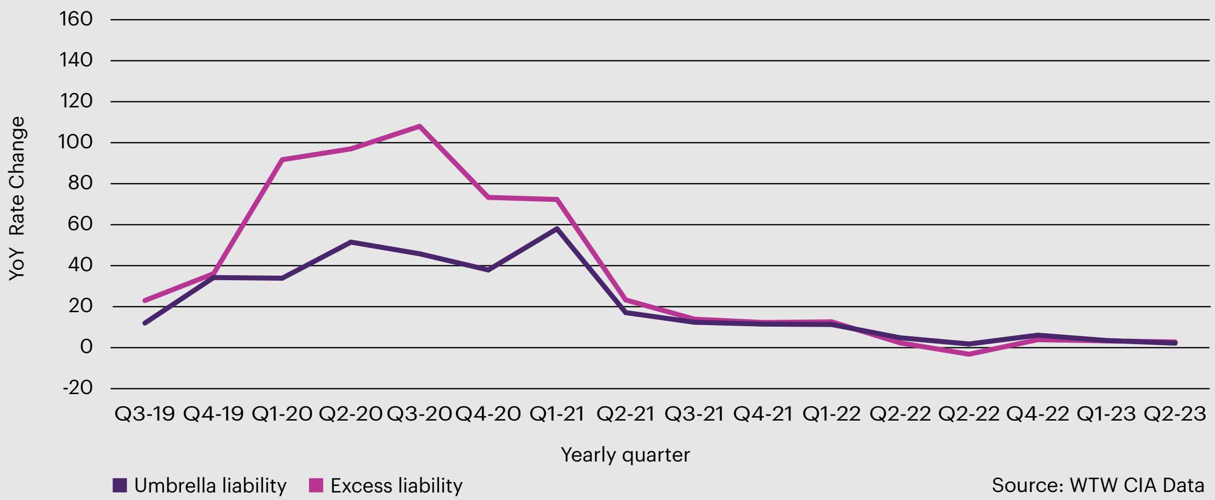
Figure 1. **Clients with supported leads and average limits**



Source: WTW CIA data

- According to a recent study by the U.S. Chamber of Commerce Institute for Legal Reform published in September of 2022, the median nuclear verdict increased 27.5% over a ten-year study period. The Institute found that while the median verdict was $20 million, the average verdict was much higher at $76 million due to outsized nuclear verdicts.
- These verdicts are often insurable and funded by umbrella/excess liability insurance, causing a constriction in excess liability capacity and a substantial increase in rates as seen in Q1 of 2021, with an average umbrella and excess rate increase of 58% and 72% respectively (WTW CIA data).
- By 2021, global litigation funding saw an estimated $17 billion invested, more than half of that investment being in United States litigation. Plaintiffs' lawyers are incentivized to pursue mass tort litigation with a substantial return on investment from hedge funds, private equity firms, and other companies. These law firms greatly contribute to the increasing number of nuclear verdicts from jury trials. The insurance industry can expect the frequency and severity of litigation to continue. Insurers are contemplating this in their attachment point and lead capacity strategies.

Figure 2. **Quarterly umbrella/excess rate trend**



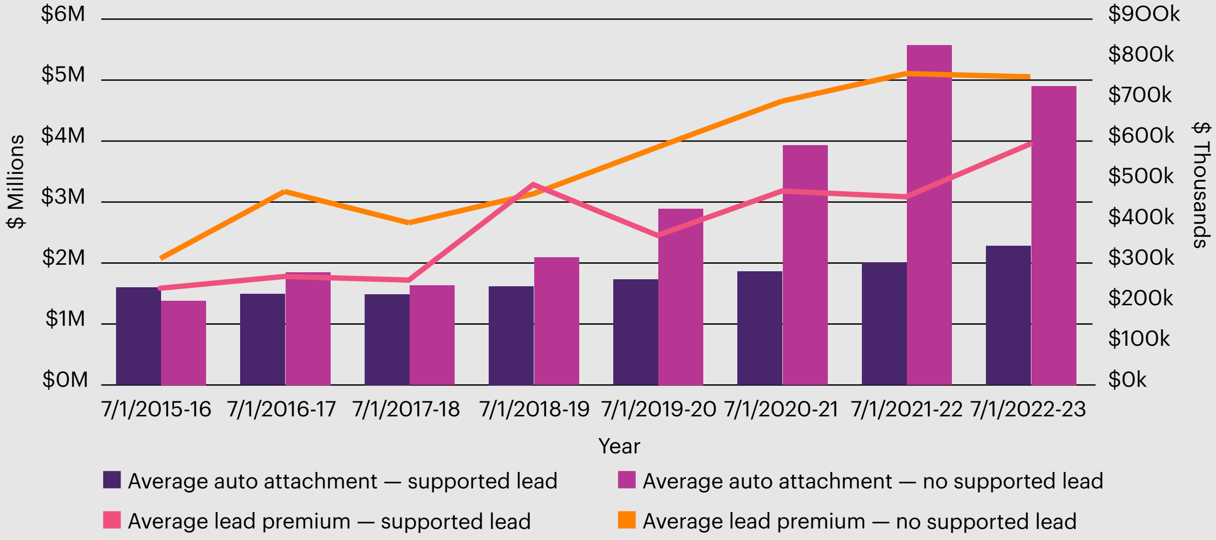
Source: WTW CIA Data

- The popularity of supportive lead structures benefits clients and insurers in several ways, leading to a more sustainable insurance mechanism as follows:
  - **Portfolio premium:** By writing both the lead umbrella and primary liability, insurers benefit from additional premium to pay covered losses.
  - **Coverage and claim concurrency:** Clients benefit from having insurer alignment on primary and lead umbrella placements.
  - **Excess pricing insulation/stabilization:** Excess liability insurers typically price layers based on "rate relativity." Portfolio financing can allow insurers to be more competitive on the lead umbrella pricing, allowing more competitive rates up-the-tower, often to the tune of seven-figure savings in the supportive lead structure change.
  - **Reduced exposure to loss:** By systematically reducing umbrella capacity from the once-popular $25 million lead block, to $10 million or $15 million today in conjunction with raising primary attachments, insurers are willing to add risk transfer in the primary limit, providing an overall reduction on limit exposure and insulation from nuclear verdict impact.

Lead umbrella carriers who write supported leads typically allow for lower attachment points and lower premiums than those who write unsupported lead umbrellas. From 2015 to 2017, supported leads didn't correlate with low attachment points. Starting in 2017, the market has been demonstrating significant benefits of pairing the primary and lead to support much lower attachment points.

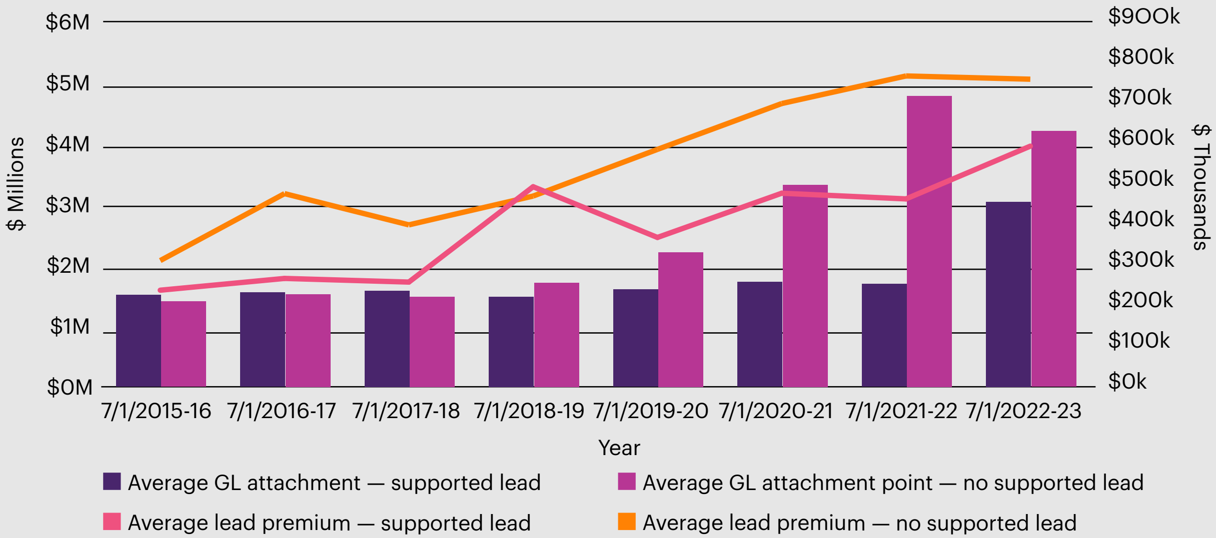
- Automobile liability (AL) average attachment points have steadily increased from $1.6 million supported and $1.3 million unsupported in 2015 to $2.2 million supported and $4.9 million unsupported in 2022-23 (WTW CIA data).
- Carriers are mitigating their respective AL combined ratios over 100% by simultaneously increasing primary retentions and employing both facultative and treaty reinsurance as they move up primary attachment points.
- Similarly, general liability (GL) average attachment points increased from $1.5 million supported and $1.4 million unsupported in 2015 to $3 million supported and $4.2 million unsupported in 2022-23 (WTW CIA data).
- Corresponding lead umbrella premiums increased from 2015 to 2018-19 for both supported and unsupported positions from a range of $230,000 to $300,000. Pairing the primary and lead didn't have an impact on premium until 2018. Then, the average supported lead umbrella premiums took a reasonable climb from $493,000 in 2018 to $593,000 in 2022-23. Meanwhile, average unsupported lead umbrella premiums jumped from $470,000 in 2018 to $758,000 in 2022-23 (WTW CIA data).

Figure 3. **Average auto attachment and premium**

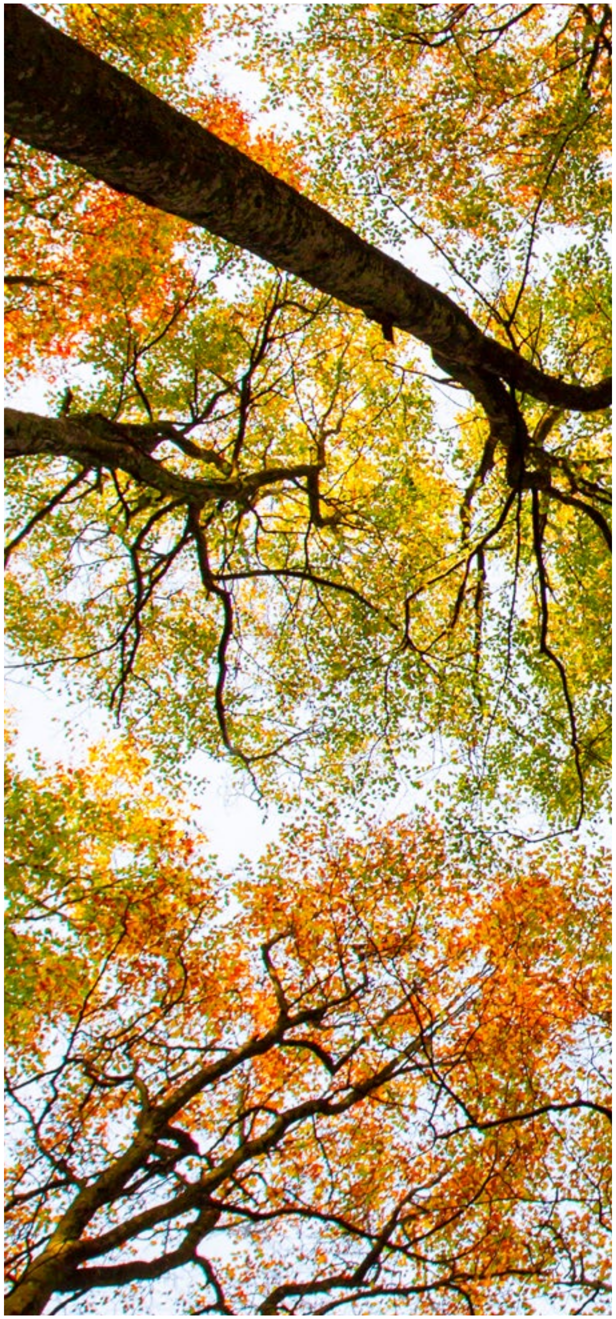


Source: WTW CIA Data

Figure 4. **Average general liability attachment and premium**



Source: WTW CIA Data

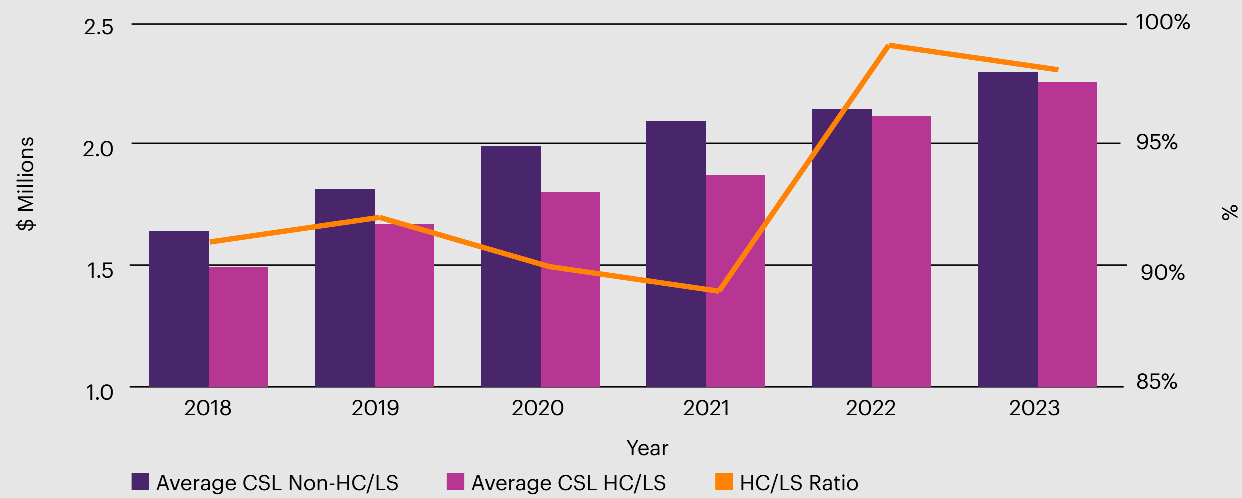


Industry spotlight

Healthcare and life sciences umbrella insurers catch up to traditional casualty marketplace.

As part of WTW's ongoing emphasis on industry-specific market insights, we analyzed our proprietary placement database to evaluate how insurers specializing in healthcare/life sciences (HC/LS) liability responded to worsening auto liability claim trends.

Figure 5. **Comparing healthcare/life sciences auto limit requirements to all other industries over time**



- While both "traditional" umbrella insurers and those with HC/LS expertise have steadily increased their underlying combined single limit (CSL) requirements since 2018, the HC/LS marketplace consistently lagged behind the attachment point needs of all other industry umbrella insurers. Over the four-year period spanning 2018 to 2021, WTW's HC/LS clients benefited from primary auto limit requirements that were 10% lower than the rest of the marketplace. This benefit, potentially attributable to HC/LS insurers' focus on pandemic-related liabilities, has since been eliminated. Beginning in 2022 and continuing in 2023, the HC/LS marketplace has placed more direct emphasis on attachment point adequacy for auto liability and are now aligned with the rest of the marketplace with average primary limits cresting above $2 million.

Pennsylvania Supreme Court approves punitive damages award.

- Around the country, the plaintiff bar is seeking creative ways to obtain larger damage awards. Frequently, this will include claims for punitive damages, which are intended not to compensate a specific injury but to punish a wrongful actor and deter future conduct. In a July decision, the Pennsylvania Supreme Court affirmed an award of punitive damage against multiple defendants. This decision was important because it set the precedent that a combined punitive damage award can exceed a 10:1 ratio when compared to the compensatory damages awarded a plaintiff. The court also ruled that the potential harm that could have resulted from the wrongful conduct can support punitive damages.
- While this case is only controlling law in Pennsylvania, attorneys in other states are likely to pursue similar strategies in seeking punitive damages from multiple defendants. It also underscores the need for clients to consider their exposure to punitive damages and the various ways such risk can be addressed, including through most favored jurisdiction endorsements, punitive wrap policies or offshore coverage.

View additional details at PA opens the door to larger punitive damage awards.

Contact

James Sallada
Casualty Leader, North America
+1 917 622 0203
james.sallada@wtwco.com

International casualty

Rate predictions

International casualty:
Flat

Key takeaway

The market for international casualty coverage remains stable within a complex landscape. Capable markets are offering competitive terms and pricing while also investing in strategies to set themselves apart.

A broad range of carriers continues to provide ample capacity, with a commitment to investing in talent and employing efficient risk transfer tools.

- External factors such as inflation, geopolitical instability, instances of nationalism, and a fluctuating regulatory environment pose ongoing challenges. Nevertheless, solutions remain available.
- Data remains a key commodity in this market, whether it be underwriting exposures, as well as the data that carriers make available about the coverage they issue around the world.
- Across the portfolio, claims statistics remain below the common averages for U.S. casualty, whether in terms of frequency or severity. However, administrative costs remain a significant factor in international casualty placements and warrant consideration during renewal planning and budgeting.
- While related lines of business such as U.S. and excess casualty can influence international casualty renewals, buyers can anticipate a stable landscape benefiting from carrier confidence and healthy competition.

- With a focus on the amount of administrative complexities from multinational coverage, opportunities exist to streamline time and costs. Multi-year arrangements can provide longer-term pricing stability. Additionally, partnering with a select number of carriers supporting multiple lines of coverage can yield pricing and terms advantages.

U.S.-based insureds can access international casualty markets in both the U.S. and Europe to obtain competitive terms; however, there are some notable coverage nuances.

- Accessing coverage from European markets will deliver optimal coverage terms for the larger multinational organizations who require support for more complex risks. U.S.-based markets offer competitive terms for both middle-market and larger global programs.
- Establishing clear objectives about what success will look like will help ensure a successful renewal in general; however, when choosing a market access point, insureds should examine the value of higher localized limits (e.g., $10 to 20 million or more) and/or the issuance of coverage terms more commonly available in Europe — and ensure a source for foreign voluntary WC.
- Access points into the market do not impact the need to ensure proper alignment across U.S., international and excess casualty on topics of coverage territory, attachment points and carrier relationships.

While most key coverage terms remain available for competitive pricing, insureds have a few places to focus.

- PFAS (per and poly-\fluoroalkyl substances) are still very much a topic at renewal, and insureds with manufacturing and retail exposures can anticipate additional underwriting data requests. However, there are recent examples of a softening approach in the market, where exclusions can be removed where exposure is minimal.
- With federal sanctions imposed in eastern Europe, global and regional carriers are restricting or eliminating coverage that can be issued in Russia and Belarus. Coverage from global programs is a particular challenge for buyers' subsidiaries in the region, so insureds should seek independent coverage in the local market. In recent exceptional cases, global program carriers have considered more flexibility in the discussion of issuing admitted coverage into the Ukraine as well as offering excess/DIC limits around exposures in these countries to protect the insureds' global HQ exposure.
- In preparation for the implementation of international programs, there are often several AML & KYC documents — and documents will vary depending on the mix of countries involved. It can often take several weeks to identify and complete these documents, so we recommend the elevation of these items prior to renewal; some markets are making them available to insured HQs in order to get out ahead of the work.

Contact

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

Middle market

Rate predictions

Favorable risks

Property +10% to +25%	General liability Flat to +5%	Auto +5% to +8%
Workers compensation -5% to flat	Umbrella Flat to +10%	Excess Flat to +10%

Challenging risks

Property +30% to +50%	General liability +10% to 15%	Auto +10% to +15%
Workers compensation +5% to +10%	Umbrella +10% to +15%	Excess +10% to +15%

Key takeaway

While the casualty landscape has continued to trend favorably, the year began with significant headwinds in the property market, and these challenges have persisted and accelerated through 2023. 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 and are driving greater scrutiny in the underwriting process and on capacity deployment on both property and casualty.

Marketplace overview

- Carriers have high retention and growth goals and are aggressively keeping 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 in the broker and carrier community, additional markets continue to enter the space.
- Several middle market carriers have implemented an industry specialization strategy and are moving away from a generalist model.
- 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 throughout 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.
- Carriers are strategically leveraging property capacity to influence their participation on casualty lines. Additional capacity is also 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, convective storms) have strained 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 of 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 treaty reinsurance renewals throughout the year 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.
- 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 markets' reluctance to deploy full capacity.
- 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. Clients should reevaluate the cost efficiency of risk transfer versus risk retention (via higher deductibles or lower limit purchase).
- Water damage coverage is experiencing higher deductibles and lowered sub-limits, and water damage mitigation is a focus.
- Uncertainty around valuation has also extended to business income and extra expense. With that, carriers have become more stringent on their requirements of a completed business income and extra expense worksheet.
- Given the property market landscape, alternative strategies such as parametrics and facilities are becoming more prevalent in the middle market space.

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 reviver laws in several states.
- For the most part, the wider marketplace is no longer comfortable providing an uncapped per-location aggregate, particularly for industries such as real estate.
- PFAS and biometric exclusions are becoming more prevalent; increased scrutiny is expected. With respect to PFAS, some carriers are willing to remove with confirmation of no exposure; however, others are taking a more stringent approach. These are both emerging topics 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.
- Alternative solutions such as captives have become more prevalent in the middle market space and will continue to be developed to fit the needs of the middle market customer.

Automobile

- Mono-line auto risks are exceedingly challenging to place and should always be leveraged with other lines of business.
- Clients with large fleets and/or fleet makeups outside of private passenger vehicles continue to see a hard market with limited capacity and an increase in cost for that capacity.
- 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. On average, combined ratios are still well above 100%, making this line unprofitable for carriers.
- 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 as coverage needs to 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 frequently 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 industry. In these scenarios, buffer layers are being introduced more often.
- While capacity for lead umbrellas has stabilized, there is still a lack of monoline umbrella or "unsupported" lead market appetite.
- 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 continue to be inconsistent with increased underwriting, appetite changes, reduced capacity, large increases and market participation changes.
- Clients continue to review contractual requirements and limits purchased.
- PFAS (or "forever chemicals"), abuse and molestation, traumatic brain injury, wildfire, assault and battery, sex trafficking and biometric exclusions are being added or coverage and capacity have been limited especially where exposure exists.

Contact

Krista Cinotti
Head of Middle Market and Select
+1 212 915 7783
krista.cinotti@wtwco.com

Beth Cohon
Head of Middle Market Industry and Broking Strategy
+1 212 915 7898
elizabeth.cohon@wtwco.com

Canada

Rate predictions

Casualty

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

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

Automobile liability:
Flat to +7%

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

Umbrella/excess liability, high hazard risks:
Flat to +10%

Property

Non-catastrophe exposed
+5% to +10%

Catastrophe exposed
+10% to +20%

Key takeaway

Casualty: The Canadian casualty marketplace continues with positive but cautious momentum toward a more buyer-friendly marketplace. Carrier sentiments remain highly trepid in adopting a softer marketplace as they are faced with the heightened pressures of hitting growth targets and maintaining long-term profitability among the persistent growth of macroeconomic factors influencing pricing decisions.

Property: After a relatively stable start to 2023, Canada experienced a catastrophic wildfire season in Q3, resulting in evacuation orders for various municipalities and significant losses to personal property. Capacity for Canadian commercial risks remains stable; however, insurers are deploying that capacity more cautiously in wildfire and other natural catastrophe-exposed areas.

Casualty

General liability

- Renewal results, on average, showed marked improvement year over year.
- We saw heightened focus on managing non-owned automobile exposures amid supply chain challenges impacting traditional (owned/leased) automobile exposures.
- While carriers remain focused on inflationary factors, it has been downgraded by year-over-year comparison.
- Carrier priorities shift to more tech solutions that will improve efficiency in decision making, create innovation and launch products quickly as they simultaneously combat workforce challenges.
- We see no marked change in attitudes toward the need for exclusionary language applicable to territory restrictions (Russia, Ukraine, Belarus), climate change, forever chemicals (PFAS), abuse/molestation, and assault and battery.

Automobile liability

- Carrier focus remains on understanding formalized operational and risk control measures as well as the use of telematics in vehicles.
- There is deterioration in claim trends as severe weather events, rising theft and increased costs of repairs continue to exacerbate claim settlements which reflect on pricing and inability to return to decreased rates.
- There exists anticipation for new available capacity from carriers writing existing casualty product lines

Umbrella/excess liability

- The umbrella layer is fast becoming the most challenging layer to replace as carriers must combat low attachment points combined with insufficient premium earnings.
- Attachment points where primary limits are considered inadequate are being re-evaluated.
- There is a moderate return to larger line sizes deployed on excess layers.

The notable increases in competition and market growth force carriers to retreat, further stoking the push toward a softer marketplace.

