Quarterly Claims Journal

Financial Services and Management Liability

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Meta’s Facebook to Pay $90 Million to Settle Lawsuit Ending Decade-Long Tracking Litigation Suit

Jane Peddicord et. al. v. Facebook, Inc.

The suit, filed in 2012, contained allegations of violating federal and state privacy and wiretapping laws by using plug-ins to store cookies that tracked when they visited outside websites containing Facebook ‘like’ buttons. Facebook was then alleged to have compiled users’ browsing histories into profiles that it sold to advertisers. The social media giant had permission to track users while they were logged in but promised to stop when logged out of the social media platform. Such conduct was said to be in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Electronic Communication Privacy Act of 1986.

The lawsuit was dismissed in 2017 by a federal judge who said the plaintiffs failed to show they had reasonable expectation of privacy or that the suffered economic harm. This ruling was appealed, and in 2020, a federal appeals court resurrected the case, saying economic harm existed. Facebook’s subsequent effort to persuade the US Supreme Court to take up the case was unsuccessful.

Facebook parent company Meta has agreed in principle to pay $90 million to settle this decade long class action lawsuit, ending a file-transfer service, which required McDonald to scan her fingerprint as a means to track her time. She alleged, however, that she was never provided with, nor did she sign, a release consenting to the storage of her biometric information, and was never informed of the purposes and length of time for which her biometric information would be stored. In her putative class action, McDonald alleged that by negligently collecting, storing and using employees' biometric identifiers and biometric information, Bronzeville violated employees’ rights to privacy as set forth in the Privacy Act. In its motion to dismiss, Bronzeville argued that the claims were barred by the Compensation Act, which is the exclusive remedy for accidental injuries occurring in the workplace, and that an employee does not have a common law or statutory right to recover civil damages from an employer for injuries that occurred in the course of her employment. The Cook County Circuit Court denied Bronzeville's motion to dismiss. Bronzeville then filed a motion for reconsideration or, alternatively, a motion to certify questions for immediate appeal pursuant to Illinois Supreme Court Rule. The Circuit Court denied the motion for reconsideration, but certified the issue of whether the exclusivity provisions of the Compensation Act bar a claim for statutory damages under the Privacy Act for interlocutory appeal.

The Illinois Supreme Court found in favor of the plaintiff, holding that the Compensation Act does not preempt statutory violations of the Privacy Act. The court construed the plain language of both acts, noting that when construing a statute, it must ascertain and give effect to the intent of the legislature. The court recognized that “[t]he most reliable indicator of legislative intent is the plain and ordinary meaning of the statutory language.” In so doing, the Supreme Court outlined at length the relative provisions of the Privacy Act, and cited one of the seminal BiPA decisions, the Rosengart v. Six Flags Entertainment Corp., determining that the provisions of the Privacy Act are enforceable through private rights of action, and specifically, that “section 20 of the Privacy Act provides that ‘[a]ny aggrieved person by a violation of this Act shall have a right of action in a state circuit court or as a supplemental claim in federal district court against an offending party.” Additionally, “[o]ther than the private right of action authorized in section 20 of the [Privacy Act], no other enforcement mechanism is available.” The court then distinguished the language of the Compensation Act, determining that it provides the exclusive means by which an employee can recover against an employer for a work-related injury.

The Supreme Court then contrasted the types of injury sustained under both acts, clarifying the parameters of the Compensation Act:

Whether the exclusivity provision bars an employee's civil claims depends upon the nature of the injury because the exclusivity provisions [of the Compensation Act], by their express language, only apply if the injury is one that is covered by the . . . Act . . . The Compensation Act’s main purpose is to provide financial protection for injured workers until they can return to the workforce, [setting forth a] compensation schedule corresponding to death, to injuries to specific body parts, and to inability to work . . . These are injuries that affect an employee’s capacity to perform employment-related duties, which is the type of injury for which the workers’ compensation scheme was created.

The Supreme Court stated that the test for whether an employee suffers a compensable injury under the Compensation Act is “whether there was a harmful change in the human organism.” This was found not to apply in the McDonald case:

The personal and societal injuries caused by violating the Privacy Act’s prophylactic requirements are different in nature and scope from the physical and psychological work injuries that are compensable under the Compensation Act. The Privacy Act involves prophylactic measures to prevent compromise of an individual’s biometrics.
BIPA Continues to Present Significant Risk

Figueroa et al. v. Kronos Inc.

Kronos Inc., which manufactures biometric timekeeping devices, agreed to pay $15.3 million to settle a putative class action lawsuit alleging they violated Illinois Biometric Information Privacy Act. Charlene Figueroa and Jermaine Burton accused Kronos of improperly collecting and storing the fingerprints or palm prints of workers at companies that use Kronos’ biometric timekeeping devices.

A significant aspect of the settlement with Kronos is that it will not affect the class members’ current or future claims against their employers who used finger-scan time clocks. The anticipated $290 - $580 recovery for each member of a class that numbers over 170,000 will encourage those individuals to seek additional recoveries against their employers. As such, employers who have not notified and/or receive written permission from their employees to collect and store their information may be in violation of BIPA and a target for litigation.

Illinois is not the only state with codified protections for biometric information privacy. Kentucky and Maryland have also passed legislation intended to protect an individual’s privacy rights. Recognizing the significant risk at hand, insurers have limited or attempted to outright exclude coverage for BIPA-related claims. Employers who implement such biometric technology should be mindful of the required notices and disclosures under this type of legislation.

Case No. 2022 IL 126511 (Ill. Feb. 3, 2022)

Second Circuit Establishes Test for “Joint Employer” Liability in Federal Employment Discrimination Claims

Felder v. United States Tennis Association

While the Second Circuit has previously noted that the “joint employer doctrine” is applicable in the context of Title VII, it had not yet fully analyzed or described a test for what constitutes joint employment in the context of Title VII. On appeal from the United States District Court, in a decision rendered on March 7, 2022, the United States Court of Appeals for the Second Circuit held that a joint employer relationship exists under Title VII when two or more entities, according to common law principles, share significant control of the same employee. Additionally, while most of the joint-employment factors presume an existing relationship between two parties, the court found that where the relationship has not yet commenced in any meaningful way, the analysis should be the same. The crux of the relevant factors is “the element of control.”

Defendant-appellee, the United States Tennis Association (USTA), contracts with security firms that employ and assign guards to work at USTA events. In 2016, AJ Squared Security hired pro se plaintiff-appellant Sean Felder as a security guard and assigned him to work at the 2016 US Open. However, when Felder attempted to pick up his security credentials, the USTA refused to issue his credentials, thereby preventing him from working at the US Open. Felder thereafter sued the USTA alleging race discrimination and retaliation under Title VII and 42 U.S.C. § 1981, alleging that it denied his credentials, thereby preventing him from working at the US Open. Felder thereafter sued the USTA alleging race discrimination and retaliation under Title VII and 42 U.S.C. § 1981, alleging that it denied his credentials because of his race, and in retaliation for a lawsuit he had filed in 2012 against another security firm providing security to the USTA, for which he had worked. The USTA moved to dismiss Felder’s amended complaint arguing that Felder had failed to state a plausible claim for relief because he was not an employee of the USTA. The District Court granted the USTA’s motion to dismiss finding that Felder had failed to allege that he was an employee of the USTA or that the USTA was Felder’s joint employer, because he “did not assert any additional facts to prove the USTA shared immediate control over him with . . . AJ Security.”

Felder appealed the dismissal of his amended complaint, arguing that he adequately alleged that the USTA was his joint employer, and therefore subject to Title VII’s prohibitions on discrimination and retaliation. The Second Circuit affirmed the lower court’s dismissal of Felder’s Title VII discrimination claim finding that an entity can only be liable under Title VII as a joint employer for rejecting the temporary assignment of a contractor’s employee if the entity would have been the employee’s joint employer had it accepted his assignment. The Second Circuit found that:

To plausibly allege that the parties intended to enter into a joint-employer relationship, a plaintiff must allege that the entity would have exercised significant control over the terms and conditions of his employment by, for example, training, supervising, and issuing his paychecks. The Court found that because Felder’s complaint was devoid of any such allegation, his Title VII claim must fail.

However, the Second Circuit vacated the District Court’s dismissal of Felder’s Title VII retaliation claim finding that Felder had plausibly alleged that the USTA denied his credentials in retaliation for the lawsuit he filed against his former employer, and because he represented that he could plead additional indicia of a joint employer relationship. To that end, the Second Circuit remanded that issue to the District Court with instructions that Felder be permitted to amend his complaint as to that claim.

The Second Circuit first looked to the meaning of the terms “employee” and “employer” in Title VII, but found them to be unhelpful in deciding whether an employment relationship exists because they are circular. The Court found that “in determining Congress’ intended meaning of the terms ‘employer’ and ‘employee’ in statutes mirroring the circular definitions provided in Title VII, the Supreme Court has ‘relied on the general common law of agency.’” Accordingly, the Second Circuit held that the common law of agency governs the meaning of “employer” and “employee” in Title VII. To that end, the court applied a...
set of non-exhaustive factors set forth by the Supreme Court in other cases that, when present, may indicate the existence of an employer-employee relationship under the common law (i.e. the right to control the manner and means of an employee’s work, location of the work, and whether the entity, hires, fires or pays the employee’s salary). The Court noted that it would therefore find a joint employer relationship when two or more entities, according to common law principles, share significant control of the same employee. “This means that an entity other than the employee’s formal employer has power to pay an employee’s salary, hire, fire, or otherwise control the employee’s daily employment activities, such that we may properly conclude that a constructive employer-employee relationship exists.”

Turning then to how the “joint-employer doctrine” applies in this case, where the employment relationship has not yet begun, the Second Circuit held that the joint employer analysis should be the same. A plaintiff who has never been employed by the defendant must prove that he or she was an applicable for employment, and not for an independent contractor position, and to do this, the plaintiff must successfully allege that if they had been hired, their relationship with the alleged employer would have been more like a traditional employee rather than a traditional independent contractor. To determine whether an employee would be more like a traditional employee, the plaintiff must plead, under common law agency principles, that the alleged employer would have exerted control over the terms and conditions of the anticipated employment by, for example through, training, supervising and disciplining. Absent any allegations indicating that the parties intended to enter into an employer-employee relationship, the Title VII claim must fail.

**Uptick in COVID-19-Related EEOC Charges**

According to Bloomberg, “[s]ince April 2020, the US Equal Opportunity Commission has received roughly 6,225 Covid-related charges of discrimination filed under federal civil rights laws” and “more than 2,700 vaccine-related charges, most of which were in 2021 when vaccine requirements were introduced.”

The report notes that “[c]harges filed to the agency are the first step for workers bringing discrimination lawsuits, including under the Americans with Disabilities Act (‘ADA’), Title VII of the 1964 Civil Rights Act, and other anti-bias laws,” otherwise known as exhausting administrative remedies. The report further found that “Covid charges not related to the vaccine were relatively steady between 2020 and 2021, with nearly 3,150 in the first year of the pandemic, and 3,075 the following year. About 66% of the Covid-related charges raised ADA violations, totaling around 4,215. Meanwhile, the ADA was cited in 300 of the 2,700 complaints tied to the vaccine.”

EEOC charges may be viewed as a fair indicator of expected litigation, as claimants are required to exhaust their administrative remedies prior to filing a civil suit in court. In many instances, claimants request an immediate right to sue letter, which allows them to immediately file a civil action after filing an EEOC charge, without undergoing the EEOC investigation stage and avoiding attempts at conciliation.

**No Right to Jury Trial in PAGA Suits in California**

**LaFace v. Ralphs Grocery Company**

Deciding an issue of first impression, the California Court of Appeals for the Second Circuit ruled that a plaintiff who has filed a representative action under the State’s Private Attorneys’ General Act (PAGA), seeking civil penalties for alleged labor violations, is not entitled to a jury trial. PAGA, codified at Ca. Lab. Cod. §2698, et seq., allows employees to bring actions for penalties against their employer for Labor Code violations. Penalties recovered are divided between the state and the aggrieved employees, with 75% going to the state, and the remaining 25% divided amongst the employees.

Plaintiff-appellant Jill LaFace, now deceased, worked as a cashier at a store owned by defendant Ralphs. She filed a PAGA action against Ralphs on behalf of herself and other cashiers, alleging that Ralphs violated an Industrial Welfare Commission (IWC) Wage Order that required employers to provide suitable seating when the nature of the work reasonably permitted the use of seats, or for a job where standing was required, when the employee’s use of the seat did not interfere with the work duties. The trial court scheduled the matter for a jury trial but later granted Ralphs’ motion for a bench trial after finding that PAGA actions were equitable in nature, and therefore not triable before a jury. At the conclusion of the bench trial, the court found in favor of Ralphs. Plaintiff thereafter appealed the decision arguing that she was entitled to a jury trial, because, among other reasons, PAGA actions are for civil penalties, which historically have been deemed actions at law that were tried by juries; that they are qui tam actions, which traditionally are tried by juries; and that they arise out of the employment relationship, and are therefore akin to common law causes of action for breach of contract. Plaintiff also made several arguments on the merits.

In its February 18, 2022, ruling, the Appellate Court held that plaintiff was not entitled to a jury trial, finding that PAGA actions are administrative enforcement actions conducted on behalf of the state by an aggrieved employee who possesses “the same legal right and interest” as the state. That legal right and interest does not include the right to a jury trial. The Court noted that PAGA plaintiffs act as proxies for the state’s labor law enforcement agencies, and as such, they represent “the same legal right and interest” as agencies: the recovery of civil penalties that otherwise would have been assessed and collected by the Labor/Workforce Development Agency. The nature of that right is administrative regulatory enforcement.

Additionally, the court found that the Labor Code’s penalty provisions may be reviewed by way of administrative mandate or by a trial de novo following an informal hearing process, both of which occur without a jury. The Court further found that PAGA penalty awards are subject to several “highly discretionary” equitable factors, the consideration of which are traditionally performed by judges rather than a jury.

**Mandatory Arbitration No Longer Enforceable in Sexual Harassment Claims**

**California Appellate Court Rules that Derivative Injury Doctrine Does Not Bar Third-Party COVID-19 Claims**

**Matilde Ek, et al. v. See’s Candies, Inc., et al**

The California Court of Appeal, Second Appellate District, will allow a case filed by a See’s Candies worker against See’s Candies to proceed, finding that the deceased husband’s death was not derivative of his wife becoming sick, but was instead directly caused by the COVID-19 virus, for which his wife served as a conduit.

Plaintiffs Matilde Ek and her two children allege that Mrs. Ek, defendant’s employee, contracted COVID-19 at work because of defendant’s failure to implement adequate safety measures. They claim that Mr. Ek subsequently caught the disease from Mrs. Ek and died a month later. They filed suit alleging general negligence and premises liability. Defendants filed a demurrer asserting that plaintiffs’ claims were preempted by the Workers’ Compensation Act, and specifically, that plaintiffs’ claims were barred by the “derivative injury doctrine,” which provides that “the WCA’s exclusivity provisions preempt not only those causes of action premised on a compensable workplace injury, but also those causes of actions premised on injuries ‘collateral to or derivative of’ such an injury.” Defendants argue that among other things, the derivative injury doctrine preempts third-party claims “based on the physical injury or disability of the spouse,” such as loss of consortium or emotional distress.”

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Due to the COVID-19 pandemic, in March 2020, Hyatt furloughed/temporarily laid off employees in California, and notified employees by letter that they were due Vested Vacation Wages at that time. The furlough/layoff amounted to a termination, and as such, employees who are laid off or furloughed are not entitled to be paid the value of unused hotel stays under the Colleague Complimentary Rooms Program. The Court also found that the complimentary hotel rooms were not unpaid wages within the meaning of the California Labor Code, and therefore the Class was not entitled to waiting time penalties.

The proposed rules are in the following five areas:

- Climate-related risks and their actual or likely material impacts on the registrant’s business, strategy and outlook;
- The registrant’s governance of climate-related risks and relevant risk management processes;
- The registrant’s greenhouse gas emissions, which, for accelerated and large accelerated filers and with respect to certain emissions, would be subject to assurance;
- Certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements; and
- Information about climate-related targets and goals, and transition plan, if any.

The required information about climate-related risks would also include disclosure of a registrant’s greenhouse gas emissions, which have become a commonly used metric to assess a registrant’s exposure to such risks.

The SEC released these proposed new rules along with a 500-page document supporting and reviewing the new rules. The SEC believes that the disclosure of this information would provide “consistent, comparable, and reliable – and therefore decision-useful – information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investment.”
SEC Proposes More Timely Notifications of Cybersecurity Breaches

The SEC proposed that public companies report cybersecurity incidents within four days after they determine such a breach is material. The proposal would also require companies to disclose more about prior incidents and describe their risk management strategies in greater detail. SEC officials advised the proposal does not require companies to disclose technical details about cybersecurity breaches. Rather, the intent is to keep investors abreast about incidents that result in business interruption, extortion, repair expenses, lost revenue, legal risks, or reputational harm and stock declines.

The four-day deadline proposal is the first time the commission has identified a deadline, as prior disclosure rules did not specify timelines for doing so. The disclosures would be made through Form 8-K. Foreign issuers would also be subject to the deadline under the proposal’s terms, and they would disclose such events under a Form 6-K.

This proposal comes on the heels of the rules proposed in February 2022 that mandate that investment advisers bolster their cybersecurity preparedness, requiring that they develop written cybersecurity policies and report significant cybersecurity breaches confidentially to the SEC.

The short deadline will likely require companies to enhance protocols for the prompt escalation and assessment of cybersecurity incidents.

California Board Diversity Law Getting Critical Eye in Litigation

Crest et al. v. Padilla

California Assembly Bill 979, passed and signed into law in 2020, requires publicly held corporations to include at least one person from an “underrepresented community” on their boards by the end of 2021, and two to three, depending on the size of the board, by the end of 2022. A member of an “underrepresented community” is defined in the law as anyone who self-identifies as “Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, gay, lesbian, bisexual or transgender.”

Upon passage of the bill legal challenges have been mounted, and the litigation has matured to the point where we’re getting a glimpse into the judge’s analysis as the two sides argue their positions.

Judge Terry Green has challenged defenders of the law on several aspects of it: Is the legislation seeking to enforce quotas? There are other minority groups in CA that are not addressed in the law, so it appears that the focus was arbitrary. Is relying on statistical analysis of board makeup enough to prove discrimination?

The judge also wondered why the state did not pursue, via the Department of Fair Employment and Housing, discrimination claims against companies for discrimination. With the judge’s comments favoring the arguments put forth by the plaintiff’s, members of the conservative group Judicial Watch, Inc., there was little more they had to say.

The respondents, represented by the CA Dept of Justice Civil Rights Enforcement Section, addressing the judge’s concerns over whether this law amounted to quota-setting pointed out that the judge is presuming that the number of board members would need to remain static, while they argued that boards could be expanded to include members of underrepresented communities. Additionally, they advised that the legislature did not rely on statistical analysis of corporate boards to justify the need for the law. Rather, they pointed to testimony regarding and a wealth of examples of discrimination at multiple levels that impede minorities’ ability to rise up the ranks and ultimately be considered for corporate board appointments.

The legal challenge to the law is ongoing and will be monitored closely. To the extent the law is upheld, some corporations may find themselves scrambling to find suitable candidates before the deadline at the end of the year.

Case No. 20ST-CV-37513 (Los Angeles County, Cal. April 1, 2022)
Fiduciary Liability

The Supreme Court Clarifies Obligations of Fiduciaries, but Also Reminds Courts to Mind Context

Hughes v. Northwestern University

As discussed previously, participants in the University-sponsored retirement plan alleged Northwestern breached their fiduciary duty in that it did not do enough either to reduce the fees it pays for recordkeeping related to the plan, that the fiduciaries did not ensure that the choices it offers for investment have reasonably low fees, and that there were too many options for the participants to choose from and it was likely to result in confusion.

Northwestern, other plan sponsors and their advisors hung their hopes on a decision from the court that would lay out clearer, tighter pleading standards that would make it harder for specious cases to be brought.

The Supreme Court, with Justice Barrett abstaining, unanimously remanded the lawsuit back to the Circuit Court after clarifying the standards on which claims against ERISA fiduciaries must be judged. The standard to which fiduciaries will be held will include the monitoring of plan investments and removing imprudent investment options from the plan's investment menu, and the failure remove such within a reasonable time constitutes a breach of fiduciary duty under ERISA. In addition, offering a broad array of options still must be done in light of a fiduciary's continued obligation to review and determine which investments should be included in the plan options.

In advising lower courts on how such claims should be considered, the court instructed that the analysis of whether or not a fiduciary breached their ERISA-mandated duties requires a context-specific inquiry of the fiduciaries' continuing duty, but also recognizes the range of reasonable judgments a fiduciary may make based on their experience and expertise.

This decision is a mixed bag for both sides. While the court did not bolster the pleading standards as fiduciaries had hoped, it also sent the message that some deference must be given to fiduciaries as they consider the investments to be included in plans. We will continue to monitor this litigation as it wends its way through the courts.

141 S. Ct. 2882 (US Jan. 4, 2022)

DOL to ERISA Plan Fiduciaries: Think Twice Before Adding Cryptocurrencies

On March 10, 2022 the Department of Labor issued a compliance assistance document raising concerns about adding cryptocurrency options to 401(k) plans' investment menus for plan participants.

The DOL expressed "serious concerns about the prudence of a fiduciary's decision to expose a 401(k) plan's participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies." The Department listed four concerns as to why they think cryptocurrency presents a significant risk to a member's retirement account:

- Cryptocurrency investment is highly speculative & volatile.
- It would be challenging to make actual informed investing decisions given how atypical cryptocurrency investing is from traditional plan investments.
- There are custodial and recordkeeping concerns, where the loss of a password can result of the assets forever.
- There are concerns about the reliability and accuracy of cryptocurrency valuations.

In addition, the SEC has also issued risk alerts about the loss of a password can result of the assets forever. Transactions can be irreversible and the value of digital assets can be extremely volatile. Participants may be exposed to a higher likelihood of fraud and other harmful behaviors.

The takeaway for plan fiduciaries is that the failure to heed the DOL's warnings about cryptocurrencies in 401(k) plans may subject them to liability should they opt to add cryptocurrency investment options for members. That said, interest and investment in cryptocurrencies is extremely popular, for those investors who want to place their money in those vehicles, plan fiduciaries who want to provide these options may need to clearly provide full disclosures as to the characteristics of cryptocurrencies and their volatility and other risk factors.

Excessive Fee Litigation Pays with Another Seven-Figure Settlement

Parmer et al. v. Land O'Lakes Inc. et al.

Employees Mark Laurance and Craig Parmer sued Land O'Lakes alleging that the company violated ERISA by failing to ensure that every investment option in its $1.4 billion plan had a reasonable cost. Instead, the workers argued, the company picked and held onto investments that ended up costing more than necessary and in doing so violated their fiduciary duties to the plan.

Land O'Lakes' position was that they managed their investments properly and Laurance and Parmer lacked standing to pursue their claims. The court denied Land O'Lakes motion to dismiss, though it did dispense with the plaintiff's claims involving third-party recordkeepers.

With the Supreme Court's decision in Hughes v. Northwestern not providing any clarity on the excessive fee issue, the parties were facing the continued uncertainty of liability and exposure this litigation presented. With both sides recognizing the risk and expense going forward, the sides were able to negotiate a settlement. The parties have asked the judge to approve a $1.8 million amount, which represents at least 20% of the estimated $9 million in maximum damages to the retirement plan. In addition, counsel for Lauren and Parmer will be seeking petitioning the court for $600,000 for their fees and expenses.

Significant excessive fees settlements are continuing to have a material impact on the fiduciary/pension trust liability insurance market. Combined with an incentivized plaintiff's bar, we expect insurers to be very thorough when scrutinizing a company's plan, its fiduciaries and their decision-making. Insureds should anticipate an exhaustive underwriting/renewal process.

Case No. 20-cv-01253 (D. Minn March 4, 2022)
Shareholder Derivative Action Filed and More Firms Under Investigation for Unapproved Messaging After JPMorgan Fined $200 Million for Failure to Preserve Texts and Personal Emails

In the Matter of J.P. Morgan Securities, LLC

Financial institutions take heed — the SEC is conducting multiple investigations of record preservation practices at financial institutions and, based on prior penalties, consequences could be severe. The first of these investigations was against JPMorgan Chase and resulted in a $200 million fine to the SEC and CFTC regarding its employees’ use of unapproved email, texts, and WhatsApp — and JPMorgan’s failure to preserve those communications. It has also now resulted in a shareholder derivative action filed against JPMorgan on March 10, 2022.

The SEC has not stopped with JPMorgan. Citigroup has now joined Goldman Sachs and HSBC Holdings in announcing in recent weeks that it is responding to federal investigation regarding their employees’ use of unapproved messaging channels to discuss business.

Employees’ use of texts and other apps to communicate on personal devices is now routine, especially as traditional work models continue to shift. Companies should recognize this change and recognize that the technology is here to stay. Most importantly, companies must ensure that they have developed oversight policies and procedures to ensure they are compliant with recordkeeping rules.

In December 2021, JPMorgan acknowledged that its conduct violated federal securities laws, including the Commodity Exchange Act, and agreed to pay a $125 million penalty to the SEC and $75 million penalty to the CFTC. It also agreed to implement robust improvements to its compliance policies and procedures to settle the matter.

Per the SEC order, there was “widespread and longstanding failure of JPMorgan employees throughout the firm.” From at least January 2018 through at least November 2020, JPMorgan employees often communicated both internally and externally about securities business matters on their personal devices. This includes using personal text messaging, WhatsApp messages, and personal email accounts. None of these records was preserved by the firm.

The failure was firm-wide and involved employees at all levels of authority, including those at senior levels. Dozens of managing directors across the firm and senior supervisors responsible for implementing JPMorgan’s policies and procedures, and for overseeing employees’ compliance with those policies and procedures, also failed to comply with firm policies by communicating using non-firm-approved methods on their personal devices about the firm’s securities business.

Critically, JPMorgan received and responded to SEC subpoenas for documents and records requests in numerous SEC investigations during the same time period that it failed to maintain required securities records relating to the business. In responding to these subpoenas and requests, JPMorgan frequently did not search for records contained on the personal devices of JPMorgan employees relevant to those inquiries. The SEC stated that JPMorgan’s recordkeeping failures impacted its ability to carry out its regulatory functions and investigate potential violations of the federal securities laws across these investigations, and that the SEC was often deprived of timely access to evidence and potential sources of information for extended periods of time and, in some instances, permanently.

The SEC brought the failure to produce text messages in an ongoing matter to JPMorgan’s attention, and JPMorgan identified other recordkeeping failures that it subsequently reported. JPMorgan now has engaged in a review of certain recordkeeping failures and begun a program of remediation.

On March 10, 2022, plaintiff Lase Guaranty Trust filed a shareholder derivative suit in a New York federal court against the ten members of JPMorgan’s board of directors, including CEO Jamie Dimon. The complaint states that as a consequence of the individual defendants’ utter failure to fulfill their fiduciary duties and implement and maintain an internal control system ensuring compliance with laws, rules and regulations, the company was substantially damaged. The complaint also states that JPMorgan has spent untold amounts responding to investigations and its reputation has been damaged.

In addition to seeking damages, restitution and disgorgement on behalf of JPMorgan, the complaint also requests the court direct JPMorgan to “take all necessary action to reform and improve its compliance, internal control systems and corporate governance practices and procedures to protect the company and its stockholders from a repeat of the damaging events described herein.”

SEC Administrative Proceeding File No. 3-20681; CFTC Docket 22-07; Case No. 22-cv-1331 (E.D. NY March 10, 2022)

New Bad Faith Law Enacted in New Jersey

New Jersey policyholders now have a statutory bad faith cause of action for UM/UIM claims against their insurance companies. New Jersey Governor Phil Murphy recently signed into law the New Jersey Insurance Fair Conduct Act. In summary, the Act affords a claimant seeking UM/UIM coverage, who is either 1) “unreasonably denied a claim for coverage or payment of benefits” or 2) “experiences an unreasonable delay for coverage or payment of benefits,” a civil cause of action in court against the responsible insurance company.

The act further authorizes a claimant to seek redress for related violations to the New Jersey Unfair Claims Settlement Practices Act. Such violations by a carrier include, among others:

- Failing to promptly communicate and investigate a claim.
- Failing to issue a coverage determination within a reasonable time.
- Refusing to pay claims without conducting a reasonable investigation based upon all available information.
- Compelling policyholders to institute litigation in pursuit of their claims.

In addition to actual damages — not to exceed three times the coverage limit — the act entitles claimants to reasonable attorney fees and reasonable litigation expenses.

The act also prohibits carriers from imposing rate increases on policyholders as a result of the act.
SEC Settles with Investment Adviser for $30M Regarding Fee Disclosure Issues

In the Matter of: City National Rochdale, LLC

The SEC announced on March 3 that it had reached a $30 million settlement with investment adviser City National Rochdale LLC regarding claims that it had defrauded clients when it failed to disclose conflicts of interest tied to fees it earned on proprietary mutual funds.

From at least 2016 through 2019, the adviser failed to tell clients that it was investing their assets in proprietary mutual funds in order to generate fees for the firm and its affiliates, when competitor funds may have had lower fees. This conflict of interest resulted because as the proprietary funds’ assets under management increased through clients’ investments, so did the fees that the adviser and its affiliates received. The more the adviser invested its clients’ money in proprietary funds, the more fees it and its affiliates receive.

As an investment adviser with a fiduciary duty to its clients, the adviser was obligated to disclose all material facts to its clients that could affect the advice the adviser gave clients. The SEC Order states that in order to meet this obligation, the adviser was required to provide its clients full and fair disclosures that are sufficiently specific to allow them to understand any conflicts of interest between itself and/or its associated persons (including its affiliates) and its clients, and how those conflicts could affect the advice the adviser gave clients.