- Continued marketplace confidence has allowed the entrance of new markets (particularly, MGAs), establishing fresh capacity and new product innovation, options for brokers and clients and a withdrawal of critical senior talent from more established shops.
- A pivot toward more offensive strategies to attain new business and seek prospective clients has carriers aggressively protecting all

well-performing risks and self-regulating on renewal rate asks and coverage offers (limiting exclusions, increased line sizes).
- Capacity deployed across multiple lines of business has strengthened as a winning strategy, becoming a focal point to help stimulate ambitious competition in otherwise challenging industry classes.

Local underwriting authority and referral chains pertinent to Canadian business remain impacted by U.S. and foreign viewpoints.

- Dispelling the need to apply U.S. or foreign approaches to coverage offer and acknowledging Canadian-centric coverage norms (e.g., provision of defense costs outside the limit, availability of sudden and accidental cover), will help leverage opportunities and showcase the benefits of Canadian-controlled and underwritten business.
- Underwriting remains conservative when considering client profiles with extensive U.S. exposure as carriers pursue portfolio balance and limit the probability for possible exposure into U.S. litigation, nuclear verdict and trial litigation costs.

Macroeconomic factors and Q3 center stage natural catastrophes events offer a pause on positive momentum.

- Positive momentum from Q2 paused as several Canadian catastrophic wildfire events, across multiple provinces, garnered unfavorable worldwide attention in Q3. While wildfire season looks to conclude, a cautious approach to pricing and underwriting appetite will remain, as concerns around these natural events continue to grow and carriers prepare for that future.
- Both interest and inflation rates continue to have a large bearing on carrier pricing models as carriers strategize to protect themselves against rising costs anticipated of future claim settlements and managing the escalating trend of exaggerated claims and fraudulent activity.
- Elevated carrier desire to maintain a level marketplace and motivation for long-term profitability is resulting in a strategy to front load on upfront rate and preferences to provide credits as only one-off agreements and singular payouts.

Property

Capacity in the Canadian market remains stable; however, insurers have heightened focus on natural catastrophe perils.

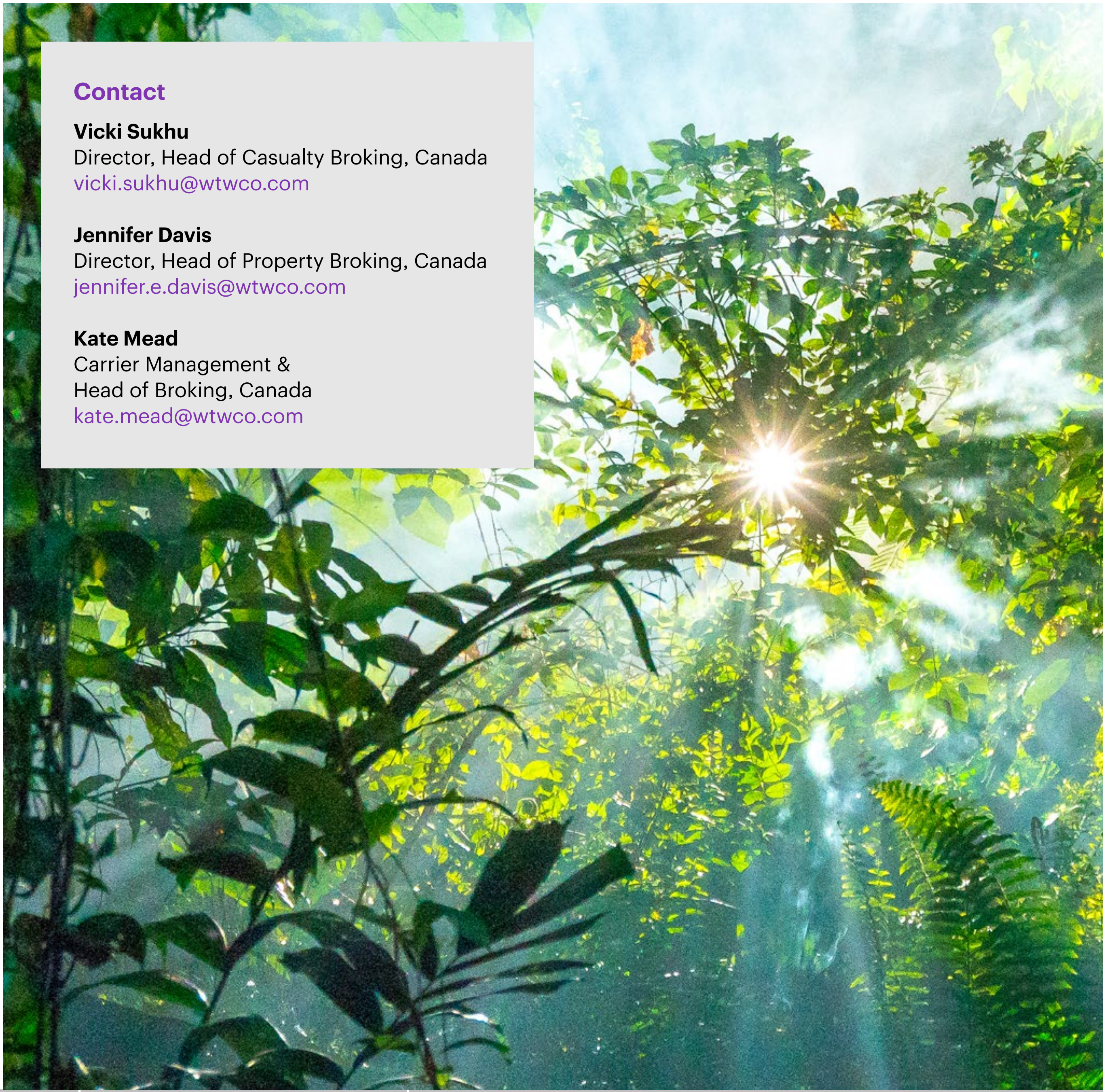
- For insureds with relatively low natural catastrophe exposure and good loss histories, rate increases remain modest (0-5%); however, over Q3 Canadian insurers began to stand firm on minimum rate increase levels closer to +5%; clients with challenging asset profiles and those with poor loss records are seeing larger increases as insurers manage capacity deployed and charge accordingly.
- The Canadian market has not seen capacity leave, although insurers are deploying capacity more judiciously around natural catastrophe perils.
- MGAs (managing general agents) continue to enter the market with a focus on specific coverages and industry sectors, providing capacity for distressed areas, such as residential/frame property, and providing an opportunity for direct insurers to deploy capacity behind the MGA structure.

In light of the severe wildfire season in Canada, insurers are adjusting their underwriting toward wildfire exposure.

- With the increased frequency and severity of wildfire in Canada, in Q3 2023 insurers started introducing wildfire deductibles aligned with other natural catastrophe events, such as earthquake and named storm (i.e., 3% of the total insured value of the location of loss, minimum $250,000).
- Insurers also stopped writing new business for insured locations within a certain radius of an active wildfire (anywhere from 25 – 100 kilometers).
- For insureds with exposures in British Columbia, insurers continue to model to the earthquake zone, and charging rate and applying increased deductibles.

Inflation, valuation and loss control remain areas of focus for insurers.

- Insurers are still expecting insureds to incorporate inflation into their values; however, as economic measures start to take effect and the market adjusts for improvement in supply chain, the expectation of inflationary lift is less than in previous years.
- Ensuring proper valuation is still critical, and some insurers are requiring appraisals as subjectivities. Where insurers do not feel confidence in the values reported they will look to apply margin clauses (5% to 10%). Insurers continue to apply business interruption volatility clauses to manage commodity price fluctuation, typically ranging from 10% to15% with both an annual and monthly cap.
- Loss control and site surveys are also areas of focus and critical for insurers being able to write a risk. Similar to valuation, some underwriters will not come onto a risk without updated engineering, or for incumbent insurers, they are writing risks at higher deductible levels or sublimits until the risk engineering has been updated at key locations.



Contact

Vicki Sukhu
Director, Head of Casualty Broking, Canada
vicki.sukhu@wtwco.com

Jennifer Davis
Director, Head of Property Broking, Canada
jennifer.e.davis@wtwco.com

Kate Mead
Carrier Management &
Head of Broking, Canada
kate.mead@wtwco.com

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- Errors and omissions
- Fidelity/crime
- Fiduciary liability
- Financial institutions — FINEX

Cyber risk

Rate predictions

Cyber risk
-5% to +5%

Key takeaway

While market stabilization has continued in 2023, organizations should continue to focus on improved cyber security hygiene to offset a potential market shift due to ever-expanding cyber threats.

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 now regularly see flat increases or even decreases at renewal. Increases, if any, will be the steepest for those organizations that cannot demonstrate strong cyber risk controls, 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 between markets, as we frequently receive two to three quotes for certain risks. Incumbents are eager to retain business.

- Excess placements are less challenging lately, as increased limit 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 between 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.

Ransomware losses are once again spiking after a slowdown during 2022 and the first quarter of 2023.

- According to Coveware, both average and median ransomware payments increased from the first to the second quarter of 2023. According to the NCC Group, March of 2023 was the most prolific month recorded for ransomware attacks, measuring 459 attacks, a 91% increase from the previous month and a 62% increase compared to March of 2022.[1]
- In the first half of 2023, cyber extortion attacks involving only data exfiltration have become more prevalent. This has contributed to a 70% increase in reported data breaches in the first half of 2023 compared to the same period in 2022.
- 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 in light of the new wave of litigation aimed at privacy violations for the collection of private information through website tracking and biometric scanning.

- 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, as well as a WTW exclusion that provided some coverage for cyberattacks tied to physical war.
- The SEC adopted rules on July 26, in part, requiring that all public companies disclose cyber security breaches within four days after a determination that the incident is material, making it imperative for such organizations to have strong cross functional processes in place to ensure that key stakeholders can quickly make this determination and meet these new reporting obligations.

[1] https://www.nccgroup.com/media/l2anvmij/ncc-group-monthly-threat-pulse-march-2023-v20.pdf

Industry spotlight

Industry-related factors of note

- **Financial institutions:** Regarding the current threat landscape for the financial services industry, the Moveit transfer application vulnerability impacted this industry more than any other in that 30.86% of the hosts running the application were financial services organizations. For larger FIs, we are seeing premium decreases in the 12% to 20% range, but flat to 10% decreases for smaller middle-market FIs. Because FIs are generally viewed as better risks than some other industry classes, there is slightly more competition among markets for this business.
- **Healthcare:** The use of meta-pixel tracking technology by healthcare organizations in particular has become a key area of focus for underwriters, given the fact that impermissibly sharing PHI in violation of HIPAA and various state privacy statutes has recently been the subject of numerous class action lawsuits.
- **Retail:** Our retail clients have seen a unique blend of exposures, as they regularly handle a significant amount of customer data while using social media and influencers, relying on third-party vendors to deliver their products and AI on their websites and at distribution centers.
- **Construction:** Ransomware continues to impact the construction and architects & engineers industry classes, particularly in the small and middle market space. Wire transfer fraud is the most problematic exposure in this industry class and impacts all sized companies.

Contact

Jason Warmbir
Head of NA Cyber/E&O
+1 312 607 0096
jason.warmbir@wtwco.com

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

Directors and officers liability

Rate predictions

Stable risk profiles

Primary (public/ private company)	Excess/Side A DIC (public company)	Excess/Side A DIC (private company)
-10% to flat	-15% to -10%	-10% to flat

Challenged risk profiles

Non-U.S. parent, U.S. exposures	Liquidity challenged	IPOs and SPACs	Challenged industries

Case-by-case basis; potential increases; nevertheless, capacity remains available

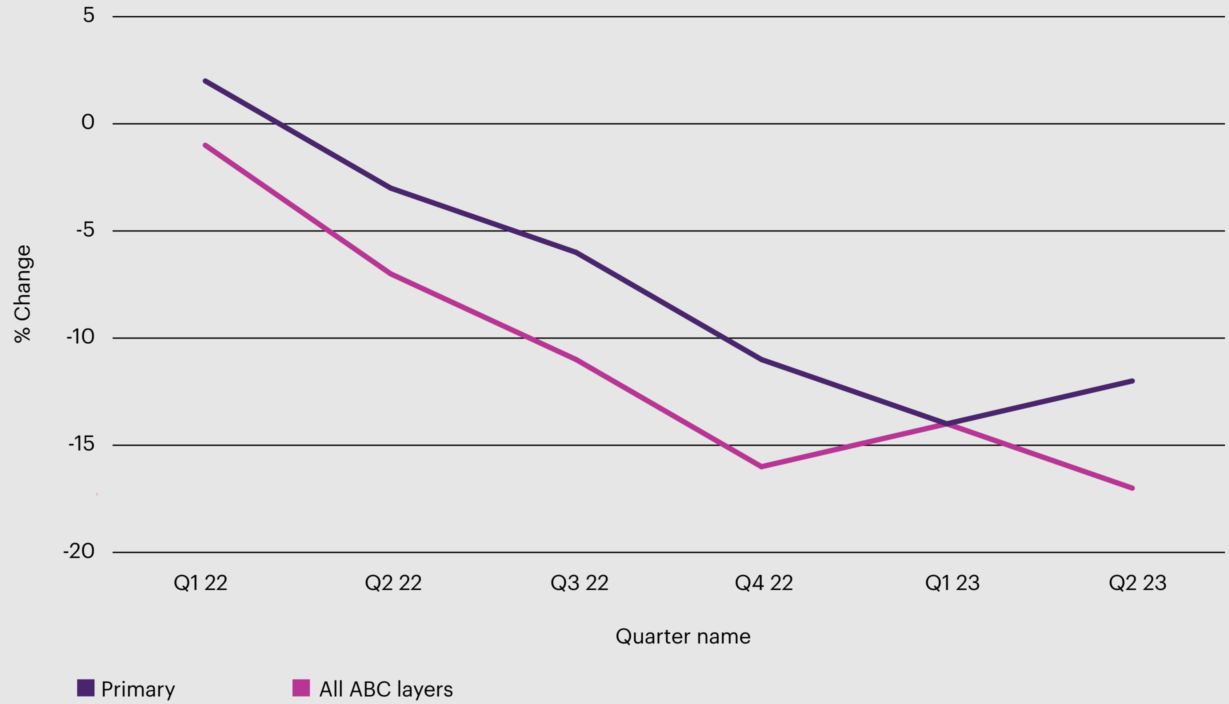
Key takeaway

Availability of abundant capacity continues to drive competitive market dynamics, but where insureds had experienced material premium relief in previous renewal cycles, the extent of decreases may begin to taper off.

Underwriting

- 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.
- **Continued rate decreases:** We expect rates for both excess ABC and Side A to continue decreasing into softer market conditions, including the lowering of ILFs and rate-per-million, reflective of more customary pre-hard market conditions.
- **Some buyers remain 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
  - IPOs, de-SPAC business combinations

Figure 1. **D&O premiums**



Source: WTW proprietary premium tracking data, public company commercials placements, updated on a quarterly basis

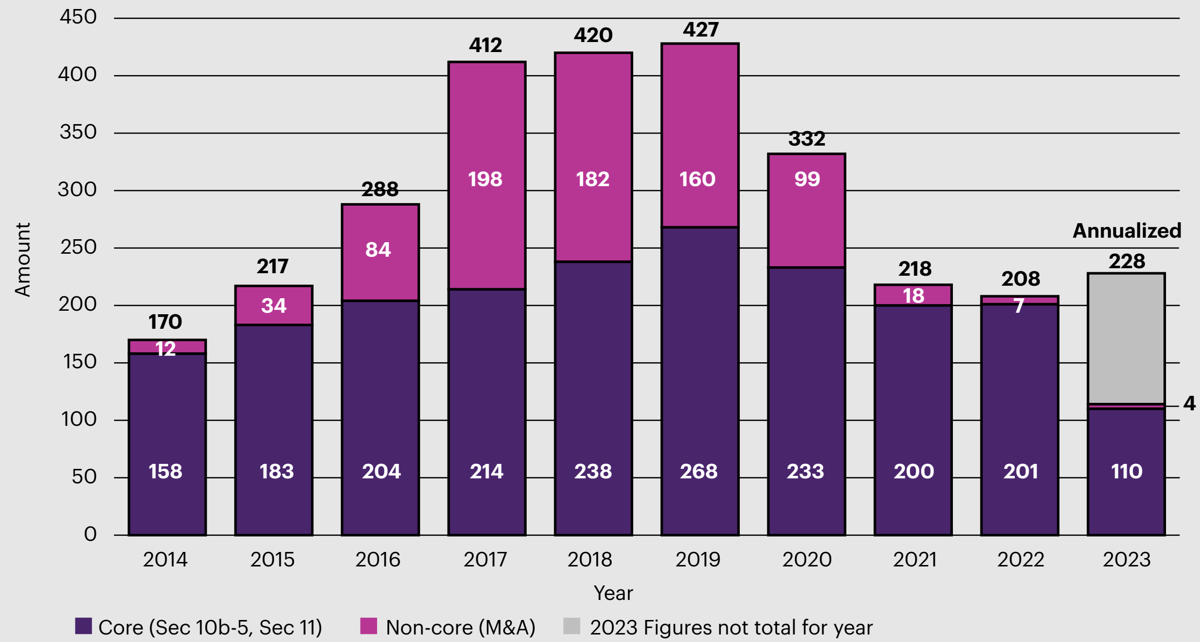
Other market forces

- **Securities class actions (SCAs):** SCA filings through H1 2023 reflect year-over-year increases, annualized at 228 filings, which would be 10% higher than 2022.
- **Broader economic influences:** Recovery from the pandemic gave rise to economic growth, and more recent fears of a recession have tapered; however, D&O underwriters remain concerned with uncertainties arising from inflation, interest rates, supply chain issues and global hostilities, among other factors.
- **Private and non-profit companies:** The moderation of rate increases in 2021 and 2022 has progressed further, with most insureds seeing flat pricing to modest decreases. High-risk profiles and challenged industries may still see increases in 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 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 limit 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.

Developments and market driving issues to watch

- **Silicon Valley Bank and related banking industry D&O risk:** The failures of Silicon Valley Bank, Signature Bank and First Republic Bank have resulted in claims against them and potentially other entities that have suffered setbacks as an indirect result. As of this writing, however, the severity of the phenomenon outside of the banks that were directly involved has mostly dissipated due to government intervention in the backing of deposits. Nevertheless, a total of six securities class actions have been filed in connection with the banking crisis, five in 2023 and one in late 2022. We continue to monitor developments around bank stability, particularly regarding any impact on the banking industry, as well as the economy and markets more broadly.
- **Securities class action (SCA) filing frequency and severity:** SCA filings increased in the first half of 2023 to 114, annualized to 228. Annualized, this would be a modest increase over the 208 filings in 2022.

Figure 2. **Federal securities class action filings**



Source: Cornerstone Research, Securities Class Action Filings: 2022 Year in Review. For 2023 filing figures year-to-date, see Cornerstone Research, Securities Class Action Filings, 2023 Midyear Assessment

In contrast, average settlements in the first half of 2023 are down 47% over 2022, to $21 million, although median settlements in the first half of the year are on the rise, from $13 million (adjusted for inflation) to $16 million. We caution, however, that settlement data in any given year may not be reflective of current D&O market conditions. In this regard, they are lagging indicators, i.e., often more accurately reflecting facts specific to cases filed in previous years and without reference to the amount of D&O insurance proceeds used to resolve the litigation.

- **Nevada issues "defense outside the limits" legislation:** On June 3, 2023, Nevada enacted Assembly Bill 398 prohibiting insurance companies from issuing or renewing liability insurance policies that contain depleting limits provisions. The law does not apply to any liability insurance contract existing on October 1, 2023, but does apply to any renewal of such a contract. As a result of concerns expressed by several insurers, the Nevada Division of Insurance proposed somewhat of a fix in an effort to prevent (according to the Division) "significant increases in the costs of insuring businesses" and "even higher costs for liability insurance." As a result of the additions to the law, the law only appears to regulate liability policies issued by admitted insurers, and while it doesn't require defense cost coverage be unlimited, it does require that defense limits be segregated from indemnity limits. According to one of the new sections of the law, admitted liability policies in Nevada will now be required to state separate defense cost limits on their declaration pages, even if that limit is $0.

  The Nevada legislation is an evolving concern and is giving rise to continued discussions and potential clarification. Nevada-based policyholders should confer with their liability insurance broker and counsel about their placement and renewal strategy options going forward.

- **Final SEC cybersecurity rules:** On the heels of the SEC announcing back in March a package of policies designed to protect the financial system against cyber incidents, the commission adopted rules on July 26 to require all public companies to disclose all cyber security breaches within four days after a registrant determines that a cybersecurity incident is material. The disclosure may be delayed up to 60 days if the U.S. attorney general determines that immediate disclosure poses a substantial risk to national security or public safety. Specifically, the rules require these companies disclose the nature, scope and timing of the incident, as well as its likely material impact to their organization. Further, companies will be obligated to describe their processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats and disclose this, along with information about ongoing or completed remediation efforts in their annual 10-K filing.

  Where the SEC is involved, there are always risks to corporations, their directors and officers which may attract coverage under D&O policies. In relation to investigations by the SEC into possible violations of this new cyber breach disclosure rule, individual insured persons are likely to have broad potential coverage, while corporate coverage could generally be triggered by formal suits or enforcement actions. SEC action against a company and its directors and officers for possible violations of the new rule could lead to derivative suits for failure to adequately oversee cybersecurity and disclosures, while securities class actions could allege that a failure to make a timely disclosure under the new rule is presumptively an actionable material omission. Fortunately, such derivative suits and class actions would likely be covered by most current public D&O policies.

- **ESG pressures and backlash:** 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 the meantime, at least two telephone service providers were sued in ESG-related securities class actions. At issue: alleged misrepresentations relating to lead contained in telephone cables.
  - In addition, anti-ESG backlash at state and federal levels has presented conflicting pressures relating both to climate and to diversity, equity and inclusion. Such backlash has included not just legislative efforts to restrict companies from implementing ESG protocols, but also shareholder proposals to limit ESG policies and shareholder litigation. As an example of shareholder litigation, plaintiffs recently filed two lawsuits against U.S.-based airlines in connection with their purported actions supporting ESG-related initiatives. In another shareholder case, the Superior Court for the State of Delaware denied a plaintiff's books and records demands based on, among other grounds, the board's lawful exercise of its business judgment in implementing corporate policies.

- **Supreme Court to review SEC authority to conduct administrative proceedings:** In June 2023, the U.S. Supreme Court agreed to review litigation that assesses the constitutionality of the SEC's use of in-house administrative tribunals. In the case of *Jarkesy, et al. v. Securities and Exchange Commission*, the Fifth Circuit held that the power of the SEC to conduct administrative proceedings before administrative law judges, as opposed to bringing actions in federal court, was unconstitutional. If the Supreme Court affirms, the decision has the potential to fundamentally change the way SEC enforcement actions, and administrative agency proceedings in general, are conducted. An opinion is anticipated before the close of the Court's term in June 2024.
- **D&O liability insurance coverage decisions**
  - **Late notice coverage defense upheld:** In coverage litigation involving a university's use of affirmative action in its admissions program, the First Circuit Court of Appeals affirmed the lower court's determination that the college's failure to give timely notice of the claim to its excess carriers forfeited any right to coverage it may have had from them under the excess policies. *President and Fellows of Harvard College v. Zurich American Insurance Company* (August 2023).

Industry spotlight

Industry-related factors of note

- **Life sciences:** For stable risks, renewal pricing is likely to depend on the extent of prior year, harder market overcorrections, with most such risks likely to see steeper decreases than the broader market. Anticipate -20% to -10% outcomes on average.
- **Healthcare:** The market for private, not-for-profit risks remains challenged due to M&A and antitrust concerns, as well as less competition than in the broader market. Stable private, not-for-profit risks can expect primary rate increases in the range of +5% to +15%, with some pressure on antitrust retentions and co-insurance as well. Excess private, not-for-profit layers can anticipate flat to +15% outcomes on average.
- **Natural resources:** There has not been significant deviation for natural resources companies recently beyond the broader D&O market; however, most companies in this sector are exposed to commodity prices. Some hedge but others allow themselves to be proxies for the underlying commodity. The most significant likelihood of deviating from the market would be an event such as a continuation or escalation of global hostilities, sudden oil price fluctuations, or other events where demand shock might disrupt commodity pricing to an extent it helps or hurts firms more than the broader market.
- **Technology, media and telecommunications (TMT)**: Within the TMT space, semiconductor companies are more challenged, as they continue to experience greater supply chain issues. Although their renewal outcomes are in line with the broader market, they generally start at higher price points compared to other technology companies.