The SEC stated that in order to meet this obligation, the adviser was required to provide its clients full and fair disclosures that are sufficiently specific to allow them to understand any conflicts of interest concerning the investment adviser’s advice and to have an informed basis on which they could consent to or reject the conflicts.

The SEC Order states that as a consequence of these breaches of fiduciary duty, the investment adviser “willfully violated” Section 206(2) of the Advisers Act and Section 206(4) of the Advisers Act and Rule 206(4)-7 by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its use of proprietary funds and its disclosures of related conflicts of interest.

Beware the Flip Side of Forum Selection Clauses

Nippon Shinyaku v. Sarepta Therapeutics

The Federal Circuit Court of Appeals ruled that held that a broadly worded forum selection clause can end up waiving companies’ rights to America Invents Act reviews. The language at issue in this matter was found in a confidentiality agreement between the companies.

Sarepta Therapeutics and Nippon Shinyaku had entered into a mutual confidentiality agreement while working on a marketing deal for a gene therapy process, and that agreement called for any patent infringement disputes or validity cases to be brought in Delaware, including a provision that prohibited the parties from bringing suit in connection with the arrangement for two years.

A dispute between the two firms arose, and Sarepta attempted to challenge the patents. The Federal Circuit upheld the forum selection language in the confidentiality agreement and ruled that Sarepta was unable to file its patent challenges for two years, as per the terms of the agreement. The ruling set new precedent that contracts can be used to sign away the right to AIA reviews.

Forum selection clauses are common in civil litigation, and when drafted correctly, are enforceable. In this instance, the Federal Circuit held the same holds true for matters which involve inter partes reviews under the America Invents Act, which sought to modernize United States patent law. Parties should pay particular attention to forum selection clauses in any agreements they are entering into, lest they unintentionally waive rights to seek redress via otherwise available venues.

Ninth Circuit Overrules Lower Court in Crime Insurance Coverage Fight

Ernst & Haas Management Co. v. Hiscox Inc. et al.

A three-judge panel in the Ninth Circuit overturned a lower court decision in connection with a crime claim submitted under a Hiscox policy involving a wire transfer based on fraudulent instructions. The lower court had previously ruled that since the fraudulent instruction was received by an employee of the policyholder, and not received by the policyholder’s bank, the coverage was not triggered. The employee of the policyholder directed their bank to make the $200,000 payment.

Hiscox’s denial of coverage was based on the fact that the funds transfer fraud portion of Ernst’s policy didn’t cover Ernst’s loss as it was an Ernst employee directed the bank to make the wire transfer. Hiscox argues that since the alleged loss didn’t result directly from fraudulent emails, coverage wasn’t triggered.

The panel noted that the fraudulent email directed the Ernst employee to transfer funds, and offered wire details and fraudulent authorization for the transfer. As such, they said the lower court was wrong in saying the funds transfer fraud provision didn’t apply. The panel found that the policy wording was not limiting, and that there was “direct loss” to the insured as there was no intervening event between the employee receiving the fraudulent instruction via email and her instruction to the bank to make the payment.

The Ninth Circuit’s broader interpretation of the policy language is obviously favorable to the policyholder, and saves them from instances where circumstances skirt between coverage sections under crime policies but don’t exactly match the language.
One of These Things Is Just Not Like the Other: The Architecture of Language

State Automobile Mutual Insurance Co. v. Tony’s Finer Foods Enterprises Inc. et al.

In a case citing the familiar Sesame Street tune, a federal court examined the “architecture of language” in ruling that an employment-related practices exclusion did not extend to BIPA claims. In a case replete with quotable citations, the court stated that “context sheds light on the meaning” and that “[n]eighboring words shed light on the meaning of other words in the neighborhood.” In examining the list of words, the court cautioned “[y]ou can tell a lot about words, like people, by who they hang out with.”

The insured was sued under BIPA due to their requirement for its employees to use their fingerprints to clock in and out of work. The insured tendered the claim to their CGL insurer, who denied the claim under the employment-related exclusion. The exclusion stated that the insurance did not apply to:

This insurance does not apply to:
“Personal and advertising injury” to:
(1) A person arising out of any:
(a) Refusal to employ that person;
(b) Termination of that person’s employment; or
(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person; . . .

The court found that a BIPA claim did not fall under any of the three sub-categories, most notably para. 1(c). The court reasoned that when there is a list, as in the CGL policy, the individual components of the list should be read together. That is, the collection of words helps to inform the meaning of any individual word. The court cited the familiar Sesame Street refrain:

Adding fingerprinting to the list calls to mind the line from a classic Sesame Street tune: “one of these things is not like the others / one of these things just doesn’t belong.” See Sesame Street, One of These Things Is Not Like the Others (Columbia Records 1970).

Using a finger to clock-in and clock-out is a practice or a policy, in a colloquial sense.

But the court found that the clocking in practice is not the type of practice or policy envisioned by the full text of the provision.

The court stated that under the insurer’s reading, the exclusion would cover just about any and all claims by employees. “And if that’s the case, one wonders why the text did not take the direct approach. It would have been easy to write an exclusion saying that it does not cover any claims by employees, period.” But instead, the policy included a list with three subparts. And the third subpart includes a list of examples that share a theme. The crafting of the language suggests that it covers a subset of claims brought by employees.

Case No. 20-cv-06199 (N.D. Ill March 8, 2022)
Energy
Downstream Energy, Power Generation

Downstream Energy – Q1 2022
Summary

Downstream energy has found itself in years of a hardening market, but now the market has begun to stabilize. Q1 showed minimal rate increases, but clear distinctions are being made based on quality of risk. Terms offered were quite different on those risks that were deemed above average. Overall, 2022 is appearing to be more stable for clients, as carriers yield profitable results. Carriers have benefited from a reduction in COVID-19 related losses and a decrease in frequency of losses, has enabled carriers to report combined ratios under 100%.

As downstream energy rebounds, the capacity in this sector is increasing. New markets are trying to grasp market share and existing markets are looking to recoup their previous lost share. One, the Bermuda based energy mutual, has increased their offering to $450M (up from $400M) and like the rest of the markets, is looking to utilize their new capacity in 2022. Current estimated available capacity is $4 billion for international programs and $2.5 billion for North American programs. Even with this capacity, full limit quota share programs are tough to fill completely, and layered structures are still common for larger more complex risks.

Given the increase in profits, underwriting discipline is still in full effect for clients with nat/cat exposures. Senior management will expect underwriters to manage their aggregates, which will rely heavily on analytics. Clients need to provide detailed and accurate data in order to obtain the best possible terms from underwriters. Extreme weather events are unpredictable and can deteriorate an underwriter’s combined ratio quickly. This will continue to be a key item for those in the downstream sector. Selection of risks will remain essential to underwriters, as they seek to maximize capacity on risks with clean loss history, minimal nat/cat exposure and adequate terms.

Those with distressed assets, should start the renewal process early to obtain the most favorable terms and conditions.

In view of the recent increases in commodity prices, it is imperative that clients report accurate BI values. New business interruption volatility clauses are emerging to protect carriers from the uncertainty in BI swings. This includes monthly and annual percentage caps of the declared values and includes premium adjustments.

Many markets are now relying on LMA S51S wording to limit the amount recoverable due to declared values vs. sustained loss. It’s not only important to declare accurate BI values at inception but to re-declare values when it is applicable.

Carriers will continue to be selective on their deployment of capacity and will focus on underwriting discipline to remain profitable in the future years. New entrants might offer relief for those markets who are pushing rate rises outside of the norm ranges.

Clients should look to work on their renewals early and to engage with their markets to help differentiate themselves.

Given the ongoing political unrest and lingering pandemic effects, many are being quietly optimistic that the hardening market is fading away.

Power Generation – Q1 2022
Summary

Thermal power clients find themselves in a somewhat fragmented market. Many predictions are stating that rates are stabilizing, but many still see this sector as delicate. A major nat/cat event could erode profitability. While those who have continued to differentiate their assets from their peers should expect to find more relief in their rate rise, those with aging assets and un-indexed values can expect harsher rate rises and less favorable terms. As scrutiny for ESG increases, many underwriters are looking to distance themselves from these risks. Lack of capacity forces these clients to self insure or bind terms that are not desirable.

The focus on profitability and underwriter discipline will continue throughout 2022. Underwriters will be expected to properly manage their nat/cat aggregations. Clients should be prepared to provide detailed information on their asset locations. Accounts will be modelled prior to deployment of capacity and the more accurate the data, the higher comfort level the underwriter will have when providing terms. Underwriters are unlikely to provide terms that appear to be undercutting lead markets to increase their market share.

As cost of raw material and lead times continues to increase, so does the claim quantum submitted. Clients who present values without any increase or consideration for inflation can expect larger rate rises to offset the difference. Aging assets that are near the end of their life or are using technology that is deemed antiquated will require a deeper dive into formalizing a proper replacement value. Clients should understand how their policy will respond in the event of a total and partial loss. This understanding will guide the renewal strategy, which may provide rate relief. Each client’s situation and portfolio varies, so the policies should be structured accordingly.

Lack of maintenance and aging assets is an area of concern for carriers, who have seen attritional losses erode their earnings.

Carriers are seeking clients who are engaged in their risk mitigation. They want to receive meaningful responses to recommendation and timely solutions to open recommendations.

These clients are able to differentiate themselves from peers and are likely to have more options during their renewals. Clients should engage with their carriers early to ensure that proper timing is afforded to discuss potential engineering/technical concerns.
### Downstream Energy

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<thead>
<tr>
<th>METRICS</th>
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<tbody>
<tr>
<td>$ PRICING</td>
<td>0% to 10%</td>
<td>Restructuring layered programs has helped achieve rate reductions on larger portfolios. Those clients with losses or nat/cat exposures can expect to receive rate increases.</td>
<td></td>
<td>We will continue to see layered programs be restructured and increased use of quota share participation where available. ESG compliance may impact rates, as carriers non-renew or refuse to insure non-compliant clients.</td>
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<tr>
<td>LIMITS</td>
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<tr>
<td>RETENTIONS</td>
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<td>New entrants into the space are increasing overall limit availability and current carriers are willing to deploy more capacity.</td>
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<td>We will continue to see an increase in line sizes as markets try to re-gain market share on their current portfolio.</td>
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<tr>
<td>COVERAGE</td>
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<td>Coverage restrictions are being seen in certain areas. Cyber exclusions are seeking to exclude losses to electronic data and the resultant damage. Insurers are adding monthly and annual percentage caps of the declared BI values and including premium adjustments. The testing and commissioning clause requires more information from the insured before accepting the risk onto operational programs.</td>
<td></td>
<td>We expect to continue to see increased coverage restrictions in the current environment. Ongoing political arrest makes the energy industry more vulnerable and this may lead to increased cyber coverage restrictions. With continued increases in commodity prices carriers will be looking to limit their BI exposure through caps on declared values. Operational underwriters will continue to push for information regarding testing and commissioning to ensure no construction/ESG risk transfers to their policy.</td>
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<tr>
<td>CARRIER</td>
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<tr>
<td>CLAIMS</td>
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<td>Aethon was the first major loss since Blue Racer to the midstream sector and has the potential to have significant limit and BI loss. 2021 showed lower frequency of large losses compared to 2020 and noticeably less than previous years.</td>
<td></td>
<td>There have been a number of new carriers entering the space which has brought increased competition and additional capacity. At the same time MGAs are still regarded as unreliable in the marketplace. Guide One was prominent the last few cycles, but now their future is uncertain.</td>
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### Power Generation

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<tr>
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</tr>
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<tr>
<td>$ PRICING</td>
<td>5% to 15%</td>
<td>Restructuring layered programs has helped achieve rate reductions on larger portfolios. Those clients with losses or nat/cat exposed can expect to receive rate increases. Coal assets will continue to pay increased rates as capacity withdrawals from this space. Exceptions to coal is an option if &lt;30% capacity/revenue is derived from coal.</td>
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<tr>
<td>LIMITS</td>
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<td>ESG may create instability as there is less interest in insuring clients who appear to be polluters of the environment – coal assets may struggle to complete their programs at current rates. Clients with diverse portfolios will be able to obtain higher limits as markets look to expand their line size.</td>
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<tr>
<td>RETENTIONS</td>
<td></td>
<td>Carriers with attritional losses may see increases in their retentions, but we are expecting these to remain flat for the remainder. Focus remains on rates versus retentions.</td>
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<tr>
<td>COVERAGE</td>
<td></td>
<td>Increased political volatility may make this sector a target. Lack of resultant damage protection makes them vulnerable. Standalone cyber and wraps may help insulate clients, but these are expensive options. Coal clients will need diversify their portfolio in order to achieve broader coverage.</td>
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<tr>
<td>CARRIER</td>
<td></td>
<td>There are lower levels of new carrier interest in insuring clients who appear to be polluters of the environment – coal assets may struggle to complete their programs at current rates. ESG compliance may impact rates, as carriers non-renew or refuse to insure non-compliant clients.</td>
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<tr>
<td>CLAIMS</td>
<td></td>
<td>Carriers are looking to increase their market share which will help offset higher priced quotes. Guide One’s future is uncertain, so traditional markets may help off set this void. MGAs are still regarded as being unreliable in the marketplace.</td>
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EU and London carriers are looking to increase capacity on existing portfolios that meet their ESG requirements.

Attritional losses are quickly eroding any profitability. It’s unknown if the current reserves are accurate as fear of inflation drives quantum.
Construction
Primary Casualty, Excess Casualty, Builders Risk, Wrap-Ups (OCIP and CCIP), Professional Liability

Construction – Q1 2022 Summary
Q1 2022 offered a continuation of many pricing characteristics seen in Q4 2021. Workers’ compensation, as expected, remains a stalwart with flat renewal rates expected on most accounts. General liability rate increase moderation has slowed, but rate increases of low to mid single digits are attainable on accounts with low loss activity (frequency and/or severity). Excess casualty rate increase moderation has also slowed, and rate increases in the 5% to 10% range should be expected. Auto liability continues to be a rate driver with 10% to 15%+ rate increases being the norm, even on accounts with extensive controls in place and favorable loss activity. Loss activity of any substance, in any line, will negatively impact rates and in most cases reduce the number of market participants interested in writing an account. Professional liability trends for contractors and construction projects remained consistent with Q4, with limits and pricing being impacted primarily for certain types of exposures, such as heavy civil and residential. Poor loss experience will exacerbate these impacts. Retentions are experiencing increased scrutiny for certain coverages and underwriters are deploying limits more conservatively.

We had anticipated 2022 being a very dynamic year and it has proven to be more dynamic than expected.

The Omicron variant of COVID-19 seems to be under control and many mask mandates and restrictions implemented to combat the surge in Omicron cases have been rolled back. The Russian invasion of Ukraine has accelerated macro-economic factors that were already placing strain on the world economy. Inflation is at a 40-year high in the United States, which, combined with the already concerning labor shortages and supply chain issues, is further straining the economy and driving changes in the construction space.