Contact

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

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

Employment practices liability

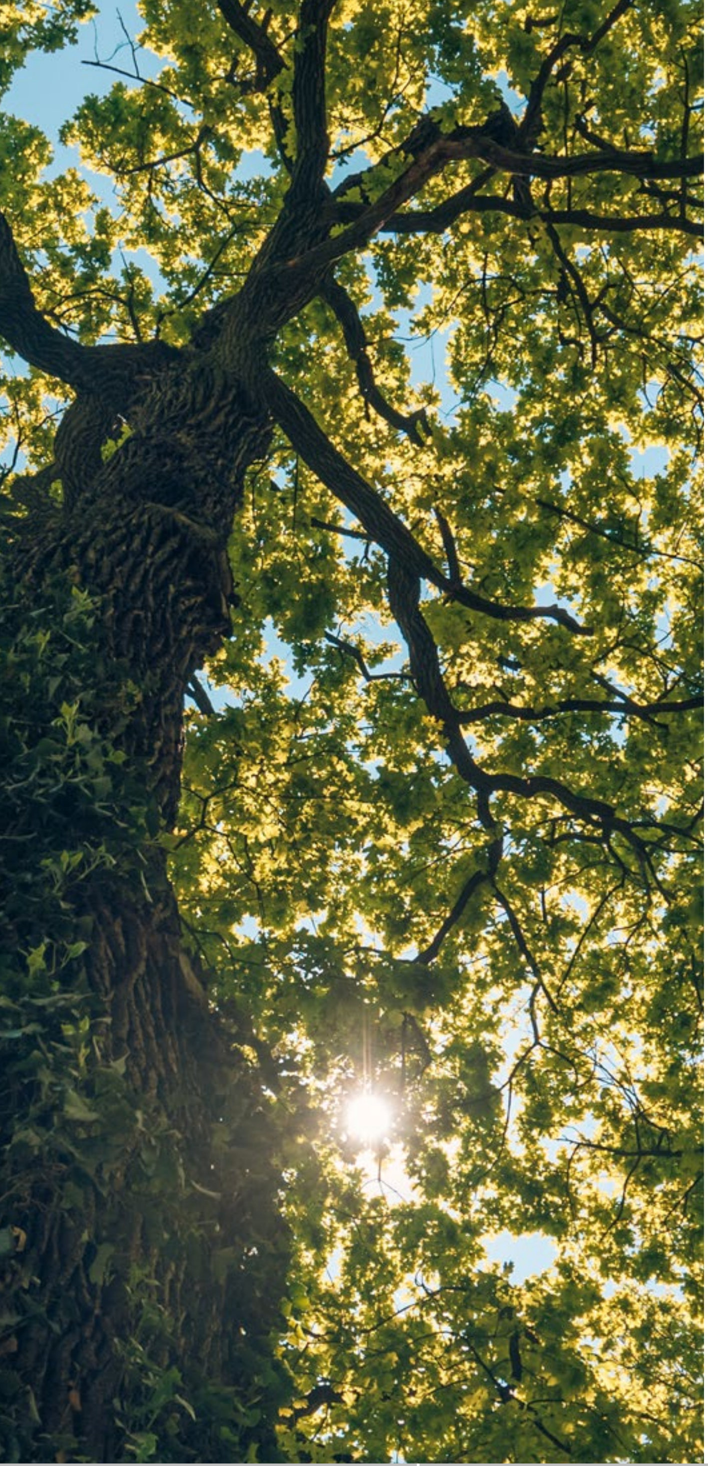
Rate predictions

Domestic markets:
Flat to +10%

Bermuda markets:
Flat to +5%

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 remain challenging as well.
- **Retentions:** While many retentions have been stabilized, 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. Moreover, some domestic markets have also sought separate retentions for states (e.g., California, Illinois, New York and New Jersey) and oftentimes even county-specific retentions. In many instances, there are separate (higher) retentions for highly compensated employees in certain industries.
- **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 lead to allegations of discrimination.
- On May 18, 2023, the Equal Employment Opportunity Commission (EEOC) issued guidance "Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964" regarding the use of AI in employment.
- The EEOC guidance is "limited to the assessment of whether an employer's "selection procedures"—the procedures it uses to make employment decisions, such as hiring, promotion and firing, have a disproportionately large negative effect on a basis that is prohibited by Title VII." Essentially, it is focused on disparate impact claims.
- New York City adopted a first-of-its-kind regulation that went into effect on July 5, 2023. The regulation makes it unlawful for employers to use automated employment decision tools (AEDTs) to screen candidates and employees within New York City unless certain bias audit and notice requirements are met.
- Several other states have proposed bills regarding the use of AI in the employment context.

Potential implications of the Harvard and UNC decisions for employers

- The Supreme Court decided two companion landmark cases this summer wherein they ruled that race can no longer be considered in the college admissions process. Students for Fair Admissions, Inc. (SFFA) v. President and Fellows of Harvard College, and SFFA v. University of North Carolina et al.
- The Court's decision was specifically limited to affirmative action in admissions processes in higher education and the legality of same under Title VI and the Fourteenth Amendment. Affirmative action in the employment context is different and strictly prohibited pursuant to Title VII of the Civil Rights Act, which is the governing law for employment matters. Note: The Fourteenth Amendment, by its terms, limits discrimination only by governmental entities, not by private parties, such as private employers.
- Accordingly, the decision does not require employers to take any action and/or to make changes to their diversity, equity and inclusion (DEI) initiatives, hiring processes, etc. assuming those already comply with relevant employment laws. However, there are potential practical implications for employers, as they may increase the potential for reverse discrimination cases and claims challenging corporate DEI programs.

Department of Labor proposal regarding overtime exemptions, ESG, and pay equity legislation could impact employment claims.

- On August 30, 2023, the Department of Labor (DOL) unveiled its long-awaited proposal to update the "white collar" overtime exemption regulations applicable to executive, administrative and professional (EAP) employees under the Fair Labor Standards Act (FLSA).
- The proposed rule focuses on the FLSA's salary level test for the exemptions and increases the standard minimum salary level to $1,059 per week.
- If it becomes final, the proposed rule could impact employers across all industries that use the EAP exemptions as it would require employers to reevaluate the classification status of exempt employees currently paid a salary below $1,059 per week, to the extent such exempt employees are not already paid a higher minimum salary under state law.
- In the employment context, focus on the "social" component, or "S" in ESG will continue into 2024. 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.

Industry spotlight

Industry-related factors of note

- **Healthcare:** In the healthcare space, there remains pressure on physician/high wage earner retentions. Renewal rate predictions relative to this industry are modestly higher than the broader EPL market, in the range of +5% to +15%.
- **Technology, media and telecommunications:** High wage earner retentions continue to be added. In the technology sector, there were layoffs earlier in the year which gave rise to concerns of a greater impact to technology EPL renewal outcomes. Yet, overall, this did not manifest. Nevertheless, if more layoffs occur in this space through the remainder of the year and into 2024, we could experience increases in premium beyond broader EPL market predictions.

Contact

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

Nina Krull
Southeast Region Leader & Claims Advocate
FINEX North America
+1 336 692 7557
nina.krull@wtwco.com

Joann D. Nilsson
Claims Advocate
FINEX North America
+ 1 212 915 8388
joann.nilsson@wtwco.com

Errors and omissions

Rate predictions

Large law firms: Primary layer:	Large law firms: Excess layers:	Mid-size law firms:	Management consulting firms
+3% to +10%	+5% to +10%	Flat to +10%	+10% to +20%

Key takeaway

As insurers continue to correct rates to better align with long-term loss trends, legacy markets' pricing at the primary layer level have been positively impacted, and new carriers are being attracted to the E&O space. Excess layer prices are increasing significantly in reaction to recent large losses penetrating multiple excess layers. We expect additional adjustments as the year unfolds.

Lawyers

- At the primary level, rates have stabilized with continued upward adjustment at lower levels to address claim inflation. Portfolio increases are yielding back to individual risk underwriting. Competition is emerging and, as a result, legacy underwriters are negotiating. Underwriters still seek higher rates for firms with poor claim history, high-risk areas of practice or poor risk management controls. Many underwriters now regard large law firm first excess layers as a working layer needing pricing more in line with the primary layer. This is pushing up total program cost. Excess insurers are recalibrating their rating models to address recent, severe losses that have penetrated multiple layers for a significant number of firms. Portfolio increases are now common with excess layer pricing and are often higher than primary layer price increases. Capacity reduction is being used more aggressively by excess insurers to find a way back to long-term profitability. Current price levels are likely to escalate further if the large potential claims the market is following closely move to equally large losses.
- 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 using a firm's revenue as a guide to do so.
- Coverage is steady. Most firms are maintaining existing coverage and occasionally achieving enhancements.
- Underwriters are paying particular attention to:
  - Artificial intelligence (AI) including Chat GPT — specifically how firms are managing this risk
  - Indemnifications in outside counsel guidelines
  - Return to work
  - Whether firms have strong cyber risk management controls and purchase cyber coverage in addition to their professional liability coverage.

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.
- Like law firm underwriters, consultant underwriters are paying close attention to insureds that are working with governments under sanctions and that have plans in place to address these situations.
- Several markets that offer consultant E&O coverage believe that it has been underpriced for several years and continue to strive for rate adequacy given 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

Contact

Geoffrey Allen
Head of Professional Services Practice
+1 818-915-4311
geoffrey.allen@wtwco.com

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

Jason Warmbir
Head of NA Cyber/E&O
+1 312 607 0096
jason.warmbir@wtwco.com

Fidelity/crime

Rate predictions

Fidelity bond	Commercial crime
Flat	**Flat**

Key takeaway

Despite competitive premiums and steady loss activity, insurers continue to look for opportunities to grow their fidelity and crime books of business.

According to SFAA data, the net loss ratio for writers of fidelity bonds is typically below (and in many cases well below) 50%.

- Insurers with primary or otherwise meaningful participation on the management and/or professional liability lines are making a concerted effort to also participate on the fidelity/crime program.
- Writing fidelity/crime allows insurers to diversify their portfolio with a line of business that is generally more profitable than others.

The fidelity/crime market is experiencing an increasing amount of competition.

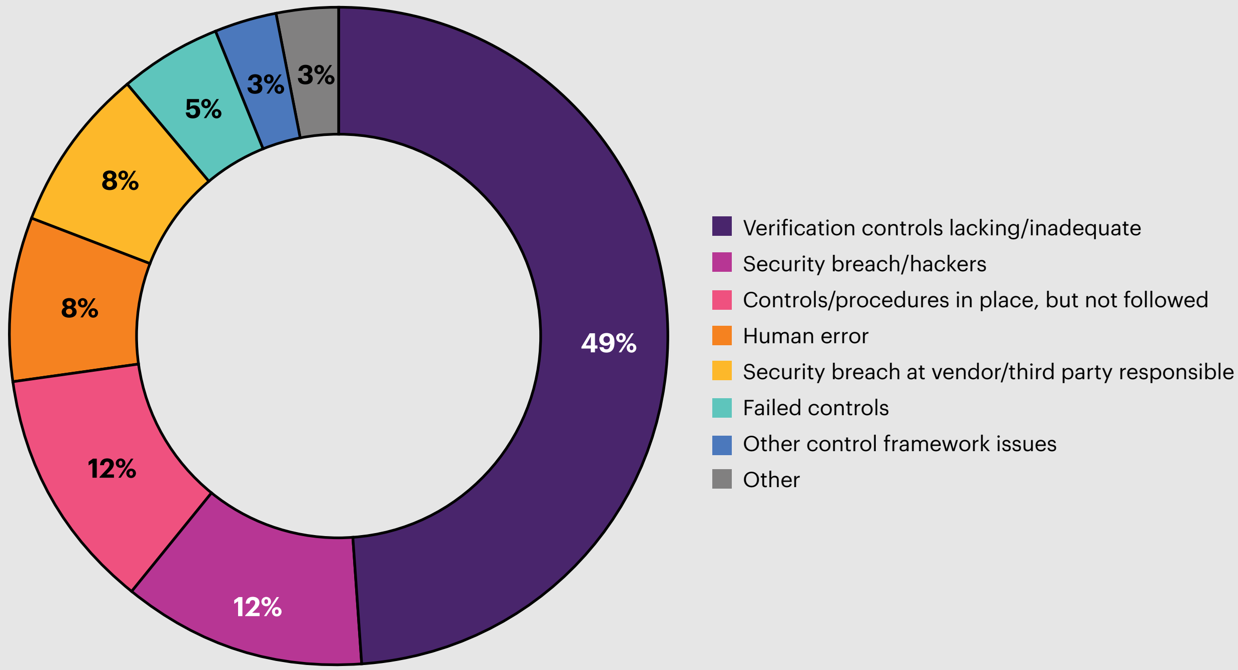
- Insurers who have historically only written management and professional liability coverages are now filing fidelity/crime forms.
- While primary markets remain limited for large/complex risks, ample competition exists on small to mid-sized accounts.
- Excess remains highly attractive business and continues to be competitively priced.

Social-engineering fraud (SEF) continues to drive a high frequency of low severity loss activity.

- In most cases, social engineering coverage remains sub-limited within the fidelity/crime policy.
- An effective way to increase the SEF limits is through the excess, because most insurers are willing to provide a drop down sublimit.
- Limited appetite in the market to extend social engineering beyond the loss of funds to also cover the loss of property.

The Internet Crime Complaint Center (IC3) recently noted a rising trend in the relationship between social engineering fraud and the real estate sector, with scams targeting all participants in real estate transactions, including buyers, sellers, real estate attorneys, title companies and escrow agents.

Figure 1. **Causes of social engineering losses**



Source: WTW Claim analysis report 2023 Commercial crime

Contact

Colleen Nitowski
U.S. Fidelity Thought Leader
+1 212 915 7654
colleen.nitowski@wtwco.com

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
-10% to +10%

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.

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.
- Despite conflicting positive and negative judicial decisions and a mostly unacknowledged drop in excessive fee class actions in the first half of 2023 (21 compared to 41 in H1 2022 and 89 for the year), a recent increase in the number of markets interested in writing primary fiduciary liability policies has been the main driver of a flattening of premium increases, with many accounts renewing flat (sometimes after threats to increase the premium).
- 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 now 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 were highly rated and Morningstar.com published an article criticizing the lawsuits. However, the fact that the first four decisions in these cases have been dismissals (in two cases, two successive dismissals) has helped to calm the concerns of many insurers. Carriers look for:
  - Frequent RFPs/benchmarking
  - Little or no revenue sharing
  - No retail share classes
  - Few actively managed funds and not as qualified default investment alternative (QDIA)
  - 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. Efforts by some carriers to push retentions even higher have usually been successfully resisted. Even the non-class action retentions are often six figures now (previously five figures). 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.

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

- Challenged classes include financial institutions with proprietary funds in their plans, whether currently or in the past, especially if they have not yet been the subject of a prohibited transaction claim. However, financial institutions without proprietary funds in their plans and/or who accept relevant exclusions and/or already have elevated premiums are 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. While hospitals continue to be targeted, new university suits have not been filed and so scrutiny can be expected to lessen in that sector.
- 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 that 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 2023, excessive fee claim frequency dropped from high 2022 volume.** For over a decade, a growing number of plaintiff firms have been suing diverse public, private and non-profit entities, alleging 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. However, excessive fee class action volume was down in the first half of 2023, with only 21 cases filed. This is about a 50% drop from 2022, which had 41 suits filed in the first half and a total of 89 class actions filed during the year. Excessive fee class actions have been up and down since they reached a peak in 2020 (101) followed by a substantial drop in 2021 (to 60). Several recent excessive fee settlements (not involving investments in defendant-sponsored proprietary funds) have been 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 recent positive precedents from the Sixth, Seventh, Eighth and Tenth Circuits (CommonSpirit, Oshkosh, MidAmerican Energy Co. and Barrick Gold 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 2023, 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 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 employer stock ownership plans or include elevated retentions. Meanwhile, private plaintiffs and the DOL sometimes bring claims against private companies with employer stock plans, mostly arising from 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. For example: https://www.dol.gov/newsroom/releases/ebsa/ebsa20221219 and also https://www.dol.gov/newsroom/releases/ebsa/ebsa20221027. In 2023, private company ESOP claims continued to be filed, and at least one substantial settlement ($8.7 million) was reached.
- **Risks post-Dobbs:** Following the U.S. Supreme Court decision in Dobbs v. Jackson Women's Health Organization, overturning Roe v. Wade, some companies implemented protocols through their health and welfare plans to assist employees in gaining access to healthcare services they may not be able to obtain in their own states. Fiduciary risks could 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 could also face challenges complying with ERISA's technical requirements in connection with plan changes and creation. However, these potential claims do not seem to have materialized to date.

Enforcement

- **Department of Labor enforcement results dipped in 2022, results not yet available for 2023.** 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 stated areas of primary 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 DOL's proposed new rule regarding environmental, social and governance (ESG) investing achieved final rule status, despite opposition.** On October 14, 2021, the DOL published for comment 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 in the Federal Register, 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 titled: "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 attempt 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 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.
- **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 (see, for example, the responses from the State of Utah and from the Securities Industry Financial Markets Association); EBSA/DOL has not taken any further action.
- **DOL drops its appeal of district court decision vacating its interpretation of "investment advice."** 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, which is one of the current five prongs necessary 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. On May 15, 2023, the DOL dropped its appeal of the district court's decision. This decision is likely to affect other pending cases and may lead to the DOL proposing an amendment to its five-part test.

Legislation

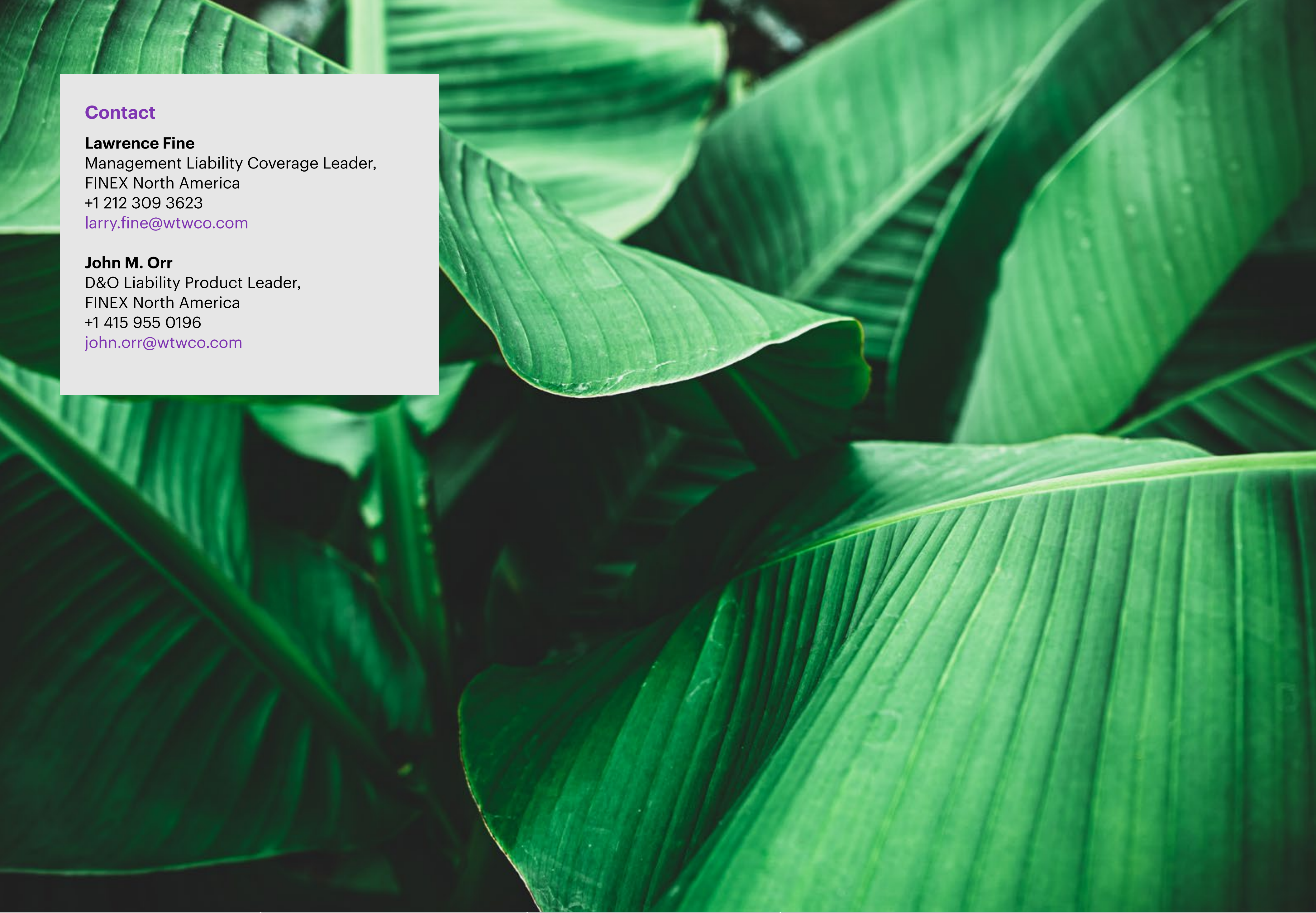
- **SECURE Act:** There has been a slowdown in the growth of pooled employer plans (PEPs) which were created as a result of the SECURE Act, with approximately 170 registered PEPs at the end of 2021, about 300 at the end of 2022 but only an increase of 50 during the first half of 2023. This may be partly attributable to a February 2022 clarification from the DOL and IRS that PEPs with more than 100 participants are subject to government audit (not the 1000 threshold many expected).
- **SECURE ACT 2.0:** Securing A Strong Retirement Act (SECURE 2.0) 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 (for more detail, see Secure 2.0 signed into law as part of 2023 federal spending package).
- 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.
- However, many ERISA practitioners remain uncertain about certain practical details relating to the actual implementation of some provisions of SECURE 2.0. The ERISA Industry Committee (ERIC) sent an open letter to the Department of the Treasury and Internal Revenue Service on June 8 asking for clarification on various provisions of SECURE 2.0, including the student loan match, Roth catch-up contributions and Roth matching contributions. Another SECURE 2.0 enhancement that awaits IRS regulations for additional clarity in its operation is section 127, the pension-linked emergency savings account (PLESA) provision, an optional feature which sponsors can adopt to allow for an employee-funded account embedded in a participant's individual account in a defined contribution plan. Amid all the uncertainty, it is possible that plaintiff class action lawyers may be preparing to second-guess plan fiduciaries.
- Relatedly, on August 10, 2023, the DOL filed a request for information, seeking public feedback and comments on those and other issues relating to SECURE 2.0.

COVID-19 relief legislation: The American Rescue Plan Act (the Act), 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. A July 14, 2023 press release from the Treasury Department stated that the data "demonstrates that governments have used this American Rescue Plan funding not only to prevent cuts in government services and respond to the immediate health and economic consequences of the pandemic, but also to make much-needed investments to strengthen their economies and their communities over the long-run."

* The provision of SECURE 2.0 which allows employers to make contributions to retirement accounts which match qualified student loan repayments does not become effective until after the 2023 plan year. This provision is expected to be especially popular in the aftermath of the U.S. Supreme Court's decision blocking President Biden's student loan forgiveness executive order.

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 and 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. Later in 2022, 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. On September 6, 2023, the Tenth Circuit affirmed the dismissal of the excessive fee lawsuit against Barrick Gold. 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 four 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 CommonSpirit Health and Oshkosh.
- In the Barrick Gold case, the Tenth Circuit upheld as proper the district court's consideration of documents which were not included in the complaint (most of which had been referenced therein). Most other courts have been unwilling to consider on a motion to dismiss documents that were not provided by the plaintiff in its complaint, but the Tenth Circuit found it appropriate to consider "documents that the complaint incorporates by reference," "documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity" and "matters of which a court may take judicial notice." Since the additional documentation contradicted the plaintiff's allegation, the Tenth Circuit agreed with the district court that the allegations were not plausible. If more courts allow for the submission of such supplemental documentation, that could lead to further dismissals.
- However, note that on remand the 7th Circuit declined to dismiss the Northwestern University case again, but rather allowed the Northwestern University case to proceed, finding that plaintiff's recordkeeping and share class allegations were sufficiently plausible.
- **Recent trials result in defense victories for Yale University and B. Braun Medical Inc.** On June 28, 2023, in a rare jury trial, Yale University succeeded in achieving a defense verdict. Although the jury found that Yale fiduciaries "breached their duty of prudence by allowing unreasonable record-keeping and administrative fees" to be charged to participants, they determined that plaintiffs did not prove any damages because "a fiduciary following a prudent process could have made the same decisions as to record-keeping and administrative fees as the defendants." The August 18th B. Braun Medical judicial decision was more straightforward, resulting in affirmative findings that the plan fiduciaries were objectively prudent.



Contact

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

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

Financial institutions — FINEX

Rate predictions

Asset managers D&O/E&O (excluding private equity)
-15% to flat

Bankers professional liability (BPL)
Flat to +10%

Insurance company professional liability (ICPL)
-5% to +5%

Key takeaway

The availability of capacity in the marketplace continues to drive competition across all lines of business for financial institutions (FIs). Upward rate pressure was expected after the bank failures, but premiums have generally remained stable.