Contractors are experiencing price escalation on everything from building materials to fuel and labor. Supply chain delays and shortages are extending project durations and placing extreme pressure on projects with delay in start-up exposure. This is driving change in the industry with an increased emphasis on price mitigation and project delivery methods. Changes such as the increased use of progressive design build and alternative dispute resolution (ADR) on major infrastructure projects, a hyper focus on risk mitigation using technology adaptation/implementation, and the overhaul of company processes and procedures with an emphasis on reducing incidents and controlling losses, are a few examples of strategies being utilized.

The complexity of this environment will create opportunities that will need to be approached cautiously to ensure profitability targets are hit.

Wrap-Ups – Q1 2022 Summary
It appears that things have finally started to turn the corner. We have had two long years of rate hikes, limit reductions, project delays and climate concerns, all of which have resulted in the hardest market we have seen in many years. These challenges have put continued pressure on risk managers to look long and hard at the insurance they are buying to make sure they are getting the best bang for their buck. This has spurred a renewed interest in alternative forms of risk management programs like captives, large deductibles and wrap-up programs.

Here is the great news: over the past 12+ months, we have actually seen close to 15 new markets enter the wrap-up space. This includes primary and excess markets, as well as new MGAs. This increase in capitalization has increased the competition among carriers, and while we are not yet seeing a full reduction in rates across the board, we are seeing a more positive turn, particularly on the layers above $10M. In the coming months we would fully expect to see more competition continuing to hit the primary markets as well. Underwriters are still going to look for the best risks, but those that approach their controls well should enjoy the best rates available.

In addition to more market capital, we are also seeing traditional underwriting being more open to alternative approaches. In the past you could only get admitted markets to consider full wrap (WC and GL) programs. They would be very conservative with any GL-only option. This left the GL-only market completely open to only E&S considerations. For larger projects (above $200M), that mindset is changing. Admitted markets realize the project size controls can be in place and are more willing to quote GL only business and give better terms and more competitive prices. This means owners and developers can expect more options on their larger projects.

Words of Caution
Large cases are starting to be heard. With COVID-19 many open claims have been shelved for quite a while. Those are now being put back on the docket. Many of these claims are very sizeable and may be another wake up call to the industry that large claims happen and more insurance is needed. Wrap-up limits of $50M and $100M have been the norm for many years. Owners should be looking to increase those limits to protect their assets.

The war in Ukraine is obviously very unsettling in every aspect, and we still don’t know how this may play out across the globe. This news only underscores the challenges of our current times. From a risk management perspective this means that we have to really continue to think long term. We still feel one of the best ways to do that is through wrap-ups and extended project coverage.

What this information means for your next capital expenditure project:

1. Make sure you speak to your broker early and discuss what will make your project best-in-class. Be open to making changes and evaluating how improving you overall risk can influence ever bottom line.

2. Ask your broker for multiple options! Full wrap, GL only wrap, OCIP vs. CCIP should all be on the table. If you start early enough, and your projects is of substantial size, you can obtain options for every option.

3. Limits, limits, limits. Claims are still happening and medical inflation continues to increase along with inflation as a whole. We highly recommend considering larger layers of umbrella coverage. The large claim verdicts we expect to see over the next 12 months are a result of projects many years prior. Thinking long term can help ensure your project remains successful.

4. Be open to meeting your underwriter face to face. With COVID-19 mandates receding, more business is being done face to face. While video conference technology has been a business savior the last two years, we all recognize that it can't replace every face-to-face discussion. With new wrap-ups, many new programs, face-to-face meetings will only have a positive benefit.

5. Plan for a longer marketing placement. Being earlier to the game is a good play and will only help your overall underwriting review and pricing.
Primary Casualty (WC, GL, Auto)

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<tbody>
<tr>
<td>RETENTIONS</td>
<td>0% to 15%</td>
<td>Rate increase moderation slowed in GL with expected rate increases in the 3% to 8% range. WC saw mostly flat to 3% increases while AL continued to drive rate increases with expected increase targets in the 10% to 15% range. Firms with frequency and/or severity loss experience should expect higher rate increases and reduced market participation.</td>
<td>Rate increases will continue at current percentages as the markets assess pricing levels against the current claim environment. The effects of inflation will increase claim valuations and may result in market hardening.</td>
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<tr>
<td>LIMITS</td>
<td>0% to 15%</td>
<td>Capacity will continue to be protected as carriers look to mitigate large loss exposures. This will continue the need for multiple carriers to meet capacity demands.</td>
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<tr>
<td>COVERAGE</td>
<td></td>
<td>The conversations around increasing retention levels have slowed due to rate moderation in the GL and XS lines and price consistency in WC.</td>
<td>Firms may reengage the retention conversation to look for ways to reduce insurance costs. Interest rate increases to counter inflation will add to the cost of collateralizing the financial risk associated with deductible programs and should be part of the conversation regarding a transition to a deductible program structure. (The Federal Reserve raised interest rates on its Federal-Funds Rate 25-basis points, at their March meeting, which is believed to be the first increase of what could be as many as 6 rate increases in 2022.)</td>
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<tr>
<td>CARRIER</td>
<td></td>
<td>Carriers posted record profits for fiscal year 2021. Fear of inflationary pressure, most notably on claims cost escalation, along with current world affairs has muted some of the positive feedback.</td>
<td>Claim cost escalation and nuclear trial verdicts may lead to changes in coverage as markets could look to utilize coverage to manage their exposure profiles.</td>
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<tr>
<td>CLAIMS</td>
<td></td>
<td>Carriers will maintain their current pricing and coverage targets as they wait to see the effects of the current geo-political and macro-economic scenarios developing worldwide. Higher interest rates will create favorable investment income opportunities for carriers, but that won’t be realized until inflation is under control.</td>
<td>Carriers must continue to emphasize loss control and safety with a focus on reducing incidents. Carriers have increased the scrutiny of loss control and safety process and procedures, from manuals to implementation.</td>
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Excess Casualty

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<tbody>
<tr>
<td>PRICING</td>
<td>5% to 50%</td>
<td>Rate increases have stabilized with construction firms seeing mid to high-single digit rate increases in their XS placements. Those with loss activity in the underlying will result in 15% to 50% renewal rate increases. Severity loss activity in the primary layers is increasing rates drastically (50% to 75%+) and reducing market interest participación.</td>
<td>Rate increases will remain consistent. XS markets are assessing their pricing positions (lead and layer) and monitoring cost escalation. As loss cost escalation increases, it increases the likelihood of claims penetrating the XS layers which could lead to hardening towards the end of 2022.</td>
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<tr>
<td>LIMITS</td>
<td>5% to 50%</td>
<td>XS markets are maintaining their desired attachment points. Quota share remains common. Most markets are targeting $10M to $20M layer limit positions.</td>
<td>XS markets will continue to protect their capacity and utilize quota share to meet tower limit requirements. Max layer positions remain in the $10M range.</td>
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<tr>
<td>COVERAGE</td>
<td></td>
<td>Attachment points are consistent. Primary markets are offering lead XS on a supported basis. Unsupported lead XS remains difficult to place yet available in the surplus lines market.</td>
<td>Coverage has normalized with most markets being transparent and consistent with what they will and will not cover.</td>
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<tr>
<td>CARRIER</td>
<td></td>
<td>Carriers have become or are approaching profitability in the XS Space. New carriers have entered the market increasing capacity.</td>
<td>Carriers are monitoring claim cost escalation as well as geopolitical and macroeconomic factors. These will slow the softening of the XS market and may lead to rate increases if incurred costs trends are noticeably higher.</td>
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<tr>
<td>CLAIMS</td>
<td></td>
<td>Claim cost have increased. A heightened attention to risk/loss control should mitigate some of the frequency and severity claims but claim cost escalation has been noticeable with key factors being increased material costs on the property side and higher jury awards on the casualty side.</td>
<td>Increased focus on incident investigation, fraud mitigation techniques such as surveillance and social media searches, aggressive settlement strategies, and claim file management will be more common.</td>
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**Builders Risk**

**Q1 2022 YOY CHANGE**

- **Pricing:** 3% to 10%
- **Limits:** Consistent
- **Retentions:** Consistent
- **Coverage:** Consistent
- **Carrier:** Stable
- **Claims:** Claim cost escalation continued into Q1 2022 following what many believe to be the second costliest nat/cat year for the insurance sector (estimated US $120B insured losses, worldwide). Material costs, supply chain shortages/delays, labor shortages and general inflation are cost escalation leaders.

**Q1 2022 COMMENTARY**

- Rate increases normalized in Q1 of 2022 with similar pricing targets as Q4-2021 in love hazard areas. Nat/cat wood frame and high hazard (floor) zones continue to push rate increases as claim cost escalation continues to be problematic.
- Capacity deployment and program structure will continue to be utilized to control exposure profiles. Nat/cat events may lead to price increases and changes in underwriting appetite if claim cost escalation continues.
- Attachment points, retentions and layer targets remained consistent.
- Warranties remain consistent quarter over quarter. Warranties continue to shape coverage and technology adoption will begin to increase in utilization and requirement.
- Builders risk market participants remained stable.
- Many leading indicators of claim cost escalation continue throughout the year. Material costs, supply chain shortages/delays, skilled/unskilled worker shortages, general inflation and socio-political fears will all weigh in on insured costs, expenses and pricing. Increased frequency of large nat/cat occurrences continue to destabilize the market.

**12 MONTH FORECAST**

- **Pricing:** 0% to 15%
- **Limits:** Consistent
- **Retentions:** Retentions and sub-limits will be utilized to control exposure profiles.
- **Coverage:** Consistent
- **Carrier:** Consistent
- **Claims:** Cost escalations are monitored closely and will impact underwriting appetite and pricing towards Q4 of 2022.

**12 MONTH FORECAST COMMENTARY**

- Strategies regarding capacity deployment and program structure have remained static quarter over quarter. The utilization of short limits and quota share was consistent throughout the quarter. Wood frame and high hazard areas continue to be difficult placements.
- Warranties continue to shape coverage and technology adoption will begin to increase in utilization and requirement. Nat/cat events may lead to price increases and changes in underwriting appetite if claim cost escalation continues.
- No significant changes in markets offering underwriting appetite.
- Many leading indicators of claim cost escalation continue throughout the year. Material costs, supply chain shortages/delays, labor shortages and general inflation are cost escalation leaders.
- Capacity deployment and program structure will continue to be utilized to control exposure profiles. Nat/cat events may lead to price increases and changes in underwriting appetite if claim cost escalation continues.

**Wrap-Ups (OCIP and CCIP)**

**Q1 2022 YOY CHANGE**

- **Pricing:** 0% to 5%
- **Limits:** Consistent
- **Retentions:** Retention levels available have remained consistent.
- **Coverage:** Consistent
- **Carrier:** Consistent
- **Claims:** Overall claims for construction continue to escalate particularly with severity. Risk managers should think about increasing their umbrella limits.

**Q1 2022 COMMENTARY**

- Primary and excess layer rates have finally leveled out for the majority of OCIP and CCIP programs. Please note that pricing is still high comparatively speaking to early 2020. Make note when looking to update your proformas and indications.
- Limits for primary layers continue to stay consistent. Excess capacity is still available but additional time and effort is needed to place coverage as more carriers may be needed to place the same limits. Expect longer periods to place your layers.
- Coverage is stable, but still challenging for certain risks. Residential coverage remains the most challenging to place as there are limited markets for ‘for sale’ coverage. Commercial market coverage remains consistent.
- For the most part, individual carrier capacity has remained consistent. New carriers have entered the market and while individual carrier capacity hasn’t increased, we are enjoying more competition.

**12 MONTH FORECAST**

- **Pricing:** -5% to 5%
- **Limits:** Consistent
- **Retentions:** Consistent
- **Coverage:** Consistent
- **Carrier:** Consistent
- **Claims:** Overall claims for construction continue to escalate particularly with severity. Risk managers should think about increasing their umbrella limits.

**12 MONTH FORECAST COMMENTARY**

- Rates should continue to hold for 2022, barring major catastrophes and continual COVID-19 shutdowns. While we expect rates to remain stable, it is still important to be conservative with estimates as you are planning your projects. Larger, well-controlled projects may actually enjoy a pricing decrease.
- Retention levels available have remained consistent. No anticipated changes. But more carriers are wary of overextending themselves. Look for enhanced underwriting requirements and carriers willing to walk away from business that doesn’t meet best-in-class evaluations.
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## Professional Liability

**Q1 2022 Pricing**

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</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>5% to 10%</td>
<td>0% to 10%</td>
</tr>
</tbody>
</table>

Most contractor renewals present moderate rate increases. Certain classes, esp. heavy civil or residential, continue to realize larger increases. Project policies for certain project types (heavy civil, stadiums) impacted by substantial rate increases.

ADPs are experiencing moderate rate increases, especially in the London market.

Real estate professionals realizing moderate increases, especially for certain venues (CA and NY).

**Q1 2022 Limits**

<table>
<thead>
<tr>
<th>LIMITS</th>
<th>RETENTIONS</th>
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</thead>
</table>

<table>
<thead>
<tr>
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<th>5% to 10%</th>
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</thead>
<tbody>
<tr>
<td>Limits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offered</td>
<td>Markets continue to restrict limit deployment for certain contractor exposures. Continued imposition of sub-limits by some markets for certain contractor coverages, such as rectification and protective.</td>
<td>Primary limits will continue to be capped by some markets at $5M for contractors, especially in heavy civil. Excess options will remain reasonably attainable. Available limits mostly unchanged for other lines, with some exceptions for certain classes.</td>
<td></td>
</tr>
<tr>
<td>Some carriers continue imposing SIR for contractor's protective coverage, where previously there was none.</td>
<td>Expect increased scrutiny on retention levels.</td>
<td></td>
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</tbody>
</table>

**Q1 2022 Coverage**

<table>
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<tr>
<th>COVERAGE</th>
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</table>

<table>
<thead>
<tr>
<th>PRICING</th>
<th>3% to 10%</th>
<th>Q1 2022</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>Rectification coverage being incorporated into forms for ADPs. Some insurers continue to restrict this coverage for contractors due to poor loss development.</td>
<td>Options will remain limited for certain project types. Coverage can still be negotiated, but we will see continued push back on certain contract-requested wording.</td>
<td></td>
</tr>
</tbody>
</table>

Limited appetite continues for residential projects, as well as stadiums.

Other policy wording remained consistent, with flexibility to negotiate certain enhancements.

**Q1 2022 Claims**

<table>
<thead>
<tr>
<th>CLAIMS</th>
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<tr>
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<th>3% to 10%</th>
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<tbody>
<tr>
<td>Adverse claims trends impacting contractor professional liability policies on heavy civil projects. Poor loss development also affecting rectification coverage in particular.</td>
<td>We expect continued claim development for heavy civil projects. We will continue to monitor impact on limit deployment, total available capacity, pricing and coverage for project policies as well as practice policies for heavy civil contractors and projects, as well as impacts to the design professional market.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Markets will continue to offer competitive premiums for renewals in most classes, with notable exceptions for heavy civil exposures.