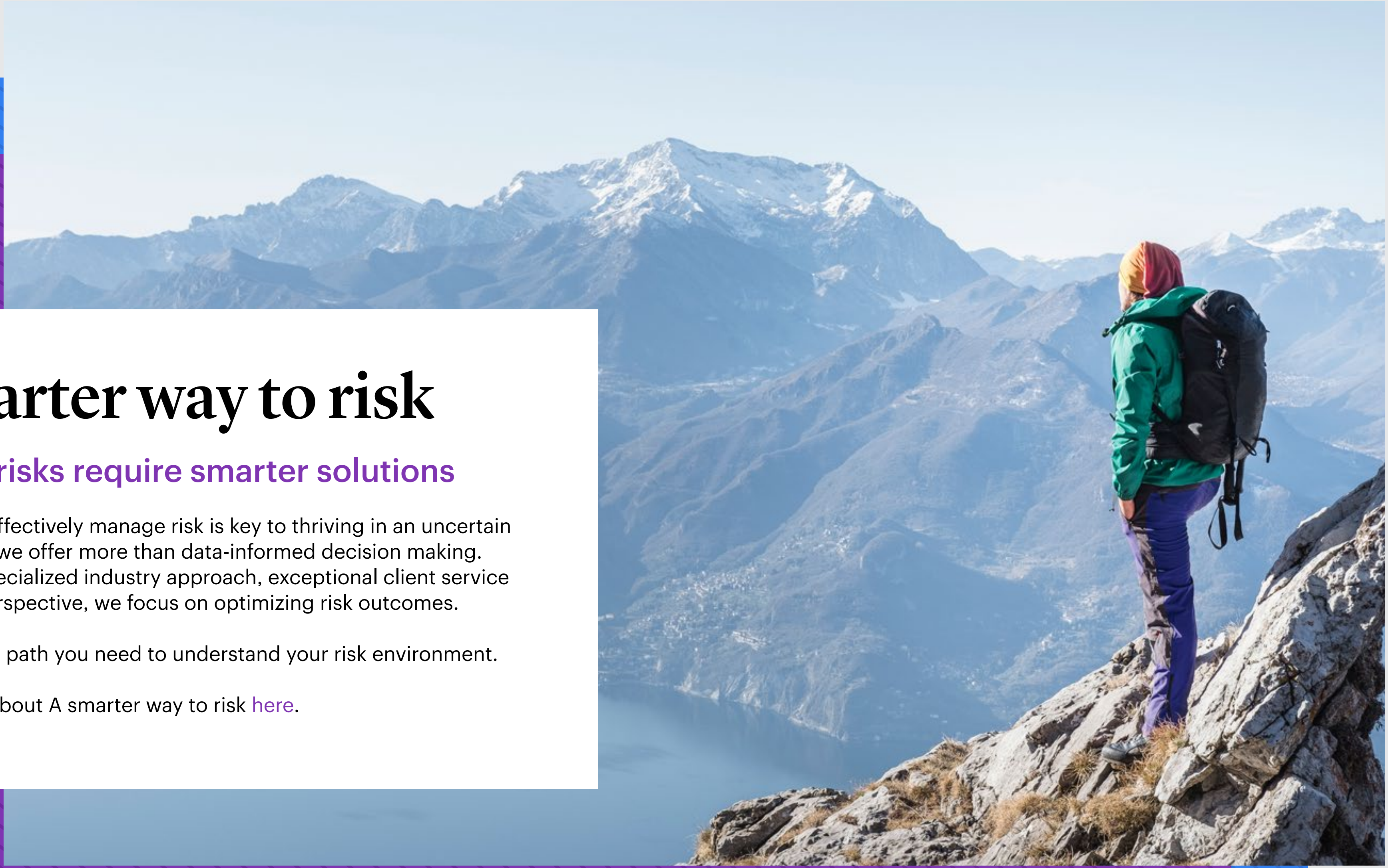
Professional liability (E&O) market dynamics vary by each subclass of FI business:

- **Asset managers:** Program adjustments made to policies over the past few renewal cycles, combined with the continued influx of new capacity, has stabilized the overall asset management D&O/E&O insurance environment.
  - Insureds with favorable risk profiles are realizing renewal premiums of flat to -15%, while maintaining as-expiring retentions and a broad scope of coverage. Registered investment advisors, private fund managers and mutual funds continue to be the most desirable class of business within the asset management sector.
  - Conversely, there continues to be a limited appetite for BDCs, firms with significant exposure to cryptocurrency, private equity funds, and portfolios with meaningful direct or indirect exposure to the middle market banking sector.
  - From an underwriting perspective, both trade errors and regulatory claims continue to be a key area of focus by D&O/E&O insurers. In particular, the steady flow of new rule proposals by the SEC addressing a variety of topics, including ESG, cybersecurity and transparency by private fund managers, are likely to generate additional questions about an insureds' ability to comply with such rules during the renewal underwriting process.
- **Insurance companies:** Rates have been relatively stable in 2023 but there remains limited primary capacity for new ICPL business.
  - Conversely, competition for excess ICPL continues to increase especially when blended with other coverage lines. We expect these trends to continue in the near term though underlying risk factors have not improved.
  - A challenging regulatory environment and climate change are prompting many P&C insurers to exit certain jurisdictions and classes of business, while life insurers grapple with exposures to interest rate volatility and ongoing sales and marketing claims.
- **Banks:** Rates and retentions have remained stable with most programs experiencing flat to modest rate increases.
  - One exception area is regional bank programs, which are experiencing increased rate and retention pressure in light of the bank failures and banking system turmoil earlier this year. While more of the recent focus has been on D&O for these banks, insurers have a close eye on the BPL as well.
  - Insurers remain focused on their bank portfolios and are closely underwriting liquidity levels, profitability, deposit flows and mix, funding sources and costs, investment portfolios, credit quality and stress, and loan portfolio mix and performance in higher risk areas, particularly commercial real estate and also multifamily real estate.

- Increased compliance risk with new proposed regulations and higher capital requirements for banks with greater than $100 billion in assets, “higher for longer” interest rates, lingering inflation, tightening in lending, and rising insurance costs for certain borrowers, are recent drivers of BPL claim activity.
- Regulators are also focused on banks’ climate-related financial risk management programs and how they are measuring and monitoring physical and transition risks; climate-related litigation will evolve and expand and lead to heightened reputational risk.

Contact

Jordan Siegman
U.S. Head of FINEX
Financial Institutions
+1 212 309 0941
Jordan.Siegman@wtwco.com



A smarter way to risk

Complex risks require smarter solutions

Your ability to effectively manage risk is key to thriving in an uncertain world. At WTW we offer more than data-informed decision making. Through our specialized industry approach, exceptional client service and broader perspective, we focus on optimizing risk outcomes.

To find the right path you need to understand your risk environment.

Find out more about A smarter way to risk here.

Specialty lines and solutions

Click on the buttons to view specialty lines and solutions.

- Aerospace
- Alternative risk transfer (ART)
- Architects and engineers
- Captive insurance
- Construction
- Energy
- Environmental
- Healthcare professional liability
- Special contingency risks: kidnap and ransom
- Life sciences
- Managed care E&O and D&O
- Marine cargo
- Marine hull and liability
- Personal lines
- Political risk
- Product recall
- Senior living and long-term care
- Surety
- Terrorism and political violence
- Trade credit

Aerospace

Rate predictions

Airlines:
-10% to flat

Airline hull war:
+100%

Airline excess war liability:
+100%

Airports and municipalities:
+10% to +15%

Products manufacturers and service providers:
+5% to +15%

Aircraft lessors/banks:
+50% with multiples for hull war

General aviation:
Flat to +10%

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

Key takeaway

The market remains consistent in its ongoing concerns surrounding inflation, increasing exposures, the increasing cost of claims, the impact of significant reserve deterioration in the manufacturing sector, the Russian confiscation of aircraft and increased reinsurance costs, but capacity is still plentiful, and such concerns are not having a material impact on overall pricing. Technical underwriting is becoming more of the norm with underwriters taking a more data-driven, actuarial approach to pricing, but they recognize that this is still a market and technical pricing cannot be the only factor behind decision making.

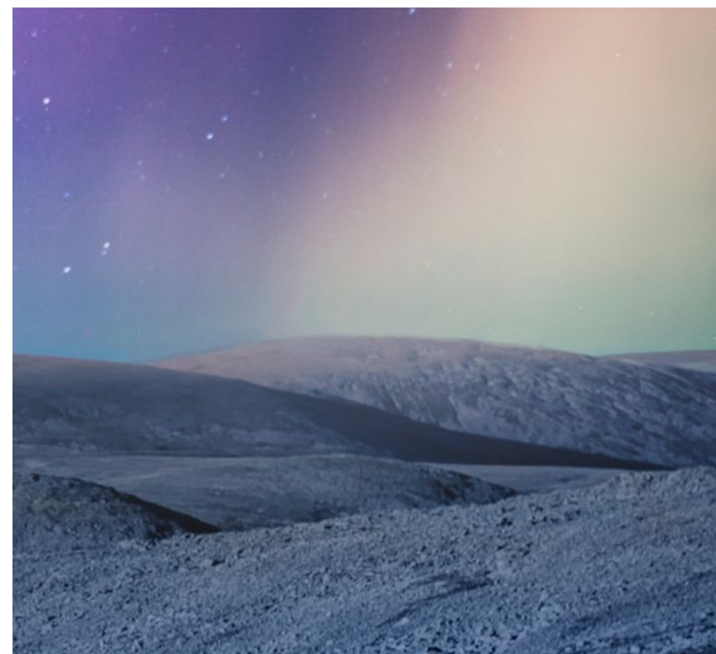
Airlines

Aircraft and passenger traffic continue to rebound in a post-COVID era, driving increased exposures on site. 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. Below-average claim activity and plenty of capacity mean that underwriters are under pressure to keep adequate premium levels.

- Ample market capacity allows clients and brokers choice and leverage.
- Attritional claim activity remains low but is trending upward with exposure growth.
- Underwriters want to stay ahead of this curve and premium levels to keep pace with claim activity.
- Underwriters are concerned about supply chain issues and repair costs escalating, as well as claim inflation due to liability awards.
- 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.

While reinsurance costs have increased for most underwriters it would appear this increase has not had a significant effect on their available capacity.

- It is yet to be seen if underwriters will be able to pass these increased costs on to their airline clients.
- 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, although this appears to be coming to an end.
- Reinsurance renewals could mean some scaled-back lines for some underwriters.



Hull war and excess third-party 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 conflict in Sudan wiped out any premium gains the underwriters were able to make.
- The aggregate of the Russian war losses is still a big unknown but not likely to get worse.
- There has been some press lately indicating that a deal could be struck with Russia to buy the aircraft, but it's a big hurdle to get over.
- Pricing will increase for both the hull war and excess third-party liability.

Aircraft lessors/banks

Hard market conditions continue to prevail with elevated emphasis on geographic aggregation of assets, but the reinflation of the hull war sub-class which led to the disproportional cost increases of the past 12 months has seen the market looking to hold premium at these levels. The impact of sanctions on Russia remains 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, particularly after the recent successful negotiation between a large lessor and a Russian airline, 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 for the balance of 2023 and into 2024.

- The combined impact of the Ukraine crisis and airline assets held in Russia are expected to have a far-reaching impact on this class.
- The majority of claims have 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 also 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 sublimit(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), sublimits and specific country aggregates offered options to moderate pricing in addition to the issuance of an updated realistic disaster scenario by Lloyd's — these factors have accelerated retraction of available capacity; in parallel, non-confiscation options are becoming more expensive as insurers continue to seek the reinflation of this market.

Product manufacturers and service providers

Pressure remains on the aviation insurance market to improve its position on all lines of business. This is mainly due to rising reinsurance cost/claim inflation and the continued possibility of a significant payout to lessors respecting 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: engage with your team early to secure terms and support, 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 (+5%-10%); however, at the moment, capacity remains readily available for accounts with no new losses or claim 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.

Airports and municipalities

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

General aviation

Underwriters continue to push for uplift in rates; however, capacity remains healthy and underwriters are actively looking to maintain and grow their portfolios with accounts perceived to be safety-driven with good loss ratios and positive market engagement.

- Inflation, the Russia/Ukraine crisis, and claim costs remain major talking points in the general aviation market.
- With the cost of business rising at a rapid rate over the last 18 months, insurers have absorbed many of these costs due to market capacity; however, we anticipate inflation will remain an important factor in upcoming renewal discussions.
- The crisis between Russia and Ukraine and the ensuing sanctions on Russia and its allies remain a major feature of discussions due to Russia's decision to confiscate an estimated 400 lease civilian aircraft, which has had significant ramifications across the entire aviation sector.
- Recent large loss awards in the U.S. combined with increases for the Boeing Max losses have impacted the entire aviation sector.

Hull war rates and war liability rates are increasing and moving toward a new equilibrium, and new aggregates are also being introduced.

- Due to increases in tensions in eastern Europe, the recent fighting in Sudan, and reduced capacity, hull war rates are increasing by up to 100%, and aggregates are now being applied.
- Underwriters are imposing capacity restrictions and price increases on war liability due to rising reinsurance costs and restrictions for this sector.

Environmental, social and governmental (ESG) stances of carriers continue to translate to more restrictive underwriting on risks that present an adverse picture on sustainability, e.g., older aircraft with less efficient/higher carbon emission engines.

- Clients are increasingly being asked by insurers to demonstrate their ESG credentials and, while this has not directly led to an impact on pricing, it is evident that the market is moving in this direction.
- There is also an increased focus on sustainable aviation fuel (SAF) and electric vertical take-off and landing (eVTOL) vehicles.

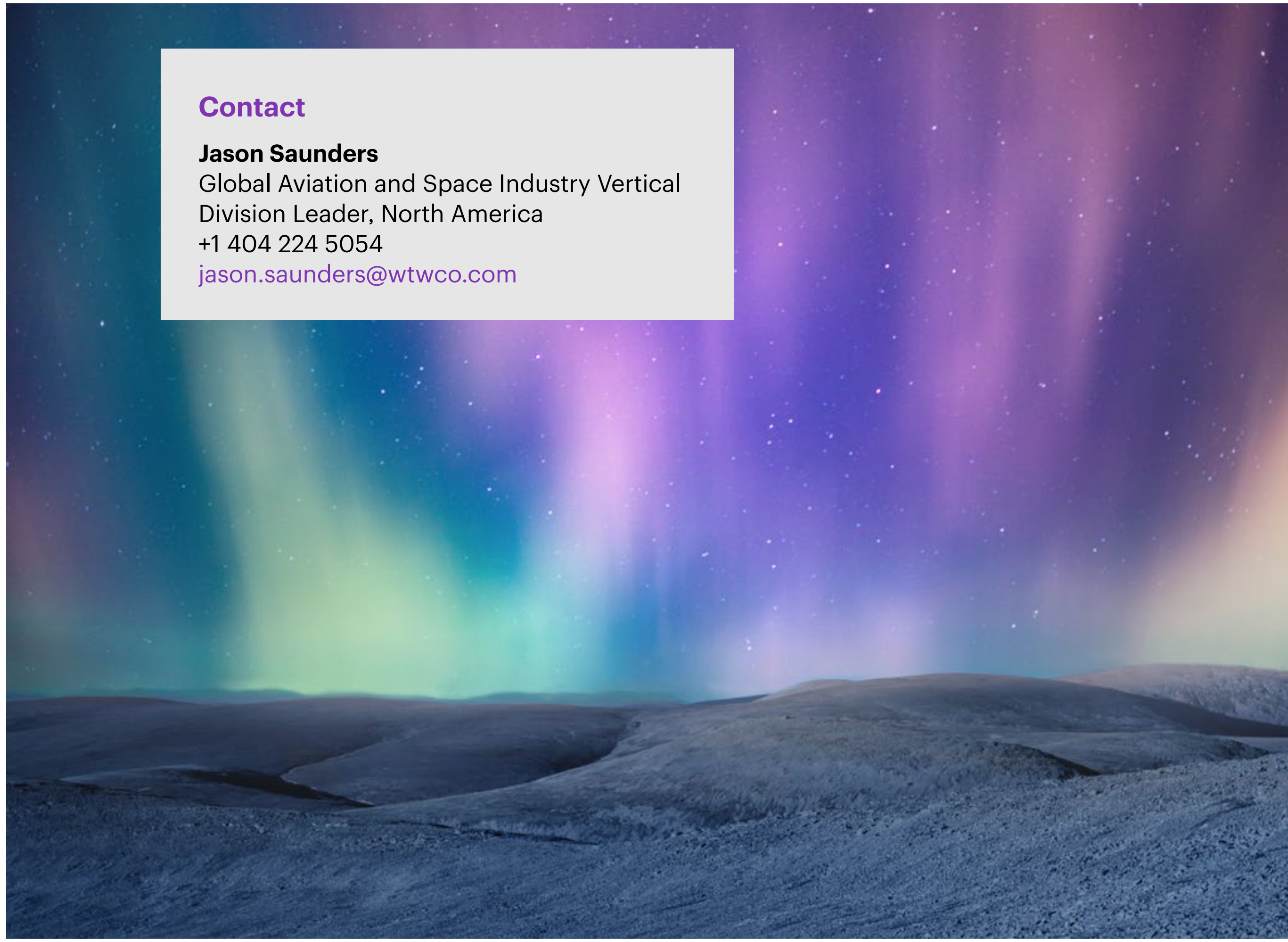
Space

Market results for 2023

- The space insurance market is in a period of uncertainty due to recent results.
- There have been two large-scale market-wide claims in Q2-Q3 2023, totaling ~$800 million.
- ~$600 million is the expected end-of-year total premium income.

Implications for 2024

- The market is currently assessing how it will respond to recent results.
- Premium rates are expected to rise, but it is too early to predict magnitude.
- 2024 reinsurance treaty renewals could impact available capacity.
- There remains an emphasis on technology-based risk differentiation.
- Limited capacity is available for first-flight or unproven technologies.
- Global space is in growth mode, and insurers can serve as a catalyst for development.



Contact

Jason Saunders
Global Aviation and Space Industry Vertical Division Leader, North America
+1 404 224 5054
jason.saunders@wtwco.com

Alternative risk transfer (ART)

Rate predictions

Structured programs:
Flat

Parametric nat cat:
-5% to +10%

Parametric non-cat
Flat to +10%

Portfolio programs:
+5% to +15%
(Flat to +5% annually)

Captive stop loss:
Flat

Key takeaway

Pricing in the ART market has proven stable. As predicted, structured and parametric solutions were the most traded alternative risk products in 2023. We expect this to continue in 2024 due to continuing pressure on lines such as property and for clients who have had significant losses.

It is governance requirement that insureds test whether alternative solutions can be beneficial in reducing TCOR or capping risk exposures to a defined risk tolerance.

Structured solutions

- Many insureds now face premium to limit ratios that exceed 50%. This forces exploration of programs that embed significant risk financing.
- In 2023 insurers saw an unprecedented volume of inquiries causing bandwidth challenges as well as creating a margin of opportunity.
  - Turn-around time on deals is now more than eight weeks.
- 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 and capacity constraints in 2024.
- Innovation continues to occur in this market as insurers embed parametric features into more traditional lines, embrace new data sources, IOT settlement capabilities 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

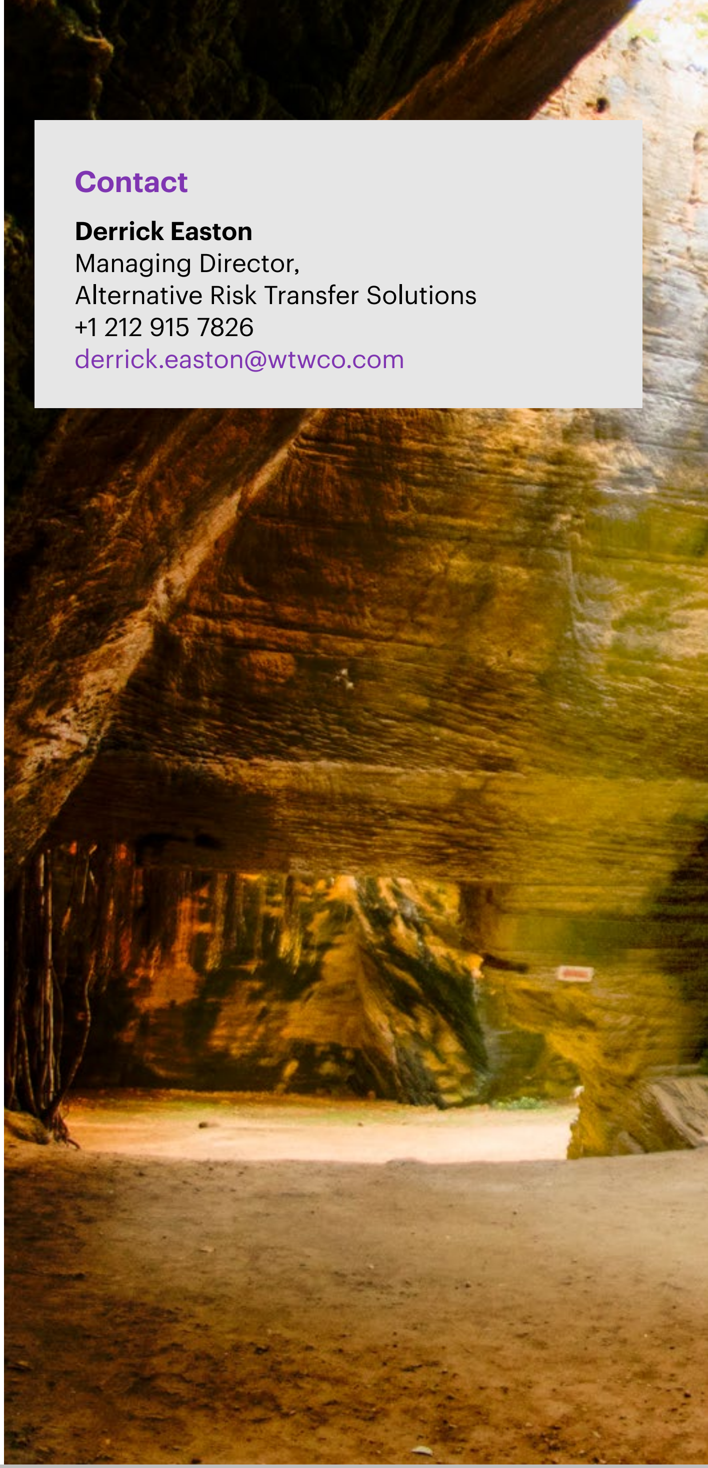
- As insureds face significant premium demands coupled with budget constraints, decisions to step outside the market became more frequent. Fronting is now being aggressively deployed to address such risks as cyber, where contracts require evidence of coverage. For investment-grade insureds, collateral "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 in North America, that has not 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.



Contact

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

Architects and engineers

Rate predictions

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

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. They 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, necessitating some design firms to look to excess markets to meet their higher limit requirements — which comes at additional cost.

Continued volatility in the A&E professional liability marketplace is expected in 2024, most notably in the form of rate increases, capacity constraints and a reduction in PL carriers' appetite for specific risks.

- A&E PL insurers are making a concerted effort to push for higher deductibles/self-insured retentions (SIR) over the last 12 — 24 months. Most underwriters would now like to see deductibles/SIRs at .5% of the A&E firm's gross revenues. These are above the average rate for the last 20 years.
- 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 and 2023, 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 because 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 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.

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.