Restricted limit deployment will continue to impact pricing for larger towers as they progress through the renewal cycle.

### Environmental – Q1 2022 Summary

Emerging contaminants such as PFOA/PFOS/PFAS and 1,4-Dioxane continue to take center stage in the environmental market and will for the foreseeable future. While many carriers are reviewing sites on a case-by-case basis some carriers are beginning to place broad exclusions on risks in certain states due to increased scrutiny from regulators. We anticipate continued tightening around coverage for PFOA/PFAS and 1,4-Dioxane as claims frequency tied to these emerging contaminants continues to increase. We also expect claims associated with environmental justice issues to increase in the coming year.

We anticipate premiums to continue to trend up anywhere from 3% to 10% depending on the line of environmental coverage.

Markets continue to favor shorter policy terms for certain classes of operational risk, and while 10-year options remain available for most transactional and some redevelopment deals, many carriers continue to steer away from offering a full 10-year option.

Carriers and clients alike are beginning to express greater concern for the risk of environmental claims associated with climate change and how issues such as sea level rise and flooding may reopen once closed environmental cases. This will be another area to pay close attention to throughout 2022.

Lastly, The American Society for Testing and Materials (ASTM) has put the new standard for Phase I Environmental Site Assessments into effect (ASTM 1527-21) This is the fifth revision of the environmental professional industry standard governing the practice and process for conducting Phase I Environmental Site Assessments.
## Contractors Pollution Liability (CPL)

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>PRICING</td>
<td>3% to 5%</td>
<td>Abundant capacity continues to pressure rates downward. Practice policies are experiencing slight increases ranging from 3% to 5% on average.</td>
<td>We expect the rate on CPL to maintain a 3% to 5% increase over the next 12 months.</td>
</tr>
<tr>
<td>LIMITS</td>
<td></td>
<td>Limits remain abundant with most carriers offering up to $25M in the aggregate. Additional limits at competitive pricing are rampant.</td>
<td>We expect limit and capacity to remain strong as this product is desirable for carriers.</td>
</tr>
<tr>
<td>RETENTIONS</td>
<td></td>
<td>Wide range of retention levels are available. Lower retentions available through online portals for practice policies.</td>
<td>Retentions remain stable for practice policies. We are beginning to see a slight uptick in retention levels for project specific policies.</td>
</tr>
<tr>
<td>COVERAGE</td>
<td></td>
<td>Coverage remains broad for contractors pollution liability (CPL) and exclusive coverages are available to NFP, including delay expense which results from work stoppage caused by known or unknown pollution events.</td>
<td>We do not expect significant pull back in coverages over the course of the next 12 months.</td>
</tr>
<tr>
<td>CARRIER</td>
<td></td>
<td>Balance Partners has entered the CPL marketplace and is offering coverage on Lloyds paper. Existing carriers continue to increase their appetite for smaller recurring policies.</td>
<td>We do not foresee any markets exiting the CPL space as it remains very profitable.</td>
</tr>
<tr>
<td>CLAIMS</td>
<td></td>
<td>Claim frequency continues to increase as projects come online.</td>
<td>We anticipate that claim frequency will continue to increase over the next 12 months with project restarts and more contractor activity.</td>
</tr>
</tbody>
</table>

## Site Pollution Liability (PLL)

<table>
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<tr>
<td>PRICING</td>
<td>5% to 10%</td>
<td>Renewal policies continue to see modest increases in pricing. Transactional placements are experiencing an uptick in pricing when meaningful coverage is provided.</td>
<td>Markets will continue to approach business selectively and actively pursue low risk/low premium placements which will have a downward pressure on renewals. Market interest for long term transaction placement is decreasing, causing upward pricing pressure.</td>
</tr>
<tr>
<td>LIMITS</td>
<td></td>
<td>Ample limits available for most risks. Abundant capacity in the marketplace with new entrants entering into marketplace. Heavily contaminated sites posed for redevelopment have ample but smaller market interest. Quota share arrangements provide most limits for complex placements.</td>
<td>Availability of limits is expected to increase for shorter term placements — five years or less, for example. Arranging higher limits for long term placements will become increasingly difficult.</td>
</tr>
<tr>
<td>RETENTIONS</td>
<td></td>
<td>Retentions have remained generally static. Less challenging risks have smaller retentions. More complex remediation and redevelopment risks are north of $100,000 per pollution event.</td>
<td>Less environmentally exposed risks are not seeing changes in retentions. Other more complex risks, such as redevelopments, are being challenged by insurers to accept higher retentions. We expect increases in mold retentions across the board.</td>
</tr>
<tr>
<td>COVERAGE</td>
<td></td>
<td>Carriers continue to retract coverage associated with emerging contaminants including PFOA/PFOS/PFAS and 1,4-Dioxane. Carriers are placing broad exclusions for these contaminants in states that have more restrictive policies such as New Jersey.</td>
<td>Handling remediation coverage knowns vs. unknowns and crafting coverage accordingly is becoming increasingly more difficult. We expect to see increasing focus on excluding all expenses within the boundaries of remedial action work plans. Broader coverage remains for purchasers of brownfields.</td>
</tr>
<tr>
<td>CARRIER</td>
<td></td>
<td>Balance Partners is offering a limited site pollution program which may be favorable for clients seeking basic coverage.</td>
<td>No significant changes forecasted in the next 12 months.</td>
</tr>
<tr>
<td>CLAIMS</td>
<td></td>
<td>Mold, lead-based paint and asbestos claims are on the rise. There is continued pressure on emerging contaminants as states are setting their own regulations. Damages to the environment and environmental justice initiatives are trending upward.</td>
<td>We expect environmental claims activity to continue to rise through the year as more people re-emerge from COVID-19.</td>
</tr>
</tbody>
</table>
Legal – Q1 2022 Summary

Lines of business particular to the practice and the business of law have shown a bit of stabilization to begin 2022. While the overall market for lawyers’ professional liability (LPL) was stable to slightly up, cyber and employment practices liability continue to experience significant adjustments.

Lawyers’ Professional Liability

The LPL market remained relatively stable in Q1 2022 with pricing largely dependent on specific risk factors, including size of firm, geography and areas of specialization. Carrier partners are reporting book-wide rate increases between 4% and 8%, with our clients averaging about a 2% increase. Smaller firms continue to enjoy mostly stable rates with middle market and larger firms seeing modest increases. Certain areas of practice are seeing more significant rate increases, including estateprobateand family law practitioners. Many carriers are putting an increased emphasis on firm revenues to determine pricing and retentions, instead of relying solely on headcount to determinerate. Excess pricing remains competitive, capacity in themarket space continues to expand.

Employment Practices for Law Firms

Law firms are seeing increased rates in employment practices liability insurance ranging from 20% to 30%. This is being driven by concerns over COVID-19 related claims, vaccination requirements and return-to-work policies. As the workforce begins the “return to work” phase of COVID-19, it will be interesting to see if claims frequency rises. There continues to be an uptick in claims relating to gender discrimination and pay equity in the law firm space. Reduced limits on primary, particularly in historically problematic states such as CA, NY and NJ, are common. Increased retentions are often common in these states as well.

Other Management Lines for Law Firms (D&O, Fiduciary and Crime)

Claims relating to COVID-19, vaccination requirements and work-for-home continue to increase, driving pricing in all these lines higher. Limits and retention structures are being closely monitored to insure sharing of the risk. Social engineering and business email compromise are also generating claims activity in these segments. Pricing increases are ranging from 10% to 30%.

Lawyers’ Professional Liability (E&O)

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<tr>
<td>$ PRICING</td>
<td>4% to 8%</td>
<td>Overall rates have begun to stabilize, but vary greatly depending on the size, location and specialty of the firm. Small firms may see flat to slight increases, where middle market are seeing 4% to 8% increases. Larger firms that do not specialize or specialize in higher risk areas of practice such as estate probate and trust, collection, high end corporate and family law are seeing even greater increases.</td>
<td>3% to 15%</td>
<td>Pricing is expected to continue to rise in specified segments due to expected increases in claims activity. Some pricing increases could be mitigated, particularly in the excess markets with carriers entering the line of business.</td>
</tr>
<tr>
<td>LIMITS</td>
<td></td>
<td>Most carriers are capping primary limits at $5M, with a few still willing to offer $10M. Quota share options continue to rise in popularity. Excess limits are still widely available up to $10M in capacity, depending on attachment point.</td>
<td></td>
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</tr>
<tr>
<td>RETENTIONS</td>
<td></td>
<td>Carriers have increasingly focused on matching the size of the retention with revenues and size of firm, particularly in the middle market to large firm space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COVERAGE</td>
<td></td>
<td>Coverage remained relatively stable throughout 2021. Some increased add-in coverages with low sublimits (subpoena, crisis management) are becoming standard.</td>
<td></td>
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<tr>
<td>CARRIER</td>
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<td>Increased exclusions related to silent cyber and social engineering are expected as these claims continue to rise.</td>
<td></td>
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<tr>
<td>CLAIMS</td>
<td></td>
<td>Severity of claims continues to rise driven by higher defense costs and larger deals with more sophisticated clients. Frequency has stabilized or decreased due to the slowdown in litigation and related areas.</td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>Carriers are expecting an increase in the number of claims as a result of COVID-19 and economic downturn. Severity of claims is expected to continue to increase.</td>
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Cyber for Law Firms

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<td>30% to 200%</td>
<td>As law firms were increasingly targeted by hackers and those seeking ransoms, rates increased substantially to account for the increased exposure ranging from 30% to 40% to over 200%.</td>
<td>Pricing is likely to continue to increase due to increases in claims activity and historically inadequate pricing as compared to exposures.</td>
<td></td>
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</table>

| **LIMITS** | |
| | Many insurers decreased limits available on primary or refused to increase limits to meet law firm demands. This resulted in the need for more participants to meet client demand for limits. |
| | We expect insurers to continue to manage limit capacity, particularly on primary. |

| **RETENTIONS** | |
| | Retentions for all size firms saw some pressure in 2021, particularly when firms lack requisite controls or have experienced claims activity. |
| | Retentions will continue to rise, as well as requirements for co-insurance or other risk sharing techniques. |

| **COVERAGE** | |
| | Ransomware coverage is closely scrutinized and often sublimited or eliminated. MFA is a standard requirement for coverage and firms unwilling or unable to implement will see reduced coverage. |
| | Continued mandatory requirements for MFA and back-up systems expected for all size firms. Decreased availability of ransomware coverage expected. |

| **CARRIER** | |
| | Underwriting guidelines tightening and reduced carrier appetite for the class of business was common as activity targeting law firms became more common. |
| | Expect continued emphasis on minimum requirements for data security and cyber controls. Law firms are expected to become a less desirable class of business as cyber carriers continue to tighten underwriting guidelines and requirements. |

| **CLAIMS** | |
| | Increased ransomware and social engineering claims against law firms continue to become public. Several hacking incidents involving large firms heightened concern about increased claims. |
| | Claims activity is expected to continue to increase and cost of investigation and remediation is expected to continue to rise. |

Employment Practices for Law Firms

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<tr>
<td>20% to 30%</td>
<td>COVID-19 concerns, including issues respecting vaccination requirements and return to work, are driving rates higher. High-profile wage disparity and gender discrimination claims have specifically impacted law firm pricing.</td>
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</tr>
</tbody>
</table>

| **LIMITS** | |
| | Many carriers are reducing limits available due to ongoing severity concerns. |
| | Retentions are increasing, particularly in difficult geographies (CA, NY and NJ). |

| **RETENTIONS** | |
| | Retentions are likely to continue to increase as claims severity rises. |

| **COVERAGE** | |
| | Carriers without specific law firm targeted forms are pulling back on coverages such as failure to make partner. Other restrictions in coverage, including sublimits for wage and hour claims, are becoming more prevalent. |
| | Continued focus on reducing or eliminating coverage for trending loss leaders. |

| **CARRIER** | |
| | Shifts in capacity are expected as carriers become more conservative about providing specific coverages for law firms. Loss of American Bar Association endorsement may narrow Chubb’s leadership in line of business. |
| | Move of American Bar Association endorsement may mitigate some decrease in capacity/availability of coverage. However, we expect carriers to continue to monitor profitability of line of business closely. |

| **CLAIMS** | |
| | Claims frequency and severity are on the rise as firm’s struggle with return to work issues and historical gender/racial disparity. |
| | Return to work and accompanying policies and procedures are expected to result in increase of EEOC matters and related claims. |
Life Sciences – Q1 2022 Summary

The life science product liability market has remained fairly consistent. New insurers continue to enter the life science space offering different options for the insured in both limits and product offerings. The pricing in this area has increased slightly due to an increase in frequency and severity of claims. Renewal rates have been stable, though increases are becoming more frequent. There is ample capacity and competition for both primary and excess layers in the domestic market, with a handful of aggressive London syndicates entering the market. However, clients are not purchasing the limits that they once used to, due to overall portfolio pricing increases.

Life science companies have had to be nimble and adjust how they do business since the onset of the pandemic. Adjustments have included increased digitization of virtually every aspect of their business, increased collaboration with companies and organizations they may not normally have done business with, adjusting how they handle their supply chains, as well as getting products to market. With all of these adjustments comes an increased need for product and product recall coverage capacity, which continues to be an issue.

Limits losses are more prevalent for invasive medical products, pharmaceuticals and nutraceuticals, causing carriers to shy away from high limits as juries continue to hand out large payouts in both individual and class action lawsuits.

The legalization of medical and recreational marijuana has been steadily gaining headway at the federal level, as more than half of US states have legalized some form of medical or recreational marijuana. But coverage for dispensaries and other cannabis related business remains difficult with fewer options and higher premiums than your typical business.

### Life Sciences – Q1 2022 Summary

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<tbody>
<tr>
<td>PRICING</td>
<td>10% to 30%</td>
<td>Pricing increases in these lines of business have begun to stabilize but concerns still remain due to COVID-19 issues, work-from-home and cyber-related events.</td>
<td>Primary rates should continue to stabilize as adjustments were previously made. Economic conditions could push rates further upward.</td>
</tr>
<tr>
<td>LIMITS</td>
<td>✔</td>
<td>Insurers have focused on managing limits capacity and ventilating exposures in the large law firm segment, which is where we see most of the demand for these coverages.</td>
<td>No change in limits expected after previous adjustments — though we may see more implementation of sublimits in certain areas.</td>
</tr>
<tr>
<td>RETENTIONS</td>
<td>✔</td>
<td>Carriers continue to monitor retention adequacy and take corrective action where needed, particularly where employee count is high and policies/procedures not fully implemented.</td>
<td>Retentions will continue to be monitored particularly where there are past claims or policies/procedures inadequate.</td>
</tr>
<tr>
<td>COVERAGE</td>
<td>✔</td>
<td>D&amp;O for law firms remains stable and adjustments that were made post Dewey failure are common. Still some adjustments being made in fiduciary and crime where sublimits and exclusions are being implemented to address increase in claims related to work from home/cyber security and excessive fee litigation (fiduciary).</td>
<td>Coverage expansion not anticipated.</td>
</tr>
<tr>
<td>CARRIER</td>
<td>✔</td>
<td>Market has remained relatively stable in the first quarter of 2022 with no real shifts in participants or appetites.</td>
<td>Market is expected to remain relatively stable with no real shifts in participants or appetites.</td>
</tr>
<tr>
<td>CLAIMS</td>
<td>✔</td>
<td>COVID-19, return-to-work and cyber activity have resulted in increase claims counts and severity in these lines.</td>
<td>Severity is expected to increase in these lines as projected settlements and related defense costs are expected to rise.</td>
</tr>
</tbody>
</table>
Product Liability

**Pricing**

- Pricing has slowly started to increase in Q1 largely driven by an increase in claims frequency and severity.
- Most markets will continue to offer competitive premiums for renewal business.
- New business will be competitive with new carriers and MGAs looking to offer more options for this line of coverage.

**Limits**

- Client demand for higher limits continues to develop in this pandemic and post-pandemic environment. There is ample limit available for most risks in this marketplace for these types of risks.
- We expect limit and capacity to remain strong as product liability coverage remains desirable for carriers.

**Retentions**

- Retentions have remained static for the most part. They continue to follow the risk appetite, adjusting only for loss history.
- We anticipate retentions to remain stable, and we expect current trends to continue for the next 12 months.

**Coverage**

- Coverage remains broad and flexible; reacting to the various ways insurers have had to respond to the pandemic.
- Availability of relatively broad coverage will continue to be accessible over the course of the next 12 months.

**Carrier**

- New carriers and MGAs have entered the space with a focus on certain subsegments of the industry. This is keeping premium competitive and offering insureds more solutions for their insurance needs.
- No significant changes for the next 12 months.

**Claims**

- Claims activity has remained fairly flat with a slight increase as life science business continues to be challenging with the prevalence of class action lawsuits.
- Large class actions will continue to be a threat as life science accounts with large settlements driving litigation.

Management and Professional Liability – Q1 2022 Summary

As we started to see at the end of 2021, client differentiation remained key to mitigate the effects of the hard cyber market and take advantage of the stabilizing D&O market. Carrier focus continues to be on the quality of the client’s risk profile. Several factors that are considered in this assessment are industry, financials, loss history, risk mitigation and corporate governance. Pricing and retention adjustments are being made directly in response to the underwriting of these factors.

Three key trends we saw in Q1 2022 in the management and professional liability line of business are as follows:

- D&O rate increases have stabilized in the first quarter of 2022 and we are now starting to see low single digit increases and, in a few cases, decreases. Excess capacity is plentiful and is driving downward pressure and is usually the sign that the hard market will be coming to an end.
- Fiduciary liability rates are up 5% to 35%+ driven by excessive fee litigation. Insurance carriers are focused on plans with assets greater than $100M where previously the threshold was much higher. ESOPs will see even greater rate increases along with those that have challenged risk profiles. This line of business continues to be challenging for insureds.
- The cyber market continued to be challenged in the first quarter of 2022 and we see this trend continuing in the second quarter. Capacity and retention management continue to be the theme for all carriers that write this business. Significant pricing and retention increases coupled with some coverage pull backs, continued to be the trend in the quarter.

The D&O marketplace continued to show signs of stabilization. In the privately held and not-for-profit company space, we saw rates range from flat to 15% compared to 5% to 20% in the second half of 2022. Carriers for the most part have achieved their limit management/rightsizing goals and we anticipate insurance limits remaining relatively consistent on a go-forward basis. The carriers continue to monitor retention levels and adjust those on an account-by-account basis.
In employment practices liability, COVID-19 related claims increased and we expect this trend to continue. Industry, employee count and corporate governance are the key underwriting criteria in this line of business.

Ransomware continues to be the driving factor of rate and underwriting concerns for the Cyber insurance market. While there is hope on the horizon that ransomware attacks may decrease in frequency and severity due to the markets push for stringent cyber controls (as well as government focus to curb ransomware threat actors), Insurers have yet to feel the effects.

The average ransom payment for Q4 of 2021 was $322,168, up 130% from the previous quarter, and the average cost of a data breach was $9.05M for 2021, up 5% from 2020.*

Further, systemic risk (a single event affecting multiple Insureds) continues to be an underlying factor regarding capacity deployment and carrier appetite. In short, the concerns and trends we saw in Q4 of 2021 have carried over to Q1 of 2022 and are expected to continue through Q2 of 2022.

A client’s ability to procure cyber coverage continues to be heavily based on the cyber controls implemented across the company’s network. Clients that want to mitigate market increases and/or have access to comprehensive coverage need to ensure key cyber controls are in place such as multifactor authentication, endpoint detection and response, emailing filtering tools, privileged access management, as well as having detailed action plans for employee training and threat response. Clients should also prepare for Underwriters to review not just internal security controls but conduct vulnerability scans of public facing domains.

Scope of coverage at renewals will not just be determined by a client’s controls but may be influenced by current events and a client’s dependence on third party vendors. Another trending topic for Q1 2022 was around the events occurring in Ukraine and Russia. These events highlighted the lingering concerns around aggregation and systemic risk causing some Carriers to broaden exclusionary language regarding infrastructure, government actions, natural perils, and war. In addition, certain widespread events such as Solarwinds and Log4j have caused some markets to implement vulnerability related exclusions.

As a final point, Carriers have scaled back on capacity offerings for dependent business interruption. In short, it will be important for clients to work with their broker to mitigate any reductions of coverage where possible.

Sources:
* 2022, 20IR, Report pdf (datasrvr.com)
* Law enforcement pressure forces ransomware groups to refine tactics in Q4 2021 (coveware.com)
* IBM Security X-Force Threat Intelligence Index (IBM)

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### Private and Not for Profit Company Directors and Officers Liability

#### Pricing

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>0% to 15%</td>
<td>Pricing will be consistent with what we have seen over the last quarter. There will continue to be a larger variability in the renewal outcomes in our private and not-for-profit book based on individual account risk attribute and the overall market.</td>
</tr>
</tbody>
</table>

#### Limits

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔️</td>
<td></td>
<td>Insurers continue to manage limit capacity. We are seeing some stabilization due to corrective action taken over the last 24 months. We have not seen reason to believe that limits profiles will increase for 2022.</td>
</tr>
</tbody>
</table>

#### Retentions

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴</td>
<td></td>
<td>Carriers continue to monitor the adequacy of retention levels across all industry sectors which has resulted in increases in retentions. We expect to see a flattening out of retention increases as the carriers complete the 24 month cycle of book correction on their existing portfolios.</td>
</tr>
</tbody>
</table>

#### Coverage

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>The retraction of coverage terms is trending towards leveling. Portfolio corrections appear to be plateauing. Trend continues toward maintaining the status quo with diminished appetite for coverage expansion.</td>
</tr>
</tbody>
</table>

#### Carrier

<table>
<thead>
<tr>
<th>METRICS</th>
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<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>We continue to see the emergence of new market capacity in the private company sector as capital is being redirected toward downstream client profiles. The post pandemic appetite for established business with less than $100MM in revenues is becoming a carrier focus. The emergence of new capital will be driven by technology and API enablement. We will begin to see significant efficiencies and increased competition as carriers strive to be first to market with technology.</td>
</tr>
</tbody>
</table>

#### Claims

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>Claims volume remains flat while defense costs and other claims elements are in an upward trajectory, which is increasing overall claims activity and expense trends. Claims costs will continue to rise and claims associated with economic impacts of the pandemic will increase claims volatility. Larger private companies and “unicorns” may attract increased SEC scrutiny.</td>
</tr>
</tbody>
</table>

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### General Partnership Liability

#### Pricing

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>10% to 15%</td>
<td>The market continued to stabilize in Q1 but remained in a hardened state. Primary and excess pricing has increased 10% to 15% versus Q1 2021. Excess layers are beginning to show signs of diminished rate pressure due in part to an increase in excess only market pressure. We expect rate increases to continue to come down over the balance of the year as the market levels off after 8 straight quarters of double digit increases.</td>
</tr>
</tbody>
</table>

#### Limits

<table>
<thead>
<tr>
<th>METRICS</th>
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<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔️</td>
<td></td>
<td>Capacity still remains strong within the GPL marketplace. The market of insurers willing to write primary is still limited but broad enough to generate steady competition. Insurers continue to push to maintain strict capacity management and are generally unwilling to offer more than $5MM on new programs. Insurers are able to maintain $10MM tranches. We have not seen reason to believe that limits profiles are increasing for carriers.</td>
</tr>
</tbody>
</table>

#### Retentions

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>Retentions have generally remained stable year over year with some GPs seeing material increases in response to significant fundraising or claims activity. We have not seen reason to believe that retentions will increase materially.</td>
</tr>
</tbody>
</table>

#### Coverage

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>Breadth of coverage is stable in comparison to Q1 2021 with a focus on broadening regulatory and investigations coverage. Subject to an unexpected event driven occurrences we expect the breadth and scope of coverage to remain unchanged.</td>
</tr>
</tbody>
</table>

#### Carrier

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>The market of primary insurers in the US remains stable. New excess capacity has entered the market but has not materially impacted pricing. New capacity is expected to enter the excess market which will result in the introduction or reshuffling of carriers onto multi-layered programs.</td>
</tr>
</tbody>
</table>

#### Claims

<table>
<thead>
<tr>
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<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>🔴⃝</td>
<td></td>
<td>The SEC continued to focus on the disclosures of investment risks and conflicts of interest, fees and expenses, liquidity, valuation of assets, and controls around material non-public information. Portfolio company bankruptcy and employment practices litigation remain the core drivers of GPL paid claims. We expect these claims trends to continue into the balance of 2022.</td>
</tr>
</tbody>
</table>
An increase in the frequency of securities class action litigation against SPACs in 2021 leveled off in Q1 2022, leading to pricing stabilizing for teams viewed by the market as qualified. Teams with targets in high risk sectors such as EVs targeting companies outside of the US, and teams located outside of the US still saw higher than average pricing. Excess pricing remains competitive due to an increase in excess only market capacity.

There is still capacity in the marketplace to support insureds that wish to obtain higher than average limits ($10M+). Insurers continue to push to maintain strict capacity management and are unwilling to offer more than $5M on each program. The number of carriers willing to provide primary limits is fixed.

Retentions for indemnifiable loss and Entity Securities Claims have remained stable, averaging $5M per claim, while teams focused on targets in emerging markets and Asia can expect above average retentions.

Breadth of coverage is stable in comparison to prior quarters. Teams should focus on extending coverage to sponsor entities given recent litigation trends.

The market of primary insurers in the US and London remains very limited. The excess market has seen new entrants in both the US and Bermuda. Capacity for insured’s domiciled outside of the US and Europe, specifically those from Asia, is limited.

SPAC securities class action filings dropped off in Q1 2022 due mostly to the fact that less De-SPAC transactions occurred. New direct actions suits being brought in Delaware state court, alleging breaches of fiduciary duty similar to the pleadings made in the MultiPlan case, are concerning underwriters who will now need to contemplate the risk of funding defense costs in both federal and state courts simultaneously.

The SEC has voted to propose a number of new rule changes intended to treat De-SPAC transactions the same as IPOs from a regulatory perspective. This would remove certain protections for issuers while increasing the potential avenues to bring suits against both the SPAC and target company teams.

We expect little to no deviation in the primary rates for the balance of the year unless there is adverse regulatory or securities claims developments. Underwriters continue to monitor existing securities litigation trends as most outstanding material litigation involving SPACs has yet to settle.

We have not seen reason to believe that limits profiles are increasing for carriers. Subject to an unexpected event driven occurrences we expect the breadth and scope of coverage to remain unchanged.

We expect this trend to continue toward more restrictive policy wordings and coverages based on all the recent claims activity.

There is no expectation in the shift in market leadership among the carriers.

Given the increase in frequency and severity of these excessive fee cases and total settlements during the period from 2015 to 2020 totaling more than $1B, the expected total cost of projected settlements is likely to increase by hundreds of millions. Legal defense costs associated with these lawsuits will even further increase the burden.

Markets will continue to monitor developments and trends with excessive fee litigation and other exposures that are challenging their profitability. Size of plan assets is a key factor that will impact pricing. $500M and those companies with challenged risk profiles will continue to see even greater rate increases.

There is still capacity in the marketplace for risks across the board, even in historically consistent and solid client relationships, given the claims environment for this line of coverage.

Carriers are trying to reduce their potential exposure to these excessive fee and expense claims. This is usually attempted or achieved by adding a sublimit, separate retention, coinsurance and using exclusitory wording for these claims.

We expect a consistent monitoring of regulatory and legal trends resulting in retention adjustment to persist throughout the year. This will all depend on where the expiring retention currently is.

Carriers are increasing retentions substantially due to the claims environment mostly driven by excessive fee litigation. Depending on the size of plan assets, retentions are often in the high six figure to seven figure range for this exposure.

We have not seen reason to believe that limits profiles are increasing for carriers.

Insurers have reduced overall and per-layer limits made available for risks across the board, even in historically consistent and solid client relationships, given the claims environment for this line of coverage.

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**Employment Practices Liability**

**METRICS**

- **Q1 2022**
  - YOY CHANGE
  - 10% to 20%

- **Q1 2022 COMMENTARY**

- **12 MONTH FORECAST**
  - YOY CHANGE
  - 0% to 20%

**COMMENTARY**

Insurers have reduced overall and per-layer limits made available for risks across the board—despite in historically consistent and solid client relationships.

We have not seen any reason to believe that limits profiles are increasing for carriers.

Carriers are and will continue to make adjustments on a state specific basis (NY, NJ, CA) primarily influenced by legislation and loss trends.

We expect a consistent monitoring of regulatory trends resulting in retention adjustment to persist throughout the year.

Focused event-driven restrictions have been introduced (BPA) in response to COVID-19 (U.S.). Carriers are beginning to present uniformity in approach as well as restricting the scope of coverage countrywide.

There is no expectation in the shift in market leadership among the carriers. We do however expect to see a slight uptick in capacity especially with carriers that offer EPL as a blended product with the directors and officers liability.

There has been a staggered increase in connection with employee claims and third party discrimination claims. Vaccine hesitancy has resulted in some employees being suspended or not reinstated, and they are challenging these decisions. Defense costs and other elements are in an upward trajectory, which is increasing overall claims activity and expense trends.

Claims volume is expected to continue its steady increase. As offices reopen, employees may seek accommodations to work remotely, which may be in conflict with company plans. The new administration is looking to expand civil rights protections which may lead to increased claims volume.

Markets will continue to monitor the news and trends and will make adjustments accordingly. Social and political pressures coupled with shifting priorities will create a volatile and uncertain market response.

**Cyber**

**METRICS**

- **Q1 2022**
  - YOY CHANGE
  - Minimum

- **Q1 2022 COMMENTARY**

- **12 MONTH FORECAST**
  - YOY CHANGE
  - Minimum

**COMMENTARY**

Ransomware, privacy regulation (e.g. CCPA), system and supply chain threats and vulnerabilities, and the war in Ukraine are expected to be at the forefront of claims and actuarial concerns. Rates are expected to continue to increase throughout 2022 as more claims are submitted.