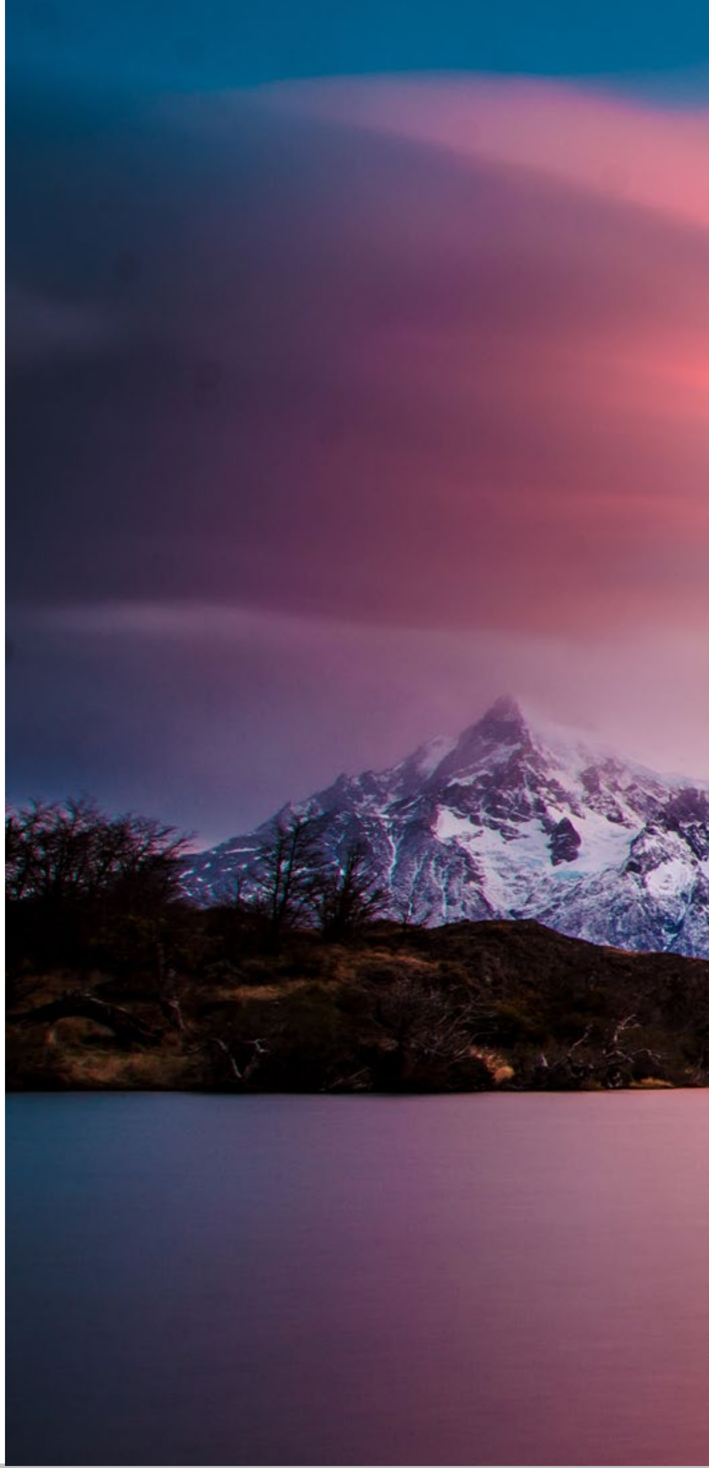
- For more information, please read the WTW A&E Professional Liability Carrier Survey Report on emerging claim trends and risks in the design profession, a report based on an extensive survey of senior claim managers from 12 leading A&E PL carriers.
- Claim severity is expected to continue in 2024. Social 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 where you can find webinars, on-demand 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 stay in front of these emerging risks.

Contact

Dan Buelow
Managing Director,
Architects & Engineers practice
+1 312 288 7189
dan.buelow@wtwco.com



Captive insurance

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 leads to increasing use of captives as vehicles to assume greater levels of risk retention. We continue to see additional consideration given to emerging and specialty 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 and continued growth in 2023. There is continuing involvement in specialty lines and the creation of diverse portfolios of risk rather than in a monoline approach.

- 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

- In August it was published that Vermont is now the largest captive domicile in the world, surpassing its nearest competitors Bermuda and Cayman Islands. Reports of captive formations in the first half of 2023 remain strong.
- There is continued interest in using captives for property coverage given the difficulties in the commercial property insurance market.
- Mature captives with sufficient capital and surplus continue to be used 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.
- A resurgence of terrorism captives is taking advantage of better pricing in the commercial reinsurance market over stand-alones directly placed or imbedded in property placements.

Americas offshore

- The key Atlantic and Caribbean domiciles of Bermuda and the Cayman Islands continue to see growth in the number of new captive insurance licenses issued.
- Through July 2023, there were 12 new captive licenses issued in Bermuda compared to 18 in the prior full year. Cayman saw 21 new licenses issued through June 30, 2023, compared to 33 licenses issued during all of 2022.
- 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. WTW has seen activity from both the U.K. and Asia.
- Bermuda and Cayman have growing numbers of internal reinsurers formed by commercial insurers to take advantage of flexible regulatory environments. These may not be captives in the eyes of local regulators but are viewed as such by their owners.
- Outside of captive business there is extensive activity relating to the formation of life and annuity reinsurance entities, both in Bermuda and Cayman.
- While Bermuda's core business remains focused on large and complex global programs, growth of segregated accounts (cell) business remains strong, targeting smaller clients and solutions for individual programs as opposed to portfolios of risk.
- WTW has managed some Side A D&O business on a funded basis through Meridian Insurance Limited, its separate accounts (cell) company, but easing in this market has slowed further growth for this business during 2023.
- International employee benefit captives are growing in importance and, aside from the savings they may generate, they also help in creating a greater diversified portfolio of risk, including premium revenue that may technically be considered as being third-party risk.
- In Bermuda, there were an additional 25 new licenses issued during the first seven months of 2023 in the non-captive classes. These included 14 restricted special-purpose insurers and four life (re)insurers.
- We continue to see 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 initial stages of development.

Contact

Peter Carter
Head of Captive and Insurance Management Solutions
+44 (0) 203 124 6300
peter.carter@wtwco.com

Jason Palmer
Regional Head of Captive and Insurance Management Solutions, United States
+1 802 264 9555
jason.palmer@wtwco.com

Paul Bailie
Regional Head of Captive and Insurance Management Solutions, Atlantic & Caribbean
+1 441 707 0692
paul.bailie@wtwco.com

Construction

Rate predictions

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%

High hazard NATCAT project builder's risk
+25%

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

Professional liability:
Flat to +5%

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

Contractors pollution liability:
+5% to +10%

Subcontractor default insurance:
Flat to +10%

Project-specific/controlled insurance programs:
+5% to +15%,
+10% to +30% 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.

Technological advancements in the construction industry have given contractors greater opportunity to control their losses.

- The growth in popularity of wearable technology, such as GPS trackers and biometric sensors, can contribute to a healthier workforce. While this is not a common requirement for insurers, the data can be used to assess different factors that may give rise to claims. With this information, contractors can take a proactive approach to developing procedures to mitigate losses.
- Many insureds are beginning to use forward- and inward-facing cameras in their auto fleets. This, along with information from telematic software, can give contractors insights into their employees' driving behaviors, such as attentiveness, lane departures and speed. This is particularly useful in assessing driving performance and determining fault in any accidents.
- The development of robotics and advancement in ergonomics have reduced the number of repetitive motion injuries on jobsites.
- Universalization of digital collaboration software has also given contractors the opportunity to better connect internally, with owners/developers and with their subcontractor partners to design and develop project plans. They can also give more insightful safety training.
- 3D construction printing is also being further developed and is now capable of constructing larger and more sophisticated buildings. This approach can offer savings for contractors on materials, labor and time.
- While all these technological advancements are reshaping the way we think about the building process, underwriters still tend to focus on historical data points. As a result, contractors may not receive the appropriate premium credit for adopting new technology. However, the use of this technology can improve loss experience and thus result in better insurance rates in the future.
  - It is also worth noting that being at the forefront of adopting technology in meaningful ways, particularly regarding safety and quality measures, may draw additional interest from the market and increase competition during a marketing effort.

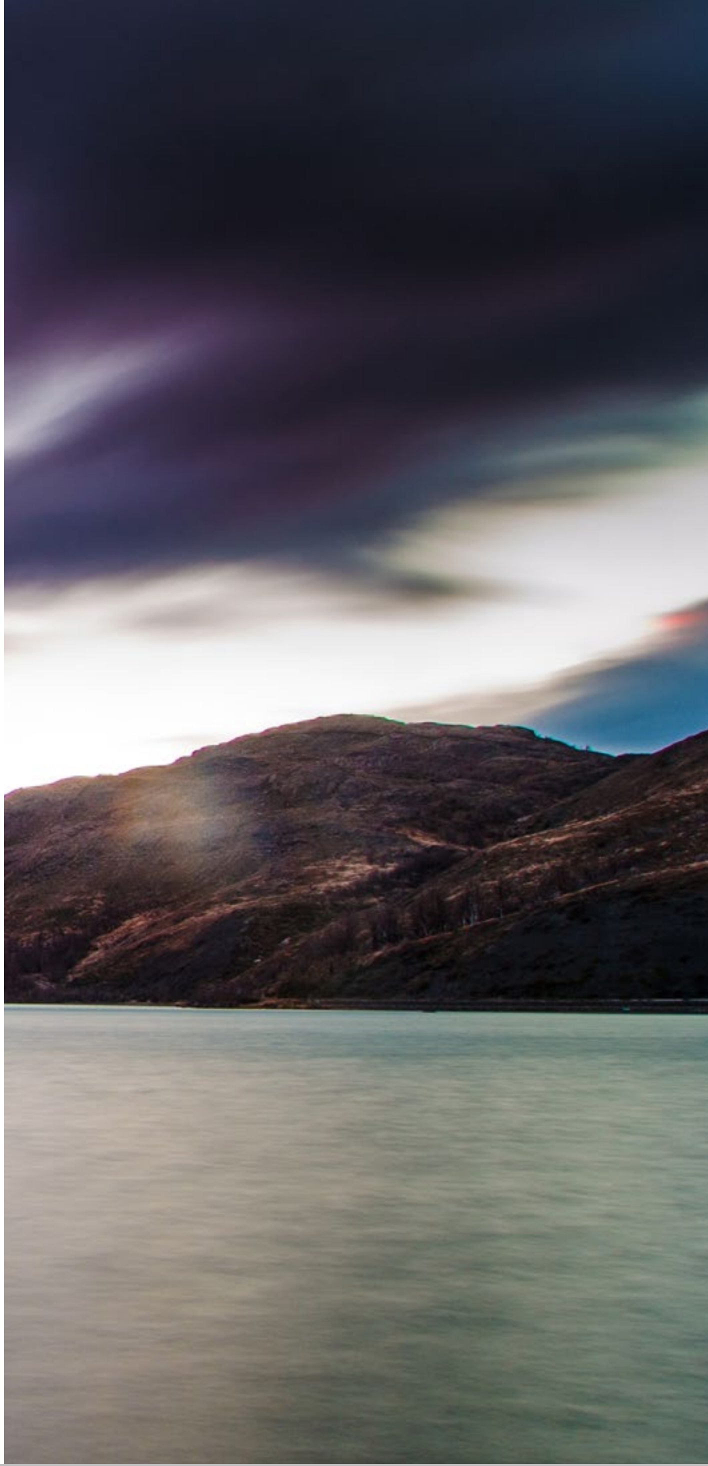
The construction industry is developing a sharper focus on sustainability and reducing its environmental footprint.

- The 2022 Global Status Report for Buildings and Construction notes that the sector accounts for over 34% of energy demand and 37% of energy and process-related CO_2 emissions in 2021.
- According to the United Nations Environment Programme (UNEP), the construction sector has invested in building energy efficiency at an unprecedented rate, rising 16% from 2020 to 2021 to over $237 billion.
  - Yet, construction growth is outpacing investment in energy efficiency.
- It appears that one possible scenario is for government to provide both incentive and enforcement of more sustainable operations.
  - As a result, many contractors are analyzing the building materials they use as one way to minimize their carbon footprint.

- Mass/cross-laminated timber (CLT) is one building material that has seen increased usage in the last few years. This material involves kiln-drying soft woods that are not usually used for building and then gluing them together in perpendicular layers to create a material that has a comparable strength-to-weight ratio to concrete while being about 20% lighter.
  - Manufacturing this type of timber is less carbon-intensive than producing concrete and steel, and the wood stores carbon after it's manufactured.
  - According to a 2014 study in the Journal of Sustainable Forestry, replacing steel with timber such as CLT could cut CO_2 emissions by 15% to 20%.
- Modular construction is another method that aims to reduce carbon emissions. The Modular Building Institute published an article citing multiple studies that found that modular construction reduces overall weight of waste by 83.2%; it uses about 20% less material overall, and it reduces waste level by about 52%.
- While these new and sustainable methods seem to garner more media attention, a similar problem for the technological advancements in construction remains for underwriters. The lack of historical loss data can make these methods difficult to underwrite and can also limit the number of markets willing to consider the risk.

Contractors are feeling pressure to defend their bottom lines.

- While the construction industry is experiencing ample investment, net profits in the industry are slim.
  - According to Deloitte's Global Powers of Construction report, average net income as a percentage of sales decreased to 4.3% from 4.5% in 2021. Excluding homebuilders, this margin fell to 3.4% from 3.8% in 2021.
- Consequently, contractors and their insurance advisors need to be more proactive in developing insurance programs and structures that fit their pipeline efficiently and can give them a better understanding of future insurance costs when submitting bids.
- Many building material costs have remained above pre-pandemic pricing, which has driven contractors to find more cost-effective alternatives. This can impact the quality assurance of a project depending on the material chosen and the contractor's experience using that material.

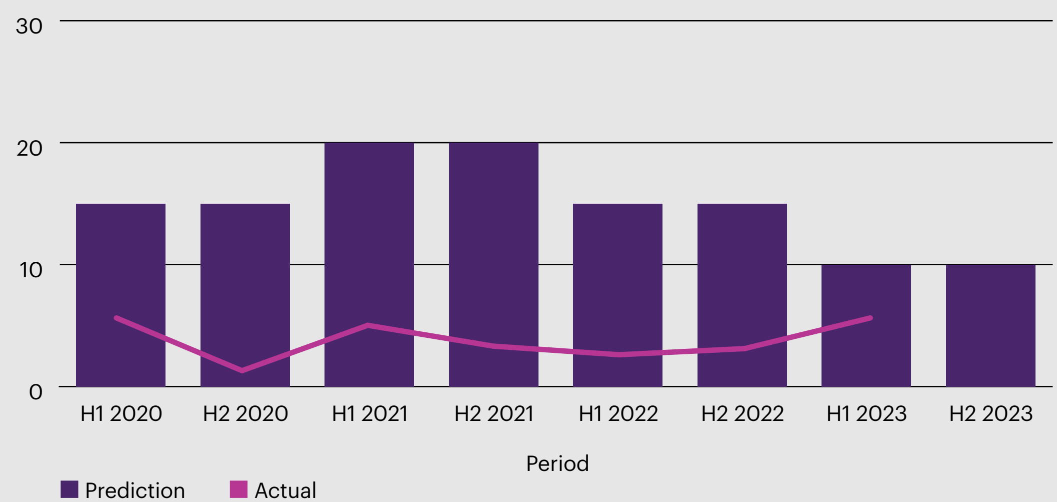


General liability (GL)

New building materials and litigation trends continue to challenge general liability renewals.

- The growth in the use of new construction materials and processes has created new challenges for actuaries and underwriters.
  - Underwriters, particularly in the retail market, sometimes have less ability to adapt to novel construction materials and processes without ample loss data to support their pricing and coverage terms.
  - They are also often limited by their reinsurance treaties and need to seek facultative reinsurance in certain scenarios, which can be a time-consuming process.
- Quality submission data presented in an organized manner can greatly affect renewal outcomes.
  - Submission information, such as revenue splits between different types of construction jobs, has been helpful in getting underwriters to understand the exposure and provide competitive terms.
  - Historical project listings that include information participation in wrap-ups (OCIPs and CCIPs), such as effective dates, construction values and program limits, are also often required not only for markets to offer terms but also to keep wrap-up exclusions off the program throughout the ensuing excess tower.
  - Accurate and complete historical loss data going back five to ten years is also a standard request. For any large losses that appear, it is helpful to supplement those narratives with any lessons learned. Contractors that can tell a positive story and share the measures that were implemented to limit the possibility of a similar loss occurring in the future will be viewed in a more positive light.
- For general contractors, favorable review of subcontractor prequalification standards and QA/QC procedures is extremely important to maintaining a competitive insurance renewal. For many carriers, the contractor's reputation can be a determining factor in how aggressive they are on a renewal or in a marketing exercise.
- The litigation environment in the U.S. continues to evolve in favor of plaintiffs. With the popularization of third-party litigation financing, plaintiff attorneys have become increasingly more organized with conducting discovery and seeking out plaintiffs. This has led to larger and more aggressive class action lawsuits. In construction, this is most often seen in cases involving construction defects.
  - Jury pool desensitization is also a recurring issue that often leads to exorbitant verdicts largely from punitive damage awards.

Figure 1. **General liability**



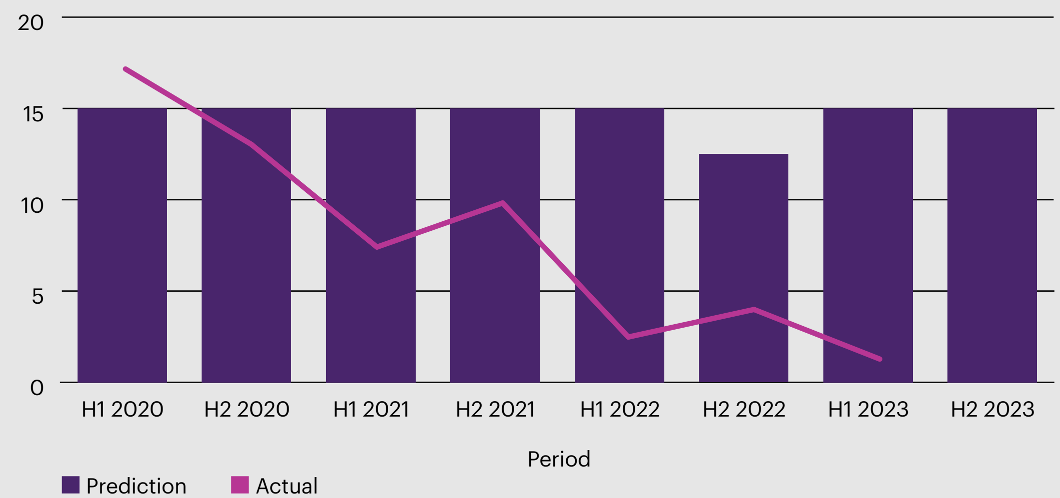
Source: WTW data

Auto liability (AL)

Auto liability continues to be a significant contributor to nuclear verdicts; however, insureds have experienced more moderate renewals after compounding years of rate increases and structure changes.

- Auto fatalities are a frequent driver of the nuclear verdicts that typically occupy headlines. Despite the severity of these accidents, the frequency of fatalities appears to be declining.
  - The estimated fatality rate for the first three months of 2023 decreased to 1.24 fatalities per 100 million vehicle miles traveled, down from the projected rate of 1.32 during the same time in 2022 (WTW's Q2 2023 State of the Casualty Market).
  - This decrease occurred alongside a 2.6% increase in vehicle miles traveled.
- Insureds have continued to increase their primary auto limits. In Q2 of 2023, the average combined single limit (CSL) was $2.1 million (WTW's Q2 2023 State of the Casualty Market).
  - The percent of oval programs with a minimum $5 million CSL has increased 36% compared to Q2 2022.
- The implementation of telematics and the recently introduced cab-facing cameras can play a key role in auto premium pricing. Contractors that have invested in these technologies are seen as best-in-class and often have increased competition during a marketing effort.
  - Underwriters are slowly providing premium credits/rate relief to contractors taking proactive measures such as these while additional data points on their effectiveness become available.
- Fleet size and makeup will continue to be heavily scrutinized by underwriters.
  - One area that has seen additional underwriting scrutiny is a contractor's hired/non-owned auto (HNOA) exposure. HNOA is a standard auto coverage that is included on most contractors' policies. It is intended to provide excess auto liability coverage over an employee's personal auto policy when an accident occurs while using a personal or rented auto during their course of employment.
  - With an increase in nuclear verdicts arising from auto claims, insurers are now keener to underwrite to specifics in a contractor's fleet policy, e.g., the personal auto limit requirements of their employees and when using a personal or rental vehicle is permissible. They will also factor in the number of drivers and miles driven.

Figure 2. **Auto liability**



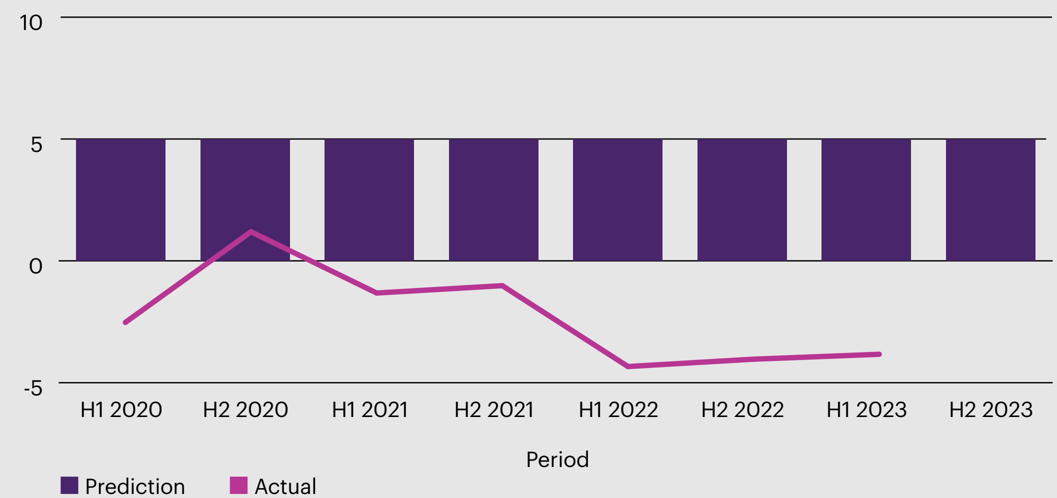
Source: WTW data

Workers compensation (WC)

Workers compensation remains a stable line of business for most contractors, which can serve as an anchoring point for the rest of the casualty program.

- Workers compensation continues to be one of the most stable lines of business during renewals from a market condition standpoint.
  - According to WTW's Q2 State of the Casualty Market, 2022 marked the ninth consecutive year of underwriting gain.
- There is some pressure on WC rates resulting from the rising cost of medical care.
  - Between 2012 and 2021, countrywide WC medical costs increased at 2% per year. For 2022, CMS actuary projects the PHC to run higher at 3.7% — and beyond 2022, in the range of 2.5% to 3%.
- The labor shortage is a recurring trend in construction. Contractors are under pressure to hire inexperienced workers to keep up with building demands. As a result, hiring and training standards can sometimes be done in a more hurried manner.
  - According to Travelers' 2023 Injury Impact Report, 47% of all construction injuries were to first-year employees.
  - Due to the inherent dangers of a construction jobsite, such as heavy equipment usage and working around unfinished structures that may lack proper safeguards, construction WC claims are also some of the most expensive of any industry. Travelers notes that construction injuries tend to be more severe and keep workers off the jobsite for longer periods, resulting in a claim average that is more than double the all-industry average.
  - As a result, underwriters and risk engineers give significant consideration to a contractor's health and safety plans as well as their return-to-work programs.
- Contractors are beginning to test different wearable technologies on their jobsites to prevent worker injuries.
  - Due to the high rate of muscle and back injuries, such emerging technologies as exoskeletons offer a potential solution. Exoskeletons can add strength and stability to a worker's back, arms, shoulders, hips and legs by displacing weight and absorbing tension. A blog post from the Centers for Disease Control recently stated their agreement that exoskeletons can be a solution to musculoskeletal injuries in the workplace.
  - The development of smart glasses also offers a solution for training employees more effectively. Smart glasses can overlay instructions and guidelines for a specific area or piece of machinery that a worker is looking at. This allows them to better follow procedures and directions and can also highlight any potential hazards, leading to fewer accidents.
- There is pressure in some states, such as Florida, to decrease WC rates. This could potentially lead to an escalation in WC carriers exiting the jurisdiction if they don't feel comfortable with the premium they are able to competitively charge for a risk.

Figure 3. **Workers compensation**



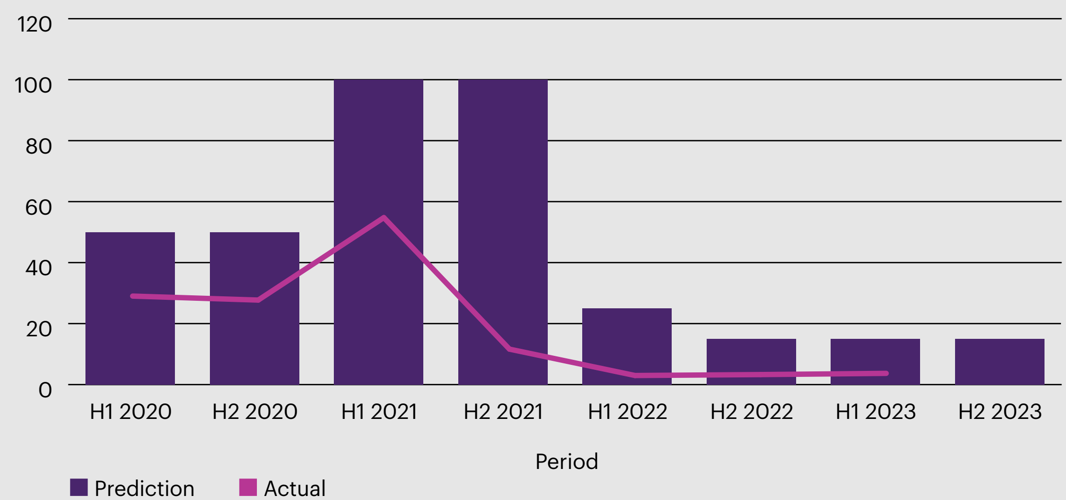
Source: WTW data

Umbrella/excess liability

Markets have steadily continued to broaden their appetite and offer lower attachment points, particularly for contractors with familiar operations.