Carriers continued to seek retention increases on tougher industry classes, companies lacking controls, or with claims activity. Waiting periods are also rising in the Business Interruption coverages. In some instances, between 24 and 48 hours.

Carriers continued to seek rate increases on tougher industry classes, companies lacking controls, or with claims activity. Waiting periods are also rising in the Business Interruption coverages. In some instances, between 24 and 48 hours.

Carriers will emphasize the requirement for quality ransomware and cybersecurity controls. Use of non-invasive scans (BrightInt, Security Scorecards and Centrify during the underwriting process will continue). Questions around findings/potential issues (i.e. open ports) will need to be remediated. Additional questions around vendor management, business continuity plans and employee training will continue to be part of the underwriting process.

Carriers continued to manage their capacity to $5M or below across their portfolio. Sublimits are becoming more common and should be expected, particularly for dependent business interruption. Insurer’s utilize the Dependent Business Interruption as a coverage or area lacking proper underwriting and are therefore scaling back the once considered “throw in” coverage. Sublimits or co-insurance may be applied to ransomware related loss when cyber controls are not optimal.

Carriers will continue to seek increases on tougher industry classes, companies lacking controls, or with claims activity. Waiting periods are also rising in the Business Interruption coverages. In some instances, between 24 and 48 hours.

Cyber claims activity is expected to continue to increase. The impact of large headline cyber events will impact carrier capacity and underwriting changes well into 2022. The continued work from home environment and return to work will continue to test cyber infrastructure across various industries leading to increased claims activity.
Tech E&O

We continue to see substantial increases due to ransomware attacks and other cyber breaches. Premiums have continued to climb and have reached a rate of approximately $35K to $50K per mil on million-dollar coverage for standard middle-market business. We have seen some carriers exceed $200K per mil on riskier business.

Many traditional carriers have exited the marketplace and carriers remain in play. Other areas have not realized the same level of increased rates and we continue to see new XS appetites entering the market.

For Tech E&O, updated security, such as MFA, must be evidenced. No MFA = no cover to obtain. Companies of all sizes must comply with the carrier requested controls. It was more difficult to negotiate language options. We have seen some carriers rolling out new forms and endorsements, with restrictions on coverage and recommend careful review.

We continue to see claims related to malware/ransomware attacks, especially targeting tech firms.

Many traditional carriers have exited the marketplace or changed appetites to distance themselves from smaller operations that do not have a sophisticated tech team.

Licensed Professionals – Accountants / Allied Medical

Higher than $5M limits continue to be hard to obtain, and towers need to be built in $5M increments. Many carriers are only doing $1M or $2M primary offers for any client with a claim. Ransomware and e-crime sublimits are also the norm and cannot be bought up in many cases.

We anticipate continued increases due to malware/ransomware attacks, especially tech E&O firms and those with cyber coverage on their E&O policies. This trend will continue through at least mid-2022, as the new baseline started to be set during the second half of 2021. We recommend caution, but acknowledge the potential for renewals during Q4 of 2022 to realize more reasonable increases as the market stabilizes relative to recent quarters.

We don’t see this trend flattening and continue to see primary limits capped at $5M on major accounts, and less for primary on smaller risks. Capacity will continue running low and markets will look to sit much higher on towers than their current positions.

Markets continue to seek higher retentions from new business as well as in their renewal options. Once the adjustments have been made, retentions should remain static. Co-insurance on e-crime, social engineering and contingent business interruption will become more common.

Many traditional carriers have exited the marketplace or changed appetites to distance themselves from smaller operations that do not have a sophisticated tech team.

We anticipate additional carriers updating forms and endorsements and introducing additional exclusions.

We expect to see defense costs options decrease in availability and policies for larger firms will get tougher on subsidiary and acquisition activity. We saw lots of M&A activity and carriers are not wanting to wait until the renewal to pick up premium for additional operations.

We expect to continue to see smaller (1 - 5 partner) firms get increases at renewal as carriers look to pick up some rate. 10% increase is the average. Firms with up to 20 partners will see more modest increases at about 5%.

We anticipate continued increases due to social engineering attacks, especially tech E&O firms and those with cyber coverage on their E&O policies. This trend will continue through at least mid-2022, as the new baseline started to be set during the second half of 2021.

We will see this trend continue through the second quarter of 2022 as markets continue to seek higher retentions from new business as well as in their renewal options. Once the adjustments have been made, retentions should remain static in the second half.

For Tech E&O, updated security, such as MFA, must be evidenced. No MFA = no cover to obtain. Companies of all sizes must comply with the carrier requested controls. It was more difficult to negotiate language options. We have seen some carriers rolling out new forms and endorsements, with restrictions on coverage and recommend careful review.

We don’t see this trend flattening and continue to watch new and evolved cyber attacks happening on a regular basis. Tech firms where such attacks shut down their operations and affect their customers operations may experience a higher rate of E&O claims.
Private Equity – Q1 2022 Summary

Following the busiest quarter on record in Q4 2021, representations and warranties (R&W) submission flow has normalized somewhat in Q1 2022. While there still remains a high level of submissions from a historical basis, Q1 2022 saw a mixed bag from a bandwidth and rate on line perspective. While some markets are still experiencing bandwidth issues, others seem to have normalized their operations. Pricing varied somewhat from market to market. Some markets are trying to maintain the higher rates from Q4 2021, while others have returned to rates closer to Q1 and Q2 2021 levels.

The greatest impact on policy terms has been a significant increase in premium pricing over the last 12 months. Many insurers are reporting 50% or higher increases as compared to just a year ago.

Contributing to the higher pricing has been an increase in claims severity over the past several years. Smaller transactions (under $50M in enterprise value) have also become more difficult to insure as have acquisitions of target companies in highly-regulated industries, such as financial services and healthcare.

R&W insurers have made strides to add capacity and underwriting staff to address increased demand for R&W policies. However, the insurance market is still struggling to keep pace with R&W insurance submission volume.

We expect current trends to continue over the coming months.
## Casuality – Q1 2022 Summary

The first quarter of 2022 saw the market shift in a slight but perceptible fashion in some respects, giving a much-needed breather in what has been an unrelenting two years of steady rate increases for nearly all insureds. While incumbent markets continue to push for at least single-digit primary casualty rate increases, most have been charged with significant new business goals for 2022. A stabilization trend that had begun six months ago seems to be cautiously gaining a foothold, at least for favorable classes of real estate and well-performing insurers. There is a sense that at least the possibility of negotiation has returned, even if not fully realized.

There are signs of rents increasing to near pre-COVID-19 levels and continued uptick of business and leisure travel are all signs of continuing economic recovery despite emerging concerns over inflation, and we anticipate that this trend will translate to more engaged market participation as well.

### Challenging risks aspects continue:

- Limited competition – certain geographies with adverse litigation and/or crime profiles have limited competition, whether entire states (GA, NY) down to specific counties (Miami-Dade).
- Increased coverage restrictions – uptick in coverage restrictions such as:  
  - Assault/battery  
  - Habitability  
  - Firearms  
  - Human trafficking  
  - Cannabis or controlled substances  
  - Animals  
  - Sexual molestation/misconduct
- Continued concerted underwriting with more prevalent focus on crime scores, human trafficking training/protocols and confirming adequate contractual risk transfer practices.

### Still, the market remains solidly in a conservative stance, with incumbent markets still holding considerable advantage on renewals and limited competition, especially for habitational risks.

With incumbents more willing to commit to firm pricing earlier in the renewal process we expect that the heavy marketing efforts during the last two cycles may taper off, especially since these efforts have generally confirmed whatever potential viable competitors are available for any given risk. Targeted marketing to viable carriers instead of exhaustive blanket efforts for little return may prove to provide adequate and satisfactory results, as we are far from a robust market competition phase. Agreeing on primary pricing early will allow for more time spent in marketing the excess tower, where the largest increases in premium continue.

COVID-19 concerns have somewhat subsided over the last quarter, as variants such as Omicron did not result in significant business pull-back.

### R&W Insurance

<table>
<thead>
<tr>
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<th>Q1 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
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</tr>
</thead>
<tbody>
<tr>
<td>$PRICING</td>
<td>25% to 30%</td>
<td>The R&amp;W insurance market normalized somewhat in Q1 2022. Pricing varied from market to market. Overall, pricing for a customary policy remained flat or decreased by ~10% to 15% since Q4 2021. However, those rates would still be ~25% to 30% over Q1 2021. While pricing over the next 12 months will depend on the health of the broader economy and M&amp;A market, we expect greater stability and a slight reduction in premium cost, relative to Q4 2021.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>✔ LIMITS</td>
<td>-15% to 0%</td>
<td>We do not have reason to believe that carrier limit profiles will change.</td>
<td></td>
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<tr>
<td>✓ RETENTIONS</td>
<td>There has been no meaningful change to the limits being offered by insurers. Most primary R&amp;W insurers are able to offer a $50M limit (or larger) policy for any particular transaction. Initial retentions on R&amp;W policies have remained stable at 1% of transaction enterprise value for most transactions. Lower initial retentions continue to be available in larger transactions and in certain circumstances. Some insurers have increased their minimum retention thresholds for smaller transactions. We do not have reason to believe that policy retentions will change materially. Policy retentions have remained stable on R&amp;W insurance in recent years.</td>
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<tr>
<td>✂ COVERAGE</td>
<td>As a general matter, breadth of coverage has been stable in comparison to Q4 2021. For target companies in highly-regulated industries (including healthcare), some insurers have been more selective to quote opportunities and have been more rigid in requiring deal-specific exclusions or other limitations in their quotes. As a general matter, breadth of coverage has been stable in comparison to Q4 2021. For target companies in highly-regulated industries (including healthcare), some insurers have been more selective to quote opportunities and have been more rigid in requiring deal-specific exclusions or other limitations in their quotes.</td>
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<tr>
<td>📦 CARRIER</td>
<td>There continues to be new insurers (MGAs) beginning to write R&amp;W insurance. There have been 3 new entrants in the last 6 months. Currently there are 25 insurers. Themis and Balance Partners just announced new facilities that will be up and running in 2022. Over the past several years, R&amp;W insurance claim severity has increased steadily. With respect to claim frequency, however, we have not observed a clear trend. Some market reports suggest a slight increase in claim frequency, while others report that frequency has not changed materially. We do not have reason to believe that claims volume or severity will change significantly over the next 12 months.</td>
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<tr>
<td>☤ CLAIMS</td>
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### Real Estate

**Auto Liability Conditions, General Liability, Workers’ Compensation, Umbrella Liability, Property Conditions**

There are signs of rents increasing to near pre-COVID-19 levels and continued uptick of business and leisure travel are all signs of continuing economic recovery despite emerging concerns over inflation, and we anticipate that this trend will translate to more engaged market participation as well.

- Limited competition – certain geographies with adverse litigation and/or crime profiles have limited competition, whether entire states (GA, NY) down to specific counties (Miami-Dade).
- Increased coverage restrictions – uptick in coverage restrictions such as:  
  - Assault/battery  
  - Habitability  
  - Firearms  
  - Human trafficking  
  - Cannabis or controlled substances  
  - Animals  
  - Sexual molestation/misconduct
- Continued concerted underwriting with more prevalent focus on crime scores, human trafficking training/protocols and confirming adequate contractual risk transfer practices.

### Still, the market remains solidly in a conservative stance, with incumbent markets still holding considerable advantage on renewals and limited competition, especially for habitational risks.

With incumbents more willing to commit to firm pricing earlier in the renewal process we expect that the heavy marketing efforts during the last two cycles may taper off, especially since these efforts have generally confirmed whatever potential viable competitors are available for any given risk. Targeted marketing to viable carriers instead of exhaustive blanket efforts for little return may prove to provide adequate and satisfactory results, as we are far from a robust market competition phase. Agreeing on primary pricing early will allow for more time spent in marketing the excess tower, where the largest increases in premium continue.

COVID-19 concerns have somewhat subsided over the last quarter, as variants such as Omicron did not result in significant business pull-back.
Insurers remain cautious on taking on new hospitality risks, as alternative use of facilities (particularly in large urban centers) still present attractive income options to some insureds. Incumbent insurers are still easily retaining profitable larger and/or upscale hospitality accounts, although there are a few markets actively providing competition in this sector. Mixed portfolios with a few hotels are not declined as quickly as in prior quarters, signally the potential for continued market thaw in this class – particularly if there are attractive supporting assets.

The habitational market has not improved during the last quarter as far as finding competitive markets to challenge incumbents, which continue to collect at least modest increases on rate at renewals. Frustratingly, incumbent insurers continue to hold all the cards if willing to remain on risk. Nonrenewals continue for poorly performing risks and/or more stringent underwriting guidelines. Options are extremely limited for nonrenewed accounts, with a marked percentage of insureds finding coverage only in the non-admitted market. Nearly all admitted markets have severely curtailed their appetite for new risks, considering only above-average risks in terms of age, construction, fire/life safety protection and favorable geographies. The use of crime scores as underwriting criterion has increased, with declinations, restricted coverage or coverage sublimits resulting.

The umbrella/excess liability market continued to be unsettled, with the slimmest gimmer of moderation seen from incumbent markets and only on upper tower layers as incumbent lead insurers continue to easily hold onto favorable renewals. Factors contributing to the volatility in the umbrella/excess liability over the past two years (social inflation; claims severity/frequency; and trends around wrongful eviction, assault/battery, sexual abuse/ molestation and human trafficking) are still driving contraction in terms of capacity offered, nonrenewals and often significant premium increases. The lack of market participation for habitational and hospitality risks continue to be disproportionately adversely impacted, but there is a brightening spot of competition in layers excess of the first $15M to $20M for commercial/industrial/office real estate.

The workers’ compensation market continues to be largely competitive, with ample capacity and generally favorable pricing — single digit increases/decreases for insureds with positive loss experience. Outside of poor loss experience, there are not significant market trends that are adversely impacting pricing for this line of coverage. Automobile liability rates for real estate are continuing to have rate increases, although generally 10% or less, as insureds in this sector generally do not have large owned auto exposure, and if so, most fleets tend to be private passenger vehicles and/or light trucks used locally for general maintenance. This line of business is not normally a driver for the real estate sector.

Overall, there are signs of a moderating market on the horizon, particularly in the primary layer. With insurers being challenged with hefty new business revenue goals in 2022, this pressure is encouraging underwriters to be more open to dialogue and exploration of opportunities for some classes of business. Mild to moderate competition is returning in the excess liability market, but only excess of $15M attachment points and only for the most favorable classes of real estate and best-performing insureds. We anticipate strict underwriting guidelines and restrictions to continue where warranted, but for markets to be opportunistic in advantageous pockets.