- While rates have generally continued to increase on lead umbrellas, these effects can be minimized through restructuring, marketing and reflecting appropriate exposure growth.
- Markets have enhanced their lead umbrella capabilities to retain recurring and win new business as a supplement to their primary casualty offerings.
  - Carriers that give their underwriters the authority to write both the primary and lead umbrella tend to be more competitive because they can view the account from a more holistic perspective.
  - While the lead umbrella space is still primarily written by the same carrier as the primary, capacity for unsupported leads has grown over recent quarters as more carriers become comfortable with the premium levels in the market. Increased GL and auto attachment points have also added to carriers' comfort-levels.
- On large excess towers, efficient and strategic use of the domestic retail and wholesale market as well as the London and Bermuda markets is critical to putting together a robust program.
  - The London and Bermuda markets have become more competitive lower in the excess tower.
- With more markets offering additional capacity, a trend has emerged for the preference to deploy their capacity in multiple, ventilated layers rather than in one single tranche.
- Excess carriers, particularly in higher layers, are wary of exposures that have the highest potential to result in a catastrophic liability loss.
  - Some of the most prevalent construction exposures causing catastrophic losses include PFAS and other "forever" chemicals, wildfire, traumatic brain injury (TBI) and auto/truck accidents.
  - Residential and, particularly for-sale construction, is also viewed as a risky class of business due to the repetitive nature of building multiples of the same home or unit. If a defect is discovered in one home or unit, it is likely that the defect exists in others assuming the same means and methods were used.

Figure 4. **Umbrella lead**

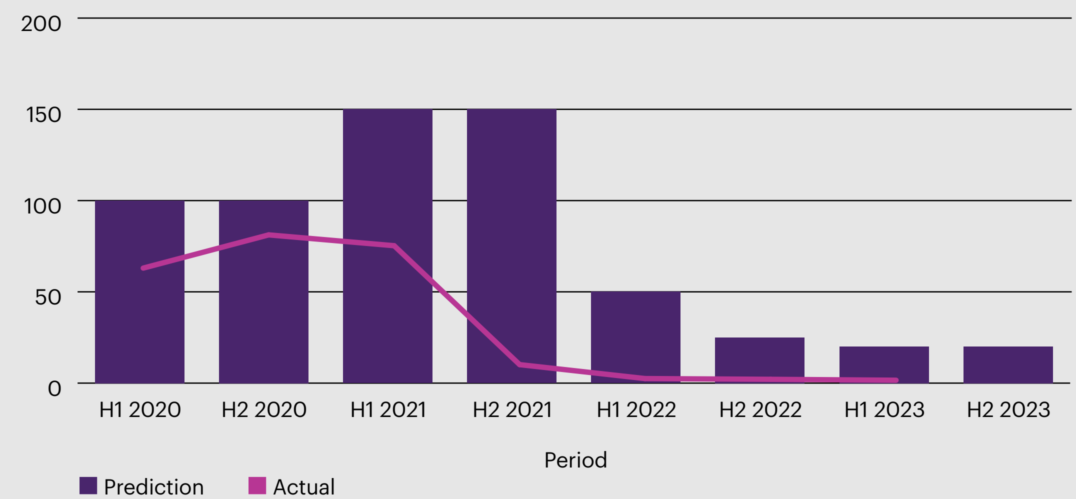


Source: WTW data

– Wood-frame construction is another challenge due to its potential for water damage.
– Contractors with heavy auto fleets also experience difficulties in the excess markets with the prevalence of nuclear verdicts from auto accidents.

- Umbrella and excess liability rates have continued to level out in recent quarters.
  – Umbrella rates in Q2 of 2023 increased at an average of 2.2%, down from 6.1% in Q4 of 2022 (WTW's Q2 2023 State of the Casualty Market).
  – Excess rates in Q2 of 2023 increased at an average of 2.8%, down from 3.9% in Q4 of 2022 (WTW's Q2 2023 State of the Casualty Market).

Figure 5. **Excess**



Source: WTW data

Controlled insurance programs (CIPs)

Larger and more complex new construction projects continue to come onto the scene through 2023. We do not expect a recession in the building industry this year or anytime soon.

Construction markets continue to focus on developing long-term partnerships in support of industry growth.

Project values continue to rise

- Construction material costs and availability are still playing a large role in construction value.
- Increased values are driving premiums up even while achieving a competitive rate on more complex projects.
- Inflation and higher interest rates continue to be a factor for project/property valuation.
- Increasing loss estimates require new depths of underwriting analysis to properly price an exposure.

Markets are responding with broader offering

- We are seeing direct market partners broadening capacity, coverage and deductible options to create long-term partnerships in support of project-specific programs.
- Continued market competitiveness: Primary rates on complex projects with higher values are trending down.
- Although insurers are hungry for these new projects, expect excess underwriters to need more time to finalize their pricing and terms.
- On rolling programs, a market incumbent's familiarity with the previous programs provides these insurers a level of confidence that allows for increased underwriting flexibility. Excess and surplus (E&S) wholesale markets are the exception to this when rolling programs include more difficult risks, such as residential, framework or increased risk for CAT perils.

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

New York controlled insurance programs (CIPs)

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.

Primary market options

- Primary GL limits of 5/10/10 are required in most cases to obtain excess coverage.
- The minimum general liability retentions in NY are in the $3 million to $5 million range depending on project size and scope.
- Very limited GL-only wrap marketplace: Carriers that enter this space have not lasted long.
- Combined owner/general contractor project-specific marketplace for projects $300 million and under CV is competitive. These carriers for the most part require the use of third-party risk management review services for qualification.

Excess market continues to pose challenges

- Excess carriers require a minimum of a $5 million attachment point.
- Lead excess pricing continues to be a challenge, with carriers seeking up to 100% premium to limit, depending on project exposures.
- Due to restrictions in excess capacity, we are seeing reduced limits and more quota-share arrangements throughout the tower.
- London and Bermuda markets are becoming more viable with needed capacity.

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

- High inflation, nuclear verdicts and insurance payouts continue to trend upward on labor law claims.
- Average settlement value of claims involving NY Labor Law 240 (1) is $1 million to $3 million.
- The use of alternative dispute resolution has gained interest among owners and contractors since the recent positive outcomes on projects that have instituted its use.

Builders risk

The builders risk market is in a state of flux. It's stable in some areas; however, still evolving/responding to recent industry loss events, including wildfires, tornados and hurricanes. Retentions are increasing, Delay in completion and wildfire are being underwritten with much more scrutiny. Rate increases for all construction types should be expected, especially highly CAT-exposed projects.

- 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.
- The builders risk market generally has sufficient capacity for our clients' construction projects; however, capacity can be restricted based on geographical location, project size and type of construction.
- Projects that involve high valued equipment/technology, modular construction, combustible construction (frame and JM/hybrid), or those exposed to natural disasters — should expect to encounter resistance from the marketplace and be subject to more stringent terms and conditions.
- Limited underwriter bandwidth and increased underwriting discipline require longer turnaround times to quote.
- Providing comprehensive and accurate underwriting information is essential to obtaining competitive quotes.

Water damage retentions — across the board

- Water damage losses continue to plague the industry and are a major loss driver/challenge to the market. Increased water damage deductibles can be anticipated, especially on high-rise, residential and wood frame projects.

High hazard NATCAT exposed projects

- Rates and deductibles continue to rise; especially in southeast U.S. post-2023 treaty renewals, carriers need much higher minimums to achieve technical adequacy for pricing related to catastrophic events, especially in Florida.
- Damage from hail/tornado/convective storm: Many carriers are pushing for higher deductibles/limitations on hail/tornado/convective storm-exposed areas, project builders risk and master builders risk programs.
- Florida wind capacity continues to tighten, and rates are up 50%+ year over year in some cases. We continue to see a push for longer waiting periods on CAT perils. The west coast and central Florida are becoming more challenging to get large bulks of capacity from an individual carrier.
- Excess flood: Extremely difficult and limiting. Carriers flood mapping is evolving, now capturing pluvial and fluvial flood.
- To summarize: Finite capacity is available, rates are very volatile and tough to predict.

LEG 3 — Limitations

- Energy and civil risks continue to tighten on terms and available capacity in the marketplace.

Renovations with damage to existing RP exposure

- Underwriting appetite is very limited on renovation projects that include structural elements and/or when the value of the existing building is more than 50% of the CV.

Project extensions continue to be challenging.

- 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.

Wildfire exposure in northwest continues to be front-of-mind for carriers.

- Increased rates and wildfire deductibles, in addition to possible restrictions in coverage, can still be anticipated on exposures that have a high wildfire rating.

Clients that can showcase exceptional risk management practices and on-site safety measures are best positioned in this market. Project-specific fire safety, hot work and water damage mitigation plans are encouraged on projects and typically required on all frame and high-rise projects.

HH NATCAT locations

- It is critical to have adequate lead time for submissions.
- Complete and adequate underwriting information/project details, elevation information, flood mitigation plans and emergency response plans will put insureds in the best position — especially coastal/surge-exposed locations.

Robust site security

- Site security is a requirement for most large wood frame or JM construction projects. We encourage risk managers and contractors to look at site security as part of their all-in construction cost instead of as an additional cost. Electronic service monitoring can be costly, and prices range dramatically from vendor to vendor, depending on the scope of surveillance needed.

Project extensions

- Project extensions continue to be challenging, 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.

Professional liability

The construction professional liability market remains competitive, with increased underwriting scrutiny for certain risks, and for carriers careful about capacity deployment and retention level.

- Total U.S. capacity continues to exceed $300 million, with recent increases from new market entrants. Reduced capacity is available for project-specific placements because many insurers reserve this capacity for practice or annual clients.
- While some insurers have reduced limits on specific coverage parts or on an overall book portfolio basis, many insurers offer at least $10 million per risk to insureds, with others able to offer up to $25 million. Most carriers restrict limit deployment for any one risk.
- There is some pressure on rates with most insureds experiencing minimal increases unless there have been exposure changes.

Most coverages are available from most carriers, but approach can vary greatly among insurers.

- Insurers underwrite each risk on case-by-case basis with a focus on contractual controls and designer prequalification.
- Depending on a project's delivery method, insurers may request 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 limiting extended reporting periods to applicable projects' state statute of repose or contractual requirement, whichever is less.
- Design professionals in A&E 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 impacted contractual negotiations between design/build contractors and owners. This, coupled with the push for limitations of liability from design professionals, is making contractor-purchased project placements more expensive and leading owners to consider procuring owner's protective indemnity.
- The owner's protective professional indemnity market remains robust with sizeable capacity and strong appetite for most projects.

Contractors pollution liability

Despite economic confusion, client need and carrier appetites for environmental coverages remain strong in our marketplace.

- While some investors await better economic certainty, the application of environmental insurance has become even more essential for mergers, acquisitions and real estate transactions.
- More than ever, authority approval from carrier leadership is needed on complex and larger capacity environmental programs.
- Following a period of market consolidation, environmental market capacity remains stable with few new market entries.

Emerging exposures and opportunities continue to fuel the creation of new environmental products and the reimagined use of some old ones.

- PFAS (per- and polyfluoroalkyl substances) restrictions are now common across most property and casualty lines, although environmental coverage may be secured for companies that can demonstrate de minimus exposure.
- New developments in risk transfer products or combinations of existing products are being applied to new environmental opportunities, such as carbon sequestration (natural resources) and reps and warranties (M&A).
- Ethylene oxide (EtO) continues to emerge as a potential contaminant to watch.

The magnitude and frequency of recent environmental claims have shaped carrier behavior and appetites.

- Rising remediation costs have moved carriers to take a more active role earlier in the claim process to mitigate losses.
- Major losses arising from ancillary environmental coverages, such as transportation and non-own locations/disposal sites, serve as a reminder of the importance of these coverages.
- 20 years on, carriers continue to offer affirmative coverage for indoor air quality (IAQ) issues, such as mold and Legionella, but many employ various underwriting tools (class of business, named peril, per-door deductibles) to mitigate their exposures.

Environmental exposures in the construction industry persist and are expanding.

- Excessive siltation and stormwater exposures continue to yield large pollution claims for new construction projects.
- Redevelopment-related claims arising from pre-existing conditions, soil and water management and voluntary site investigations are commonplace.
- PFAS restrictions are now encountered on construction-related programs.

Subcontractor default insurance (SDI)

Owners, developers, lenders and general contractors continue to face subcontractor default risk and increased multipliers in claim magnitude. SDI usage continues to be an accepted performance and post-completion security tool with the comprehensive coverage provided by SDI. Schedule protection for the unforeseen subcontractor default (inflation/recession, materials and supply uncertainty and ongoing skilled labor constraints).

- SDI marketplace is mature — six carriers since 1996.
- Single limits can now be offered at $50 million or greater per loss.
- Excess limits portfolio or project is available.
- Dovetail use of surety and SDI.
- Insurers continue to offer flexibility for annual, 24/36 month and multiyear programs and on subcontractor enrollment.
- New capacity and choice: Buyers should retain experienced broker to tailor a bespoke program review, current policy terms, conditions and pricing.
- There are increases in bankruptcy, claims and claim notices.
- Claim experience matters versus a generalist approach.
- Study the data (take it all in).
- SDI “waterline,” loss multipliers and ground up magnitudes continue to see an increase.
- New normal underwriting! SDI insurers are critical of contractors who are altogether new to SDI. Insurers have increased vigilance — more frequent in-person underwriting and risk engineering visits.
- Owners and contractors will have greater emphasis on performance security tools surety/SDI.

Contact

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

Energy

Rate predictions

Tier 1

Well-engineered,clean and well-run risks

Flat to +5%

Tier 2

Clean, but lower premium income

+7.5% to +12.5%

Tier 3

Loss-affected programs

15%+

Key takeaway

New capacity and sustainable sector claim performance year-to-date is yielding improved results for buyers, but risk differentiation remains key to success. Named wind and surge-exposed accounts remain subject to changes in terms and pricing.

Scrutiny on reported values remains, but the recommended rate of value increase is slowing.

- It is important to provide details based on the replacement cost per location being used.
- Exhibiting a reliable baseline of values being indexed is critical to successful use of these tools.
- Concern remains in areas regarding the impact of inflation on declared values.

New capacity into the market is leading to increased competition.

- The end of a major MGA relationship between two notable property insurers has opened up new, additive energy sector capacity as both entities will continue to write business in the space.
- A new MGA market entrant backed by a notable, domestic wholesale broking firm and a major nationwide insurer will begin writing new business in Q4 2023.
- Despite line size scrutiny by some insurers, the new capacity should more than offset some line size contraction.

Risk quality and account differentiation remain critical to successful renewals.

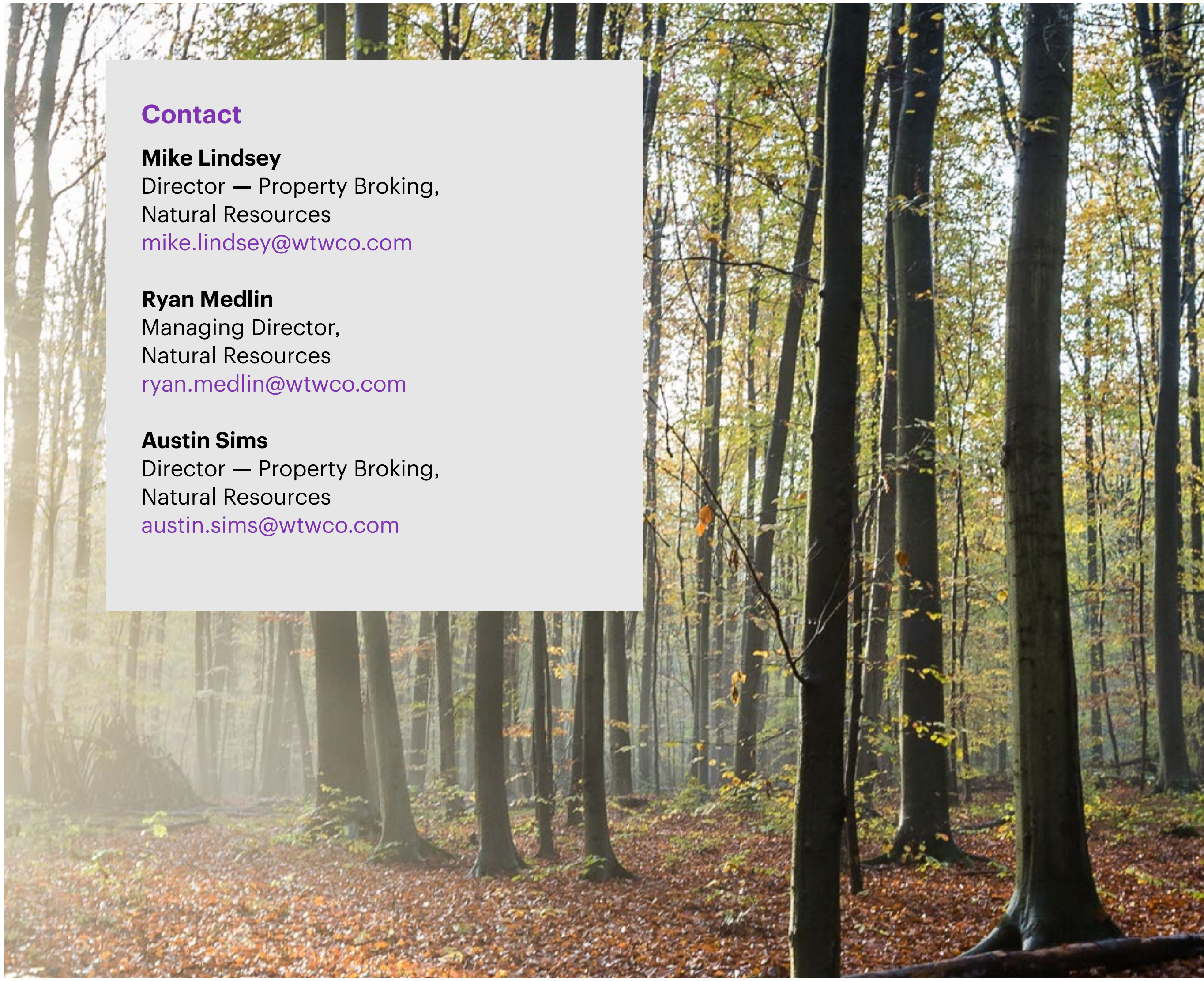
- While robust capacity in the space is available, deployment from underwriters depends heavily on risk quality.
- Without adequate risk engineering reports on critical sites, including up-to-date responses to open recommendations, renewal results will suffer.
- Risk differentiation via avenues like underwriter meetings can set risks apart from peers and yield improved results.
- Insurer ESG positions also represent a complex market dynamic impacting results and must be addressed by insureds directly.

Business interruption (BI) volatility continues to be an area of focus as well as coverage restriction.

- London Market Association (LMA) BI volatility clauses are now market standard in downstream with percentage caps varying based on market perception of volatility risk.
- Market understanding of supply chain and contract strength can help alleviate some market concerns, but these clauses are likely to still be required.
- Reporting of BI values, including monthly breakdowns, provides better coverage clarity.
- Regimented review of reported values to validate cap adequacy paired with mid-term value adjustment can relieve recovery limitation concerns.

Underwriters are evaluating line sizes (both capacity deployed and percentage share) to improve underwriting results.

- There remains heightened scrutiny from senior management, particularly in downstream where profitability has not met expectations.
- Recent midstream losses have led to reevaluation of appetite in the space for some insurers.
- Through two quarters, energy underwriting results have been excellent.
- Increased underwriter gross written premium budgets could lead to more aggressive pricing for Q4.



Contact

Mike Lindsey
Director — Property Broking,
Natural Resources
mike.lindsey@wtwco.com

Ryan Medlin
Managing Director,
Natural Resources
ryan.medlin@wtwco.com

Austin Sims
Director — Property Broking,
Natural Resources
austin.sims@wtwco.com

Environmental

Rate predictions

Contractors pollution liability (CPL):	Site pollution liability (PLL/EIL):	Combined environmental + casualty/professional/excess:
+5% to +10%	+5% to +15%	+5% to +15%

Key takeaway

The ability of companies to understand and differentiate their environmental exposures (by their industry as well as from their peers) in the current marketplace will be their key to success.

Despite global economic turbulence, client need and carrier appetites for environmental coverages remain strong in our marketplace.

- While some investors await better economic certainty, the application of environmental insurance has become even more essential for mergers, acquisitions and real estate transactions.
- More than ever, authority approval from carrier leadership is needed on complex and larger capacity environmental programs.
- Following a period of market consolidation, environmental market capacity remains stable with few new market entries.

Emerging exposures and opportunities continue to fuel the creation of new environmental products and the reimagined use of some old ones.

- PFAS (per- and polyfluoroalkyl substances) restrictions are now common across most property and casualty lines, although environmental coverage may be secured for companies that can demonstrate de minimus exposure.
- New developments in risk transfer products or combinations of existing products are being applied to new environmental opportunities, such as carbon sequestration (natural resources) and reps and warranties (M&A).
- Ethylene oxide (EtO) continues to emerge as a potential contaminant to watch.

Figure 1. **2023 Contractors Pollution Liability (CPL) multi-year effective rate increase**