**Property – Q1 2022 Summary**

After a prolonged period of turbulence in the property market throughout 2021 that saw significant changes to account terms, policy rates and conditions, the first quarter of 2022 brought stability for some clients and further uncertainty for others. Soft occupancy accounts – such as those comprised of primarily class A highly protected office buildings – as well as those performing with few or no losses continued to see less severe rate increases ranging from flat to mid/high single digit; this was driven, in part, from higher market competition due to healthy local and international industry capitalization putting pressure on incumbents to retain attractive risks. However, underwriters continue to pull back the reins on the broad coverage terms and conditions normally expected for softer occupancies, even for accounts with excellent loss history.

Conversely, accounts such as those with adverse loss activity, less desirable occupancy class (i.e. habitational and hospitality), or significant exposure in natural catastrophe-prone geographical areas are seeing premium increases and heightened restriction of terms and conditions, with single carrier programs faring worse than shared and layered due to limited single carrier capacity. Convective storm, again highlighted from the recent devastation from tornadoes in the Midwest, continues to be a peril in the spotlight due to frequent and severe loss events. Following the 1/1 treaty reinsurance renewals, accounts with heavy Florida wind exposure have seen at minimum double digit increases to pricing and accounts placed with AmRisc (also known as Waypoint Wholesale) have been instructed by their management to expect increases in the 25% to 75% range and significant reduction in wind capacity offered at renewal.

Some carriers traditionally writing heavy Florida accounts are even imposing 10% deductibles for named windstorm. A contraction of capacity of markets writing in these states, particularly single-carrier capacity, continues to challenge an already distressed market which is clearly evident with more shared and layered programs and alternative market capacity (particularly E&S) participation. Further, high claims activity from other climate-related losses such as wildfires, flooding and hurricanes has continued to impact capacity, retentions and pricing throughout Q1.

Underwriter scrutiny remains high around reported contingent business interruption values as supply chain issues continue to complicate the conducting of normal business activities; this knock-on effect also results in business interruption values being more closely analyzed with more questions asked, especially when done in conjunction of values (in general) trending upwards due to COVID-19 recovery efforts.

Valuation and water-related losses continue to be at the forefront of key concerns highlighted by markets. Benchmarking data, high labor costs and supply chain issues coupled with significant loss creep have been cited as critical reasons for underwriters to identify under reported values. To help offset this, margin clauses and coinsurance subjectivities continue to be the norm, particularly in the habitational occupancy class. Every insured will be expected to trend replacement cost values upwards to keep on par with inflation, and if it is not done, carriers will do that on their own. Higher and separate water damage deductibles are also widely used on loss sensitive accounts; underwriters are advocating loss control initiatives, both physical and human-element, as a measure to help insureds control this exposure.
### Auto Liability Conditions

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<th>METRICS</th>
<th>Q1 2022 YOY CHANGE</th>
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<th>12 MONTH FORECAST</th>
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<tbody>
<tr>
<td>PRICING</td>
<td>5% to 15%</td>
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<td>LIMITS</td>
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#### Rate increases are anticipated to continue, although only to a mild to moderate degree in the next 12 months. Hired and non-owned auto exposure also continues to be severely underwritten and rated, although premiums are not generally significant.

#### Standard limit offering of $1M/$2M/$2M has not changed. However, more umbrella markets are requesting attachment point of $2M/$4M/$4M, which some insurers are not able to provide. This may necessitate the placement of a buffer layer for umbrella excess liability placement.

#### Retentions for automobile liability are not common for the light fleet exposure presented by real estate clients. If an insured suffered significant liability losses, a small retention could be considered based on individual risk characteristics. Some insurers have sharply increased physical damage deductibles as the cost of repair/replacing automobiles continues to steadily rise.

#### Automobile coverages are largely statutorily driven, but there are extensive broadening endorsements available. If an insurer offers these types of enhancements, it is not generally difficult to obtain for clients as the most serious claims arise from third party bodily injury scenarios.

#### Availability of reasonably broad automobile liability and physical damage coverages are anticipated to continue over the next 12 months.

#### Automobile liability is usually quoted without issue by the insurer writing the other casualty lines. If a monoline automobile coverage is needed or for clients with adverse loss experience or other risk peculiarities, the market is severely limited, mainly to insurers admitted in the non-admitted market.

#### The automobile liability claims front continues to present very significant exposure to insurers. Severe claims can result from a single occurrence, both from owned and non-owned auto exposure. Distractions and/or intoxicated driving contributes considerably to accidents. While RE clients overall generally have less vehicle exposure than do other auto-heavy risks, hospitality risks using shuttle vans carry the risk of multiple passenger injuries.

#### Remarkable auto markets will continue to be scarce due to the lack of additional casualty premium needed to balance the potential for severe losses.

### General Liability

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<td>PRICING</td>
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<td>LIMITS</td>
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#### Trends of requiring $2M/$4M/$4M attachment points from the umbrella market is expected to continue and increase into the next year, although still far from becoming the new norm. Limiting overall capacity deployed via expense aggregate limits is also expected to continue. Curtailing exposure to sexual abuse/molestation (as opposed to remaining silent) is being utilized by some markets to curtail risk to this exposure.

#### We are seeing reductions in coverage induced by more liberal use of adverse exclusions (communicable disease, abuse/molestation, assault/battery; New York Labor Law, human trafficking etc.) particularly for habitational and hospitality risks. These exclusions can be successfully negotiated away in some instances, but only in competitive situations.

#### Insurers have steadily withdrawn from the habitation risk market, leaving fewer and fewer admitted carrier solutions. Insurers have not completely returned to the hospitality sector although COVID-19 concerns have lessened. What insurers remain primarily by class of business, crime score or specific loss profiles, is expected to be a continuing trend with little negotiating ability.

#### While there has been some new insurer capacity entering the market (e.g., RISE for habitational risks), overall, primary market capacity has not increased. While COVID-19 variants have proven to be less detrimental than feared, inflation and conflict in the Eastern European markets have not improved competition. Insurers in some instances have increased the middle-of-the-road hospitality accounts will continue to struggle.

#### There are some signs that insurers are beginning to get a handle on profitability, via a combination of shedding poor performing business and healthy rate increases over the past 2 - 3 years. However, we see no change in the claim frequency or severity that has challenged the market over the past several years.
### Workers’ Compensation

**METRICS**

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The workers’ compensation market has remained stable over the past few years, subject to state of operation, industry and loss experience.

Trend is anticipated to continue through the next 12 months.

**PRICING**

-1% to 1%

Workers’ compensation limits are statutory, so not defined by the broker or insurer. The standard limit of $1M for the employer’s liability component of coverage has remained available without issue.

No changes foreseen.

Guaranteed cost workers’ compensation policies are common in the real estate sector and widely accessible. Larger and more sophisticated clients interested in controlling claims costs and processing the wherenofet and appetite to take on risk continue to pursue large retention programs. “Hybrid” or structured programs (Copes, strategic cordon) are also attractive options that provide certainty in ultimate cost while providing potential for return premium during well-performing years.

No changes foreseen.

Workers’ compensation coverages are standard regardless of insurer, with few broadening endorsements, e.g., blanket waiver of subrogation and voluntary assumption. Coverages for workplace related injuries and loss of income are set by state statute and exclusions are common across the marketplace. There have been no significant coverage changes or trends developing over the last 12 months.

No changes foreseen.

**LIMITS**

There is robust insurer participation in this line of coverage. Many insurers look to lead with sizable WC exposures/premiums in the real estate sector, to bolster the often more challenging general liability performance.

Workers’ compensation has remained a largely profitable line of business and we anticipate continued strong insurer support.

**RETENTIONS**

Workers’ compensation limits are statutory, so not defined by the broker or insurer. The standard limit of $1M for the employer’s liability component of coverage has remained available without issue.

No changes foreseen.

Guaranteed cost workers’ compensation policies are common in the real estate sector and widely accessible. Larger and more sophisticated clients interested in controlling claims costs and processing the wherenofet and appetite to take on risk continue to pursue large retention programs. “Hybrid” or structured programs (Copes, strategic cordon) are also attractive options that provide certainty in ultimate cost while providing potential for return premium during well-performing years.

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No changes foreseen.

**CARRIER**

As the hospitality industry continues to recover from the pandemic shut-down, claims activity will increase. Labor shortages of experienced hospitality workers may also contribute to an increase in claims as we move into 2023. lengthy questions around working remotely and safe return to work will continue, creating potential for increased claims activity.

The impact of COVID-19 related workers’ compensation claims is limited in the real estate sector given that these employees are not in the “front line” category of employment. However, with the increase in business/leisure travel, more workers have returned to the hospitality space, and claims are likely to increase.

**CLAIMS**

While percentage pricing increases continue to be the most extreme for umbrella coverage, there is a sense that we are behind the worst corrective actions. Commercial risks (retail, office and light industrial) still experience the lowest increases. Rating emphasis is on cost of capacity. While exposure certainly directs pricing, carriers are underwriting to limit and attachment point more than seen in previous years. Risk purchasing groups are making significant adjustments in premiums at time of master program renewals.

Increased lead attachment points of 25/25/50/100 are now common for residential and hospitality risks. However, in response to this limit increase requirement, we are seeing more primary carriers provide larger limits in quotes or lead umbrella options. Clients are reevaluating total limits/placed/primary risk purchasing groups become more restrictive, carriers reduce capacity and overall cost of limits increases. Quota sharing limits is common and frequently leads to more competitive outcomes. Carriers are restricting per location aggregate limits through the excess tower.

Minimal standard retentions still apply. Carrier pricing not impacted heavily with primary retention increases.

### Umbrella Liability

**METRICS**

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-30% to 75%

Last quarter’s projection remains relatively unchanged; premium increases will not substantially but will continue to raise renewal sentiments. We expect most carriers to hedge their risks outside their appetite and will have aggressive new business goals. This will drive competition; however, general price expectations will persist.

Increased lead attachment points of 25/25/50/100 are now common for residential and hospitality risks. However, in response to this limit increase requirement, we are seeing more primary carriers provide larger limits in quotes or lead umbrella options. Clients are reevaluating total limits/placed/primary risk purchasing groups become more restrictive, carriers reduce capacity and overall cost of limits increases. Quota sharing limits is common and frequently leads to more competitive outcomes. Carriers are restricting per location aggregate limits through the excess tower.

We expect current trends to continue for the next 12 months.

**PRICING**

-30% to 75%

-30% to 75%

We expect current trends to continue for the next 12 months.

**LIMITS**

Human trafficking exclusion now common for hospitality risks. Assault and battery exclusions widespread and in line with primary carrier exclusions. We are seeing carrier flexibility depending on excess attachment point. Communicable disease exclusions are now expected on all renewals.

Coverage restrictions will persist and become more common throughout the next year. Formal safety and risk management plans around assault and human trafficking will be key in negotiating exclusion removal. Account specific claims including violence and bodily injury will drive introduction of new exclusions.

**RETENTIONS**

Carriers revise appetite, capacity and attachment point regularly. Lead umbrella limits will be most competitively priced if provided by the primary general liability carrier rather than on a monoline basis. Risk purchasing groups are exceedingly selective with renewals and new business — however, when interested in a risk, RPGs continue to offer very competitive options. Flexibility on crime scenes as an underwriting tool and guidelines is becoming frequent.

Carrier appetites are reactive to loss trends. With no sign of closing claim frequency and severity, we expect the current course to persist through the year. In areas where appetite is state, we anticipate capacity to fluctuate.

**COVERages**

Carriers revise appetite, capacity and attachment point regularly. Lead umbrella limits will be most competitively priced if provided by the primary general liability carrier rather than on a monoline basis. Risk purchasing groups are exceedingly selective with renewals and new business — however, when interested in a risk, RPGs continue to offer very competitive options. Flexibility on crime scenes as an underwriting tool and guidelines is becoming frequent.

Carrier appetites are reactive to loss trends. With no sign of closing claim frequency and severity, we expect the current course to persist through the year. In areas where appetite is state, we anticipate capacity to fluctuate.

**CLAIMS**

Two major claim trends contributing to current market pressures:

1) Social inflation has led to rising claim payouts, loss ratios and insurance costs.

2) There has been a significant increase in claim severity, settlement awards and verdicts.

Claim trends will continue through the next 12 months, especially with the use of litigation financing.
### Property Conditions

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<tbody>
<tr>
<td>Pricing</td>
<td>$0% to 10%</td>
<td>There were hopes that pricing would flatten in Q4/Q1. C&amp;Y insurance treaties on 1/1/22 put a damper on that. Profitable accounts with no/low loss activity along with desirable occupancy classes mostly experienced mid- to high single-digit rate increases. Conversely, less desirable occupancy classes, less profitable accounts and those located in higher loss prone states (FL, LA, MS, TX) are still experiencing distressed pricing conditions (15%). Increased competition fueled, in part, by more capacity options offered from foreign insurers (i.e. London and Bermuda) will continue to help general pricing trend downward. We’re expecting challenging conditions specific to certain occupancy classes/accounts to somewhat continue, albeit tempered as general market conditions improve through the course of 2022.</td>
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<td>Limits</td>
<td>%0% to 5%</td>
<td>Generally, program limits/sublimits saw little change although accounts in states prone to higher loss face greater scrutiny such as new/ lower sublimits related to convective storm (wind/hail) and wildfire. Contingent business interruption values for certain account types i.e. retail are typically seeing a more detailed underwriting review due to supply chain issues. Expect scrutiny on contingent business interruption values to continue until local/national/international supply chain resolutions are found. Less interest from clients to “trade” sublimits for premium savings due to market conditions improving.</td>
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<td>Retentions</td>
<td>%0% to 10%</td>
<td>As insureds have now gone through multiple renewals in a prolonged turbulent market, underwriters in general have a better level of comfort with current retentions, having seen them revised in previous renewals. However, pressure for new/higher water damage deductibles on accounts with water related loss activity is still evident, as is adequacy of retentions for insureds with heavy convective storm exposure. Even accounts without water-related losses are experiencing carriers pushing higher deductibles, which are company mandated. With improved and less stressed market conditions predicted going forward, underwriters will have less leverage to implement adverse retention changes on insureds than in prior renewal cycles. The knock-on effect of more favorable trading conditions is less interest from clients to “trade” higher retentions for premium savings.</td>
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<td>Coverage</td>
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<td>In general, most renewals saw no/little change to coverage terms and conditions. However, accounts with supply chain exposure are being more closely examined for business interruption and/or contingent business interruption values. Residential accounts are still subject to valuation concerns; if not already, many are seeing coinsurance and/or margin clause subjectivities being pushed by underwriters where such apprehension exists. Supply chain issues, labor shortages and improper valuations are making underwriters pay closer attention to certifying reported replacement cost and business interruption/contingent business interruption exposures; this could result in corrective measures being forced, if not already in place. Accounts with no such issues/risk exposure can expect little to no change.</td>
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<td>Carrier</td>
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<td>Overall capacity continues to be healthy — incumbent carriers are offering expanded capacity and/or new markets are offering new capital, particularly from London and Bermuda. However, we’re predicting prolonged challenges to continue to exist in higher loss prone states (TX) which may now require a shared/layered program solution rather than a traditional single-carrier approach. Strata, a big property writer in Texas recently announced they would not offer any renewals after 3/15/22. With rates stabilizing