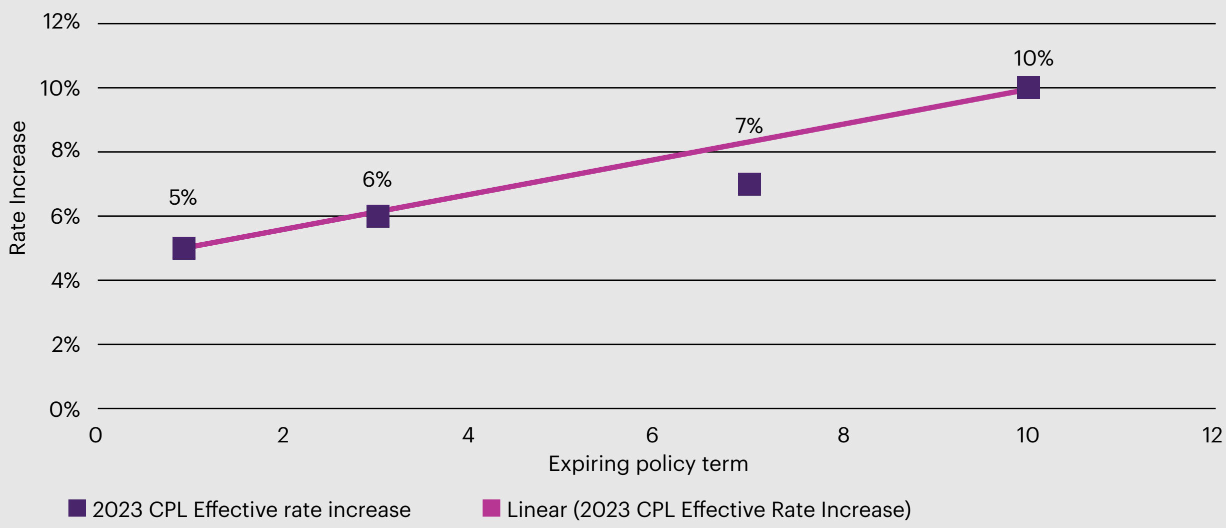
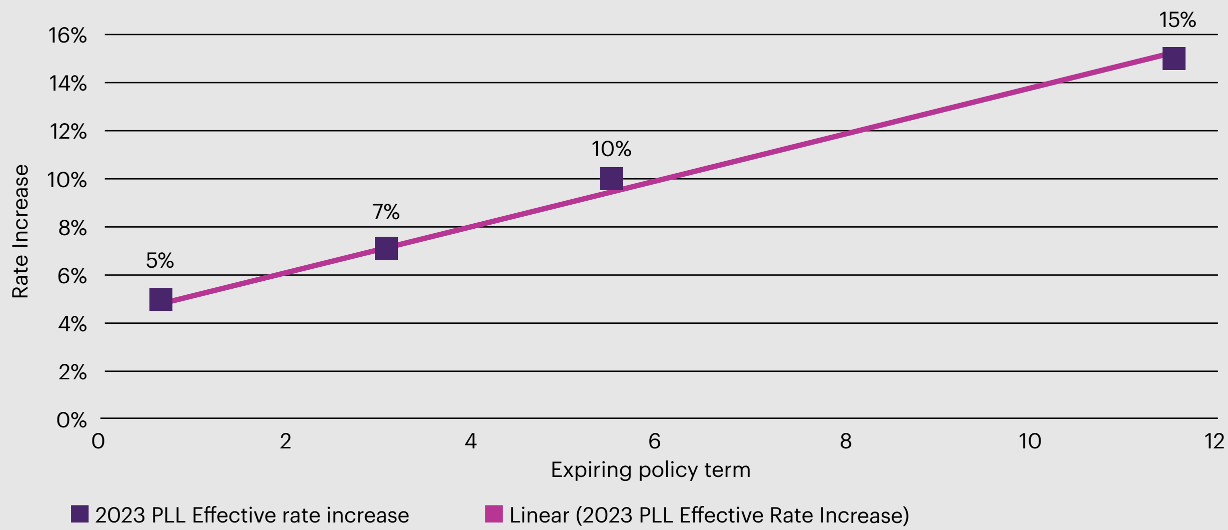
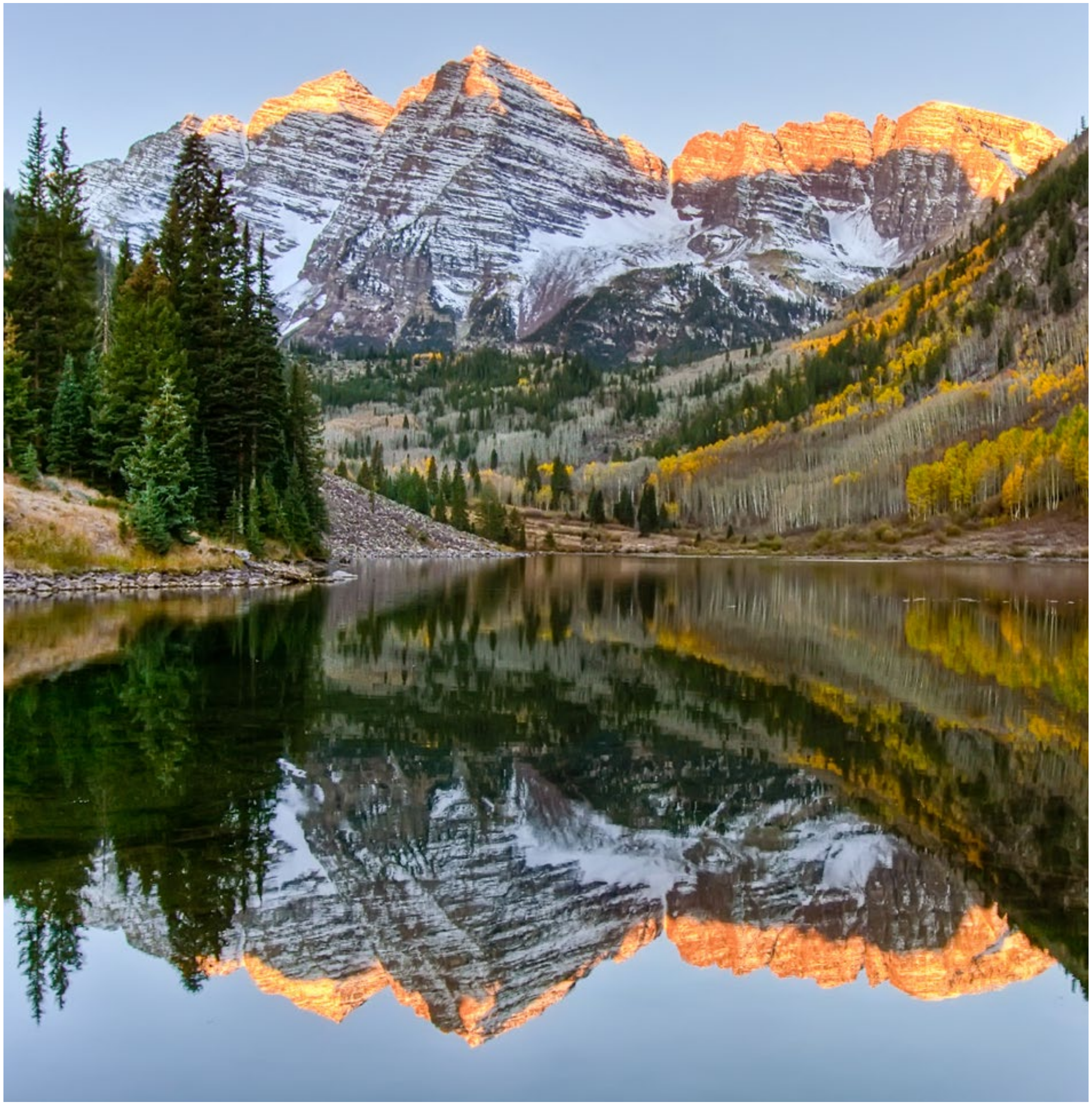


Figure 2. **2023 Site Pollution Liability (PLL) multi-year effective rate increase**





The magnitude and frequency of recent environmental claims have shaped carrier behavior and appetites.

- Rising remediation costs have moved carriers to take a more active role earlier in the claim process to mitigate losses.
- Major losses arising from ancillary environmental coverages, such as transportation and non-own locations/disposal sites, serve as a reminder of the importance of these coverages.
- Twenty years on, carriers continue to offer affirmative coverage for indoor air quality (IAQ) issues, such as mold and Legionella, but many employ various underwriting tools (class of business, named peril, per-door deductibles) to mitigate their exposures.

Environmental exposures in the construction industry persist and are expanding.

- Excessive siltation and stormwater exposures continue to yield large pollution claims for new construction projects.
- Redevelopment-related claims arising from pre-existing conditions, soil and water management and voluntary site investigations are commonplace.
- PFAS restrictions are now encountered on construction-related programs.

Contact

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

Healthcare professional liability

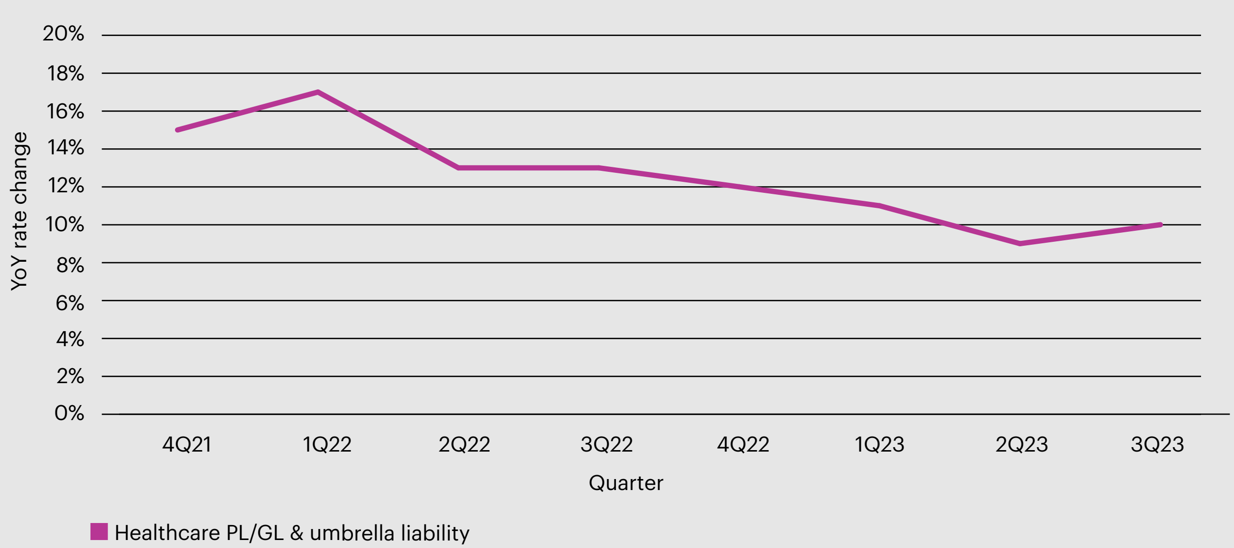
Rate predictions

Allied health +5% to +15%	**Hospital professional** +5% to +20%
Managed care E&O +5% to +12%	**Physicians professional liability** +5% to +15%

Key takeaway

Markets are careful in deploying capacity. Sexual abuse coverage continues to be carefully scrutinized and limited. Underwriters are carefully evaluating venues (i.e., Georgia, Pennsylvania, New Mexico and California). Batch claims continue to be problematic, and nuclear or outlier claims continue to be awarded.

Figure 1. **Renewal pricing trends healthcare professional liability rolling quarterly results***



*Data reflects a sample of blended rates for each class of healthcare business referenced above as extracted from WTW renewals.

Allied health

- Staffing adequacy, training and burnout
- Underwriters' concerns about providing services in a healthcare setting
- Patient privacy

Hospital professional

- State legislative activities — tort reform including increased opportunities to venue shop
- Batch coverage including sexual abuse
- Practitioner burnout/retirement/staffing shortages

Managed care E&O

- Regulatory claims such as antitrust and HIPAA
- Pharmacy benefit management and opioid litigation
- Member and provider disputes

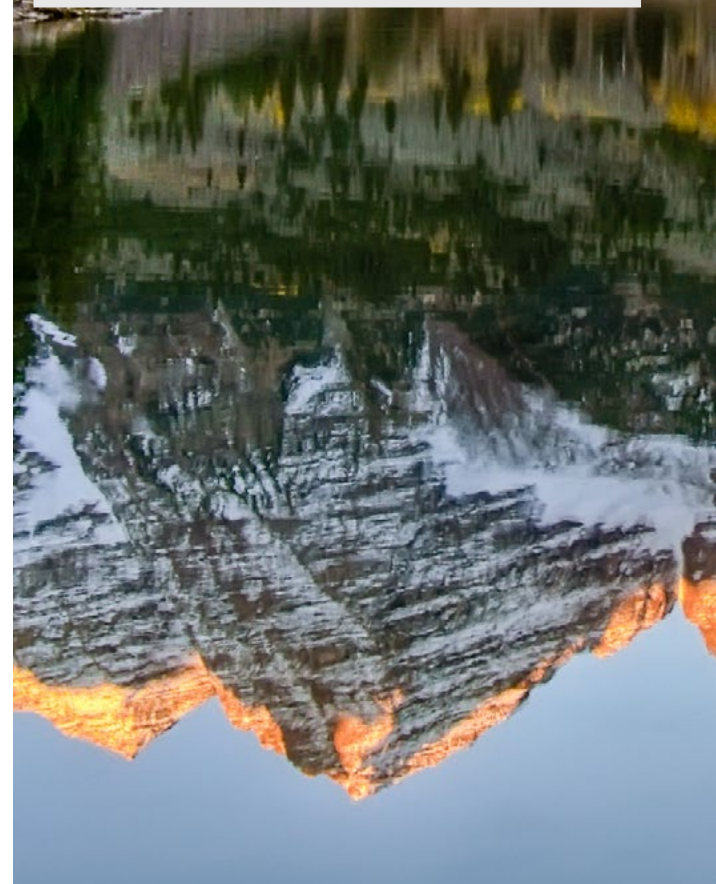
Physicians professional liability

- Physician burnout
- Staffing shortages
- Sexual abuse

Contact

Michael Faralli
Healthcare Broking Leader, North America
+1 347 439 7058
michael.faralli@wtwco.com

Joanne Kowalczyk
Senior Placement Specialist
Healthcare Broking, North America
+1 973 829 6395
joanne.kowalczyk@wtwco.com



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 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.

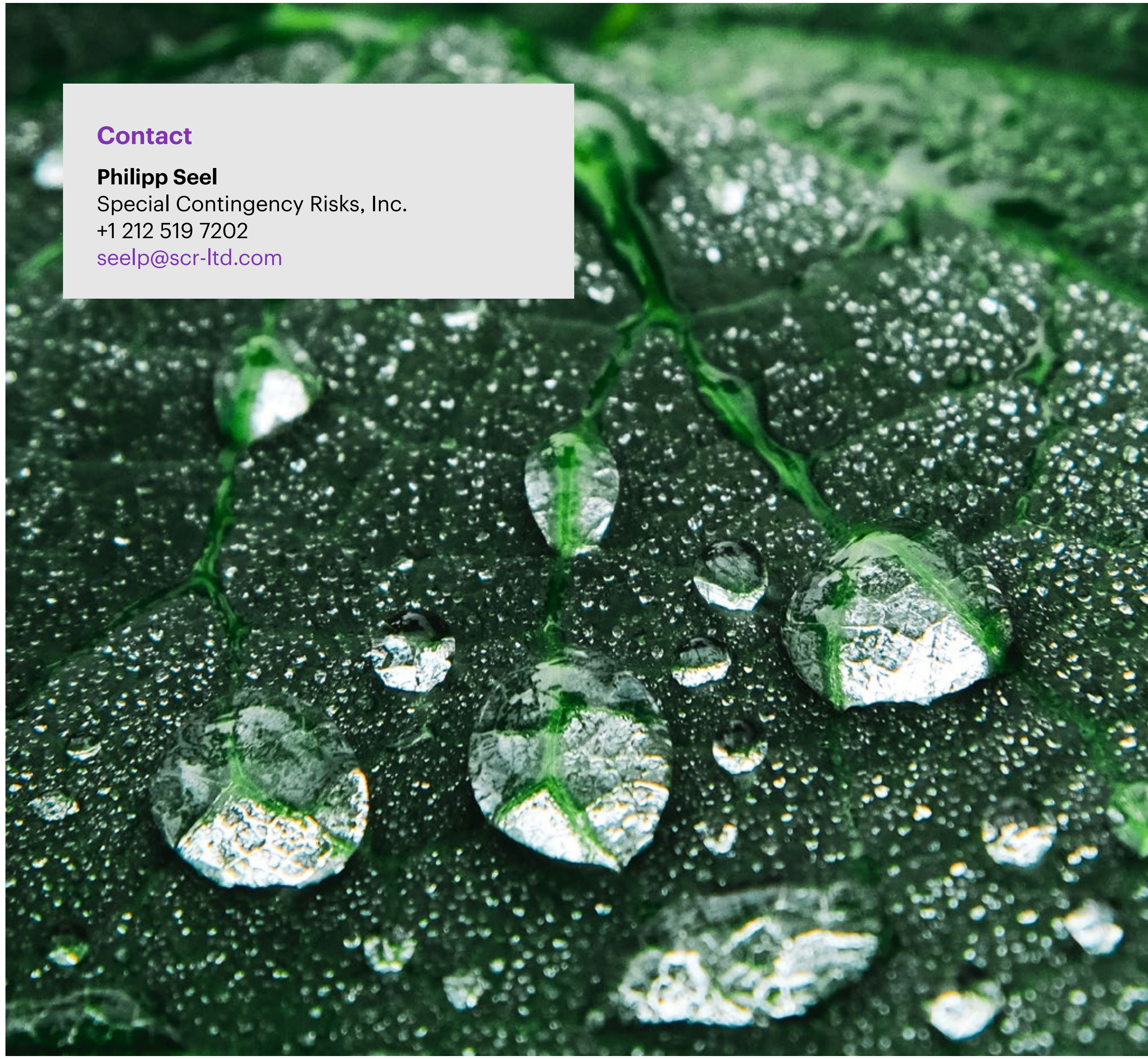
- As restrictions and lockdowns have eased, the incidence of kidnap activity has returned to pre-COVID-19 levels in several countries. While the decline in international travel has led to a perceived reduction in risk, our data shows an increase in the numbers of local nationals kidnapped.
- Moreover, 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.

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.



Contact

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

Life sciences

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. While one carrier recently announced they are withdrawing their capacity for medical product liability, there is also new/expanded capacity from two additional carriers.

The following items remain a concern for underwriters:

- **Acetaminophen:** Acetaminophen MDL is being closely monitored, and mounting concern surrounding this product has led to broadened exclusionary language. In addition to exclusions for in-utero ingestion of acetaminophen linked to neurodevelopmental disorders, some carriers are adding exclusions for other issues, such as acute liver failure, acute generalized exanthematous pustulosis, Stevens-Johnson Syndrome and toxic epidermal necrolysis.
- **Product impurities:** We continue to see recalls for products containing benzene, which tends to be prevalent in personal care products, such as lotions, deodorants, antiperspirants, sunscreen, shampoo/conditioners, body wash and hand sanitizers. As a result, we are commonly seeing benzene added to the list of excluded impurities.

  In response to the nitrosamine impurities issues stemming from as far back as 2018, the FDA has now provided drug manufacturers with critical guidelines for conforming their products to what the agency has determined to be safe nitrosamine exposure limits for patients. The product liability insurance marketplace continues to exclude claims in any way related to nitrosamines.
- **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, PFAS exclusions on product liability programs are becoming more prevalent.

As always, capacity for certain litigated product classes such as orthopedic implants and proton pump inhibitors remains limited.

The convergence of the consumer product and healthcare industries continues to create coverage challenges that the insurance marketplace is struggling to keep up with. We are continually working to push the boundaries of traditional insurance policies to ensure that insureds have adequate coverage in place to meet their evolving needs.

With the demand for pharmaceuticals and medical devices rising, 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.

Contact

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

John Connolly
Life Sciences Industry Vertical Division Leader, North America
+1 610 254 5686
john.a.connolly@wtwco.com

Managed care E&O and D&O

Rate predictions

Public MCOs
E&O: +10%,
D&O: -10%

Blue plans
E&O: +8%
D&O: +10%

Hybrid entities (accountable care organizations, third-party administrators, revenue cycle management, etc.):
E&O: +10%
D&O: +15%

All other MCOs:
E&O: Flat to +5%,
D&O: +10%

Private company, other lines of business:
EPL: Flat to +7.5%
Fiduciary: Flat to +15%
Crime: Flat to +10%

Cyber liability:
MCOs with good cyber security controls and no adverse loss activity: +5% to +15%

For less-than-optimal risks: +15%

Key takeaway

E&O and D&O conditions for managed care organizations (MCOs) continue to stabilize, but systemic risks and concern over regulatory investigations and claims, mass tort, antitrust and class action claims are still driving coverage restrictions. Economic realities and federal and state health policy changes add additional pressure as well as climate, ESG, inflation and political considerations. For those with pharma or PBM exposure, the risk is greater. 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 manage their exposure to aggregated risk but are more actively seeking new business opportunities. MCOs continue to use captives because of market conditions related to coverage.

Cyber liability pricing trends continue to improve in 2023 in the managed care sector with further market stabilization. However, cyber underwriters remain technically focused on ransomware controls and cyber security resilience. Public companies continue to see rate reductions in their D&O programs, but these reductions are for organizations that are performing well and have good loss experience.

Fiduciary liability has been stabilizing but larger plans with assets of $1 billion+ are underwritten with lots of attention to detail, scrutiny of plan fees and review of notices to participants.

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 ceased. But we are keeping an eye on regulatory retentions based on political and regulatory uncertainty at the federal and state level, which is adding further complexity to the marketplace in this area.
- Some markets apply coinsurance and sub-limits related to antitrust and regulatory risk.
- 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 and other exclusions are being added to PBM policies.
- MSOs and other hybrid entities find it hard to obtain bodily injury cover.
- 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 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 continues. 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.
- Non-core business diversification is driving risk and coverage limitations.

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, and the result has been a log jam of disputes, rising costs, lobbyist battles in Washington and incentives for providers to remain out of network. This process has once again been halted by HHS/CMS based on judicial orders. This raises premiums and results in risks, including defense costs and the possibility of additional risk/exposure. Market response is likely to involve restrictions in coverage related to these "claims."

Merger and acquisition activity continues to rise.

- 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, the chair of the FTC and the antitrust division of the DOJ have made it clear that they intend to scrutinize 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.

The 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 a significant impact on all healthcare entities, payors and providers alike, including self-funded health plans. 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 this risk 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.

Regulatory and policy uncertainty

- With the continued difficulties and changes in health policy as administrations change driven by politics and ideology as well and enforcement priorities, the payor industry is seeing consistent — if not constant — threats to business strategies at the federal and state levels. Regulatory investigations, compliance and related claims (E&O, D&O and cyber) continue pressure underwriters to anticipate risk and exposure. When there is limited information, but consistent change and the possibility of risk/exposure, underwriters err on the side of caution, which limits coverage and drives up rates. This is not likely to change any time soon. 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.

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, 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 exposures based on legislative and regulatory action are also adding to the pressure.
- **Government fines and penalties:** Because MCOs are so tied to government reimbursement, plans are likely targets of government False Claims Act investigations, whistleblower lawsuits or administrative fines/penalties. Beyond restitution, damage awards, fines and penalties, defense costs alone can exhaust a risk transfer program. International regulatory compliance is another risk in countries (e.g., the 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 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.

Contact

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

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

Marine cargo

Rate predictions

U.S. markets

Transit

Good loss experience:	Marginal to poor loss experience:
Flat to +5%	+10% and higher

Stock throughput

Good loss experience:	Marginal to poor loss experience:
+2.5% to +7.5%	+10% and higher

London markets

Transit and stock throughput

Good loss experience:	Marginal to poor loss experience:
Flat to +5%	+10% and higher

Key takeaway

Due to the current state of the property market, marine insurers are being asked to provide an alternative stock throughput program structure option. In some cases, despite the competitive policy terms and conditions secured in the marine market for an alternative STP structure, we are seeing that the property markets are not able to provide the appropriate credit for the removal of the inventory from the property program. Alternatively, when the inventory is insured via the property market, due to the increase provided, the marine program is often marketed, so seek premium savings to assist subsidizing the property increase. Marine insurers are also focusing on CAT season to determine if the season is prolonged due to global warming. Insurers continue to be fixated on CAT per occurrence and annual aggregate limits, as well as corresponding deductibles.

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

- 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, theft attractive 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 increased pressure on suppliers and vendors
- **Labor shortages:** Ensured by aging populations, skill gaps and strikes
- **Sustainability:** Extreme weather making some raw materials harder to harvest or access; floods, fires and storms impacting logistic chains, while companies are also 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 could result in more lockdowns and restrictions that could threaten supply chains)

Contact

Anthony DiPasquale
Marine Industry Vertical Division Leader, North America
+1 212 915 8591
anthony.dipasquale@wtwco.com

Marine hull and liability

Rate predictions*

Domestic hull and machinery:
+2.5% to +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:
+5% to +7.5%

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 +2.5%

*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 and higher end of range for challenging risk exposures.

Underwriting in the current environment remains challenging

- Marine underwriters requiring premium increases for claim inflation (personal injury and increases in raw material cost) and cost of reinsurance increasing.
- Excess liability underwriters are taking a careful review of non-marine underlying coverages (specifically auto liability) scheduled under marine bumbershoot policies and requiring higher minimum attachments points (no longer accepting $1 million underlying auto limit for fleets of significant size).
- Excess liability underwriters reducing capacity and requiring ventilation between layers requiring quota share placements and additional market capacity.
- Due to political unrest globally and specifically for the situation in Ukraine/Russia, we expect significant adverse developments in the hull war market in carrier capacity, appetite, and terms/conditions.
- Underwriters seeking additional retentions on U.S. Gulf area must consider hull risks due to consistent NATCAT losses.

International group P&I clubs

- P&I club market is starting to stabilize after several consecutive years of large pool claims, high average market combined ratio and lower investment returns.

Burdens increasing on both sides of 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.

Contact

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

Personal lines

Rate predictions

Homes under $1,000,000
+10% to +14%

Homes over $1,000,000
+14% to +18%

Cat-exposed
+20% to +50% with restrictions and/or non-renewal

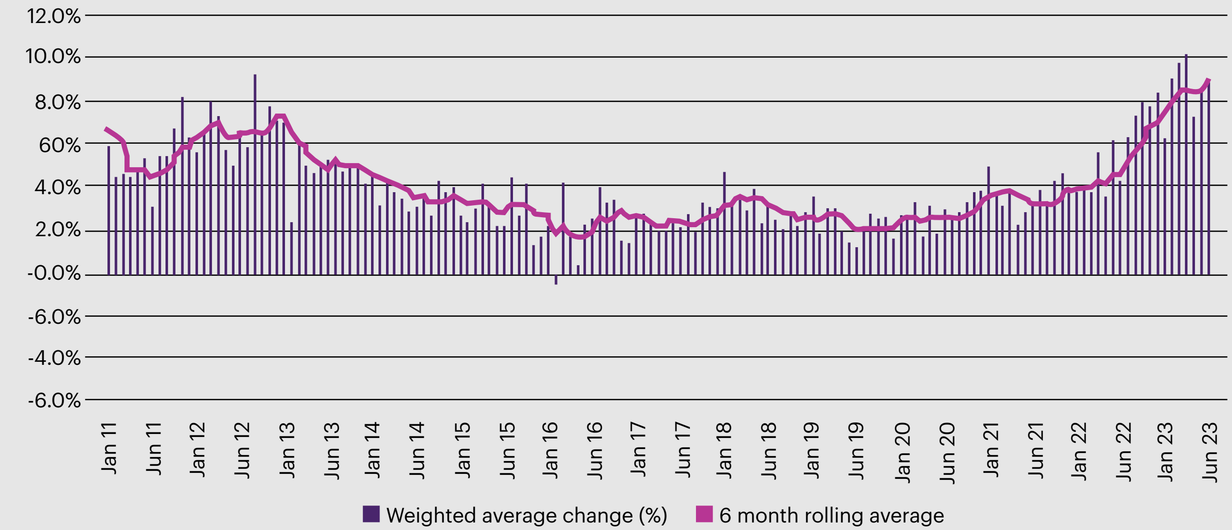
Cat-exposed and/or losses
+50% or non-renewal

Auto
+15% to 20%

Key takeaway

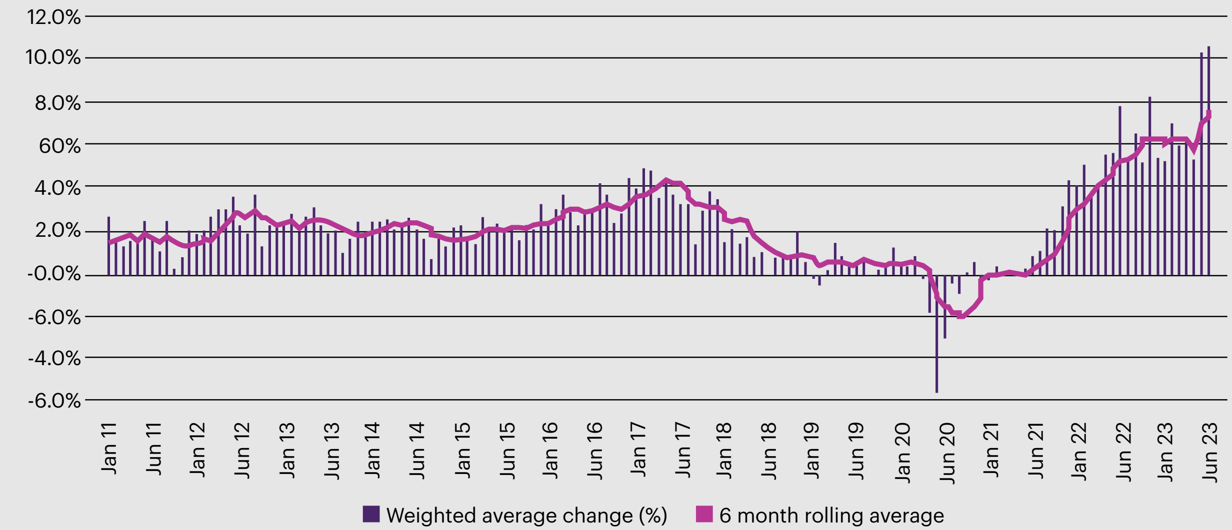
Market conditions continue to deteriorate for personal lines clients. Recent storms have exasperated an already stressed market fleeing from years of persistent high loss ratios. Carriers have taken aggressive action to slow growth to focus on pricing risk appropriately. Regulators will need to allow more rate increases to free up capacity in CAT-prone states. Meanwhile, many clients will be forced to explore E&S options as the traditional market becomes constrained.

Figure 1. **Homeowners — weighted average rate change by month — 2011 through to 07/28/2023**



Source: S&P Capital IQ, Inside P&C

Figure 2. **Personal auto — weighted average rate change by month — 2011 through to 07/28/2023**



Source: S&P Capital IQ, Inside P&C

High limits of excess liability become elusive.

- Umbrella/excess liability policies have experienced double-digit rate increases for many years.
- Several carriers have pulled back support for higher limits of liability due to nuclear verdicts along with higher costs of litigation.
- Clients are faced with strict underwriting guidelines often finding themselves with limited options.

Contact

Tyler E. Banks
National Practice Leader and CEO, Personal Lines
+1 949 930 1766
tyler.banks@wtwco.com

Auto rate increases show no sign of slowing down.

- Motor vehicle insurance prices in July increased 17.8% year-on-year, accelerating from 16.9% in June (CPI).
- Loss cost trends remain stubbornly high due to elevated costs in labor, materials and used cars.
- Auto manufactures are ramping up production, which should bring some relief on the horizon.

Home insurers have taken a defensive position due to extreme weather conditions.

- Major insurers have officially exited several states while simultaneously re-underwriting their exposure across the country.
- Clients are growing accustomed to retaining higher deductibles and limiting claims to lower their premium spend.
- Preventative measures, such as installing automatic water shut off devices and maintaining brush clearance, are no longer optional.

Political risk

Rate predictions

Political risk

+10% to +70% for renewals depending on country mix within portfolio

Flat for anniversaries within multi-year policies (same host country sub-limits), flat to +10% for increases in host country sub-limits

Key takeaway

Instability and unpredictability are in a heightened state, with the spate of coups in Africa, continuing U.S.-China tensions, Latin American government actions and unrest — we recommend seeking longer policy periods to guarantee capacity and flat pricing and taking cover, not for high-risk countries of the moment, but rather on countries in which you can't afford to lose the investment.

Overall, the PRI market remains hardened with the following emerging dynamics:

- Self-insured retentions (SIRs) are being used more regularly, particularly on transactions with many host countries.
- Several carriers are lowering their line-size per transaction; placements require more syndication.
- Appetite for large numbers of host countries has declined, several carriers preferring single-country transactions or a smaller set of countries, such as five; pricing on programs of a higher number of countries has increased.

The continuing spate of coup d'états in Africa highlight a potential for more instability on the continent.

- Gabon experienced a coup d'etat on August 30, 2023, shortly after the announcement that incumbent president Ali Bongo Ondimba had won the August 26 general election. The reasons cited include views that the country's oil wealth had not trickled down and helped regular citizens, potential corruption and the political process.
- Niger experienced a coup d'etat on July 26, 2023; the country's presidential guard removed and detained President Mohamed Bazoum citing dissatisfaction with the security situation of extremist groups and some protestors citing anti-French sentiment. Burkina Faso, Guinea, and Mali have declared support for the junta and will not apply sanctions and have asserted furthermore that any military intervention in Niger was a declaration of war against the two countries. France has said it will withdraw its ambassador and its troops over time.
- Earlier this year Sudan, and previously Mali, Guinea, Chad, Burkina Faso, have also had coups. Since 2020 there have been nine coups in West Africa, Central Africa and the Sahel region.
- The key takeaway is to contemplate how North American insureds will be treated in the wake of such a coup by both the juntas and by the population at large, and how the contagion might continue to other African countries that have a similar profile.

Latin America continues to show instability with unrest and government actions.

- Ecuador's President Guillermo Lasso in May dissolved Ecuador's legislature, plunging the country deeper into a security crisis with unrest and the dramatic assassination of presidential candidate Fernando Villavicencio in August. Run-offs of the snap election are scheduled for October 15 in a country that was once one of Latin Americas safest countries.
- Nicaragua's recent expropriation actions against educational institutions are a concerning development on investments.
- This region is one we continue to watch for increased risk of expropriation, political violence and currency inconvertibility.

High profile seizures in Russia showcase challenges of exit for multinational companies.

- In July, per CNN, Russia seized share-holding of two companies, a brewer and a yogurt maker, by a decree signed by Russian President Vladimir Putin in which these foreign-owned stakes were put under the "temporary management" of Russia's federal property agency.
- Companies are also struggling to repatriate dividends from "unfriendly jurisdictions" per Financial Times, billions of dollars of western profits are trapped in Russia in the amount upwards of $18 billion.

China continues to be a country of investor interest for political risk insurance while capacity has declined for new business.

- Capacity remaining is likely (+/-) $15 million to 60 million depending on the transaction.
- Remaining capacity generally excludes companies in sectors deemed politically sensitive (e.g., technology and defense), and underwriters are doing much more due diligence.

In our recent Political Risk Index: Spring/Summer 2023, we examine how today's cost-of-living crisis fuels political turmoil. In addition, as all our Political Risk Index editions do, we provide analysis on 61 countries with respect to their risk levels for expropriation, currency inconvertibility, political violence, terrorism, and sovereign default.

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.

Contact

Laura Burns
Head of Political Risk, North America
+1 646 684 9626
laura.burns@wtwco.com

Product recall

Rate predictions

Product recall:
Flat to +2%

Key takeaway

Recalls continue to increase across most industries as FDA and NHTSA recalls continue to be the driving force as recalled units have increased 13.7%. We must protect our clients by addressing limit adequacy in these uncertain times.

Market movement

- Dual Crisis Management has expanded to London and New Zealand.
- ARK Syndicate left the market due to loss ratio.

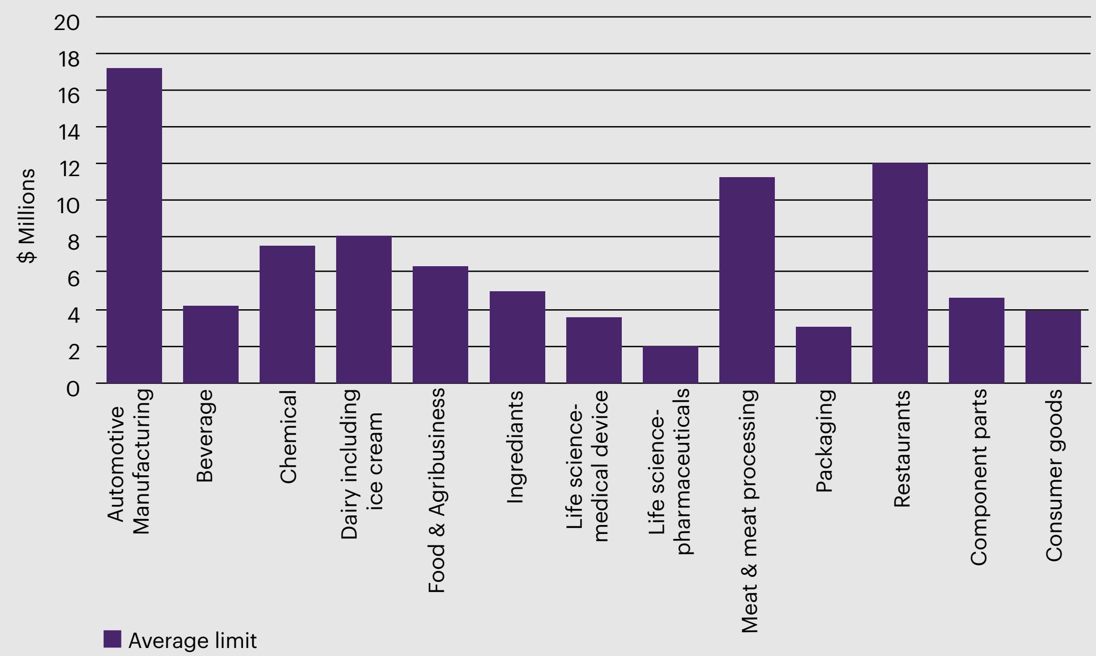
Food and drink marketplace

- Large losses from mid-2022 continue to be adjusted in 2023 — some large losses take 12 months to close.
- The recall market for food and drink is over $85 million with the addition of new capacity.
- Renewals remain competitive compared to previous years — carriers are being selective on new risks.

Automotive marketplace

- Higher limits remain a challenge (excess of $50 million).
- Large losses are driving underwriters to be more conservative with their capacity.
- Renewals and new business will take more time to market, as more information will be needed to properly underwrite these accounts.

Figure 1. **Product recall average limit**



Source: WTW data

Contact

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

Shawn McCleary
Associate Director,
National Product Recall Team
shawn.mccleary@wtwco.com

Jonathan McMahon
Broker, National Product Recall Team
jonathan.mcmahon@wtwco.com

Senior living and long-term care

Rate predictions

General and professional liability with favorable loss experience and venue:
+5% to +20% for accounts with favorable loss history and venue. Anticipate higher variability and larger rate increase for challenging accounts.

Property with non-challenged occupancies:
+5% to 20%

Property with challenged occupancies:
+20% to 50%+

Workers compensation:
-5% to +2%

Auto:
+4% to +12%

Key takeaway

Property renewals are of most concern to owners and operators, especially those in CAT-prone and challenged occupancies, as available capacity is constrained and the terms for capacity may be considered punitive. General and professional liability and auto premiums are rising, citing adverse development as well as economic and social inflation as key drivers. The bright spot continues to be workers compensation, with abundant capacity and stable pricing.

Professional liability and general liability

- Markets are more aggressively seeking rate increases as compared to 2022 and early 2023. Risks with developed losses and difficult venues will continue to see greater rate increases.
- There continues to be frequent reluctance to deploy significant capacity in such litigious venues as NY, NJ, CA and FL. Other less-than-desirable venues are Philadelphia, PA and Cook County, IL.
- Staffing shortages are contributing to loss severity — failure to monitor/appropriate monitoring are common allegations as a result. The use of contracted employees continues to be scrutinized.
- Courts have reopened, resulting in more verdicts being issued and losses trending upward.
- Economic and social inflation is being priced into all business.
- Underwriters have continued incorporating a broader communicable-diseases exclusion rather than simply excluding COVID. Stand-alone communicable disease liability policies are available, but large capacity is still not available.
- Sexual abuse and class action capacity continues to be difficult, and carriers are restricting coverage terms on existing business.
- New capacity from Bowhead, Munich Re and Arch has entered, and new entrants may not be able to offer comparable terms to our long-term care/senior living markets on primary PL/GL.
- 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 insureds are assuming larger deductibles or self-insured retentions. Buyers need to be proactive in securing lender waivers when retentions exceed those allowed in standard loan covenants or when captives 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. Add to this continued freeze, historic rain, severe convective storms and wildfire losses have driven up insurers' loss ratios adversely impacting profitability.
- 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. Reinsurers have been pushing price increases, increased retentions, and lowering limits they will offer.
- The recent shift in available capacity is causing an acceleration of rate for both non-challenged and challenged occupancies to varying degrees. To contain cost increases, owners and operators are increasing deductibles as well as purchasing less limit to an amount deemed adequate. Additional consideration for alternative risk strategies/solutions and parametric products may be justified.
- 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 undervaluation of property values.
- Insurers continue to restrict many coverages previously offered, such as communicable disease and cyber. Additional coverage tightening is occurring on CBI (contingent business interruption) and service interruptions, as well as increasing 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.
- Submission flow into the market is very high, and submissions require ample and robust data to attract new/renewal markets and differentiate risk quality. Insurers are being highly selective, and to drive the best results the comprehensiveness and quality of the renewal submission is critical.

Workers compensation

- 2022 marked the ninth consecutive year of underwriting gain, and the sixth consecutive year of combined ratios under 90%.
- While we were seeing some rate stabilization in senior living and long-term care, underwriters are now beginning to seek rate more aggressively. We believe this is a result of carriers providing rapid rate relief at the end of COVID. Loss development and difficult venues continue to be intensely analyzed.
- Underwriting concerns continue regarding opioid addiction, the aging workforce, and medical bill and payroll inflation.
- Due to increased competition and labor market withdrawal, employers are paying higher wages. Inflation impacting client exposure bases (wages) is not commensurate with hazard risk. Clients look to adjust exposure bases to offset inflationary trends (e.g., headcount or hours worked as opposed to payroll).

Auto

- Combined ratios are still over 100%, and the volume of vehicles on the road and miles driven continued to increase as the pandemic subsided.
- Higher occupancy vehicles continue to be viewed less favorably and may add rate to a community's auto premium if its fleet involves multiple vans and/or buses.
- With the highest economic and social inflation in 40 years, insurance claim costs have continued to rise faster than the underlying consumer price index. Rates and premiums have not kept pace with the rise in claim costs, which results in unprofitable results for insurers.
- Persistent industry trends — characterized by increased fatality rates and distracted drivers — are driving sustained increases in auto liability rates despite 26 consecutive quarters of rate upturn.

Contact

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

Randy Stimmell
Senior Vice President, Client Executive
+1 312 288 7414
randy.stimmell@wtwco.com

Surety

Rate predictions

Overall market

Flat to 10%

Key takeaway

The global construction industry continues to face downward pressure as high inflation and tightening monetary policies limit investment growth. We expect a protracted economic decline in China will have strong global implications. Global construction output is expected to expand 2.6% (2.1% excluding China) in 2024.

Commercial surety pricing remains flat except for bank deposit bonds, which are experiencing upward pressure of 10%+. Availability of the bonds remains limited with most sureties focusing on the largest of the banks. Many surety companies have exited the product line.

Digitization remains a major trend in the industry with greater regulatory impact as governments and insurance companies attempt to minimize cost, improve operational efficiencies, minimize fraud and ensure inclusive access.

Underwriting remains aggressive.

- Increased cost of capital makes credit product replacements more attractive.
- Capacity is readily available with expansion continuing following strong profitability in the surety segment.
- New surety companies continue to enter the market; however, the pace of entrants is showing signs of slowing.

Economic uncertainty is creating increased opportunities.

- According to Maximize Market Research, the global surety market, estimated at $17.2 billion in 2022, is expected to expand by 5.8% CAGR to $25.5 billion by 2029. North America will continue to be the largest user of surety, with the U.S. surety industry generating $4.7 billion[1] in direct written premium for the 1H 2023 ending June 2023. This represents a 10.3% growth as compared to the $4.3 billion[1] of U.S. surety direct premium written as of 1H 2022 ending in March 2022. On an annual basis, the U.S. surety market generated $8.6 billion[2] in direct written premium in 2022. This represents a 15.7% growth as compared to the $7.4 billion of annual direct written premium generated in 2021. Profitable growth, sufficient reinsurance support, and continued new surety entrants should keep the market soft in 2024.
- The demand for commercial surety bonding is experiencing upward pressure, especially in the performance bonds and financial guarantee class codes.
- Bankruptcy filings and recapitalizations are drawing attention in the surety marketplace as companies try to identify trends and reduce exposure.

Increasing investment in energy is driving many sureties' discussions.

- Traditional energy surety obligations are under review and nearly certain to require increases.
- Alternative energy opportunities continue to roll out across NA with solar leading the way. Understanding of the obligations is maturing, creating steady growth.
- Global infrastructure output will grow at an average of 6.3% from 2023 to 2027, with energy and utilities sector output expanding at an annual average rate of 6.4% as governments drive environmentally friendly energy generation including wind and solar. Global infrastructure is the one segment which continued to grow throughout the pandemic as governments focused on spending in this area to drive economic stimulus.

Contact

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

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

Jeff Broyles
National Commercial Surety Leader
+1 360 213 8236
jeff.broyles@wtwco.com

Douglas Wheler
North American Contract Leader
+ 1 215 275 1779
douglas.wheeler@wtwco.com

Waiman Yeung
International Surety Leader
+ 1 347 446 8278
waiman.yeung@wtwco.com

[1] The Surety & Fidelity Association of America, Quarterly Results 2Q 23
[2] The Surety & Fidelity Association of America, Top 100 Writers of Surety Bonds

Terrorism and political violence

Rate predictions

Terrorism and sabotage

Non-volatile territories
+5% to +15%

Some volatility and/or isolated events
+10% to +20%

Major volatility and/or widespread risk of major incidents
+20% to +30%

Political violence

Non-volatile territories
+15% to +30%

Some volatility and/or isolated events
+30% to +50%

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

Key takeaway

Rates continue to be impacted by major events in Chile, Hong Kong, South Africa, and Ukraine; however, Q1 to Q3 2023 loss ratios have been much lower compared with more recent years.

Insurers continue to pay some of the largest losses in the market's history due to the crisis in Ukraine affecting the political violence market and other correlating war and political classes, but some loss settlements are coming in lower than initial reserves.

Multiple geopolitical and socio-economic concerns are on the risk radar for insurers: ongoing Russia/Ukraine conflict, Taiwan cross-strait relations, potential global or regional recessions in 2023, global energy crisis, and the increasing social inequality gap.

Some insurers mandating newer cyber exclusions with new "data" exclusionary language in addition to more traditionally "cyber-attack-focused" language

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.

- Insurers continue to push rate as they attempt to rebalance their books against increasing losses and treaty costs while attempting to balance this over a multi-year period rather than repeat the sudden sharp increase they saw on their 2023 treaties.
- Many mid-year 2023 treaty renewals saw lower increases than their renewals in 2022.
- 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 the 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 are the retraction in appetite for contingent and non-physical damage coverage and a limited interest for binding multiyear programs.
- The potential for reactive pricing to quickly jump remains, either in specific regions due to varied and ever-changing security risk environments or globally in case of further catastrophic loss events.

Overall market capacity has not dramatically changed but there now exists expectation for actual reductions in line size deployment on individual risks.

- Overall theoretical market capacity has not dramatically changed post-treaty renewals, but we will likely see actual reductions in line size deployment on individual risks — on average 40% more carriers required in 2023 to complete the same placement from previous years, especially in high-risk territories, heavily aggregated locations, and for policies with wider political violence perils.
- Insurers are reviewing aggregation models for strikes, riots and civil commotion due to recent events, coupled with reduced aggregate availability and greater "per-city" retentions following treaty renewal.

Contact

Fergus Critchley
Head of Crisis Management,
North America
+1 212 915 7651
fergus.critchley@wtwco.com

Trade credit

Rate predictions

Trade credit:
-5% to flat

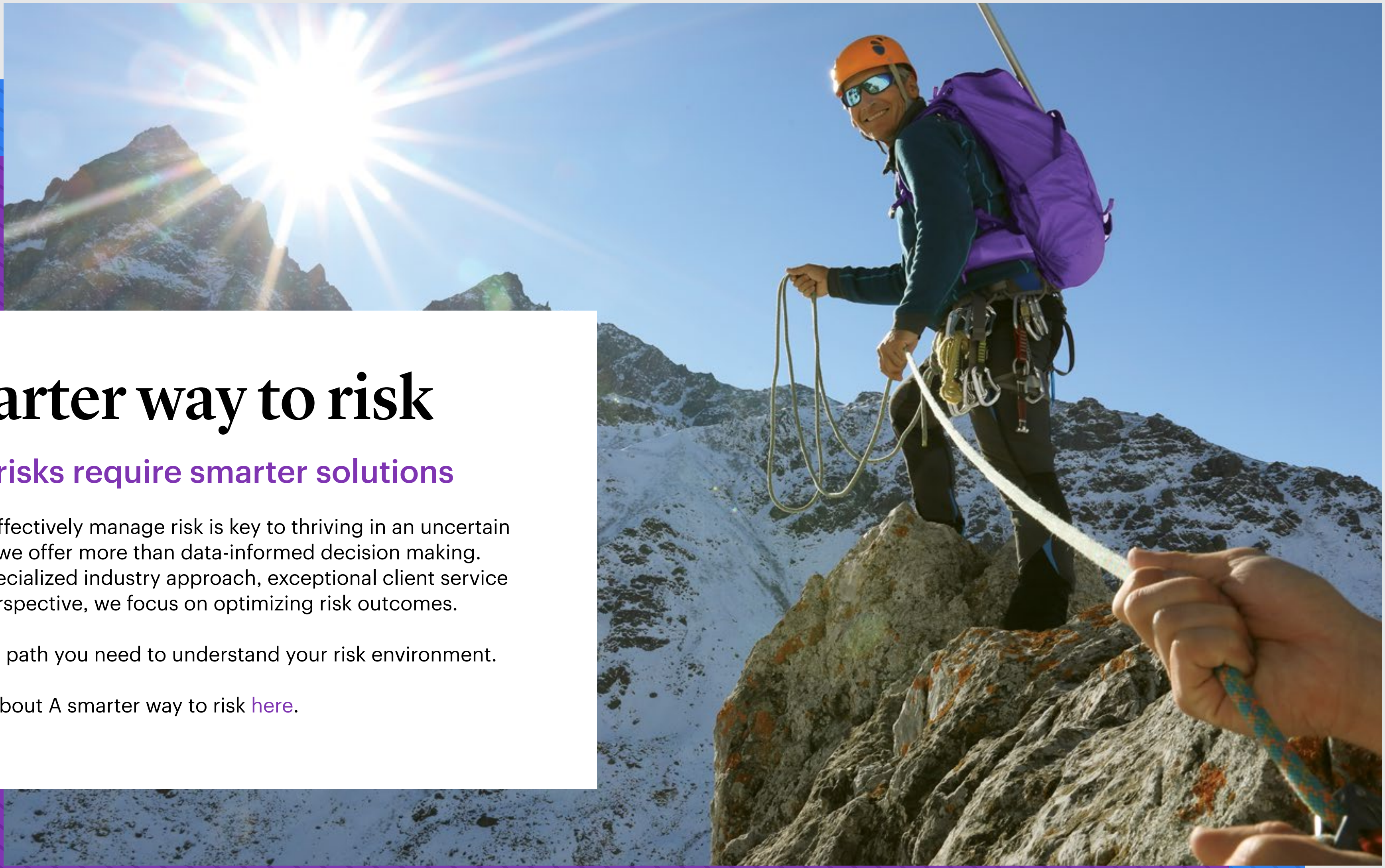
Key takeaway

The North American trade credit market remains robust and highly competitive. Insurers continue to be pressured on their rates and overall capacity as new entrants push for market share. All insurers remain profitable because insolvencies are on the rise.

- Corporate insolvencies are moving higher in 2023.
  - Corporate insolvencies in the U.S. in 2023 have now eclipsed the total number of corporate insolvencies for all of 2022.
  - Consumer discretionary spending sector leads with the most filings.
  - Industrial sector is also hit with the most and largest filings.
- Premium rates are under pressure even with increased insolvencies.
  - New entrants into the market compete for quality programs.
  - While insolvencies are up, the underwriting profit remains, as insurers are doing a good job of managing risk for clients.
- Bank-driven programs remain the biggest driver for growth.
  - Increased capital pressure leads to banks employing trade credit as a tool for regulatory capital relief.
  - Bank programs remain highly profitable in the supply chain finance space.

Contact

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



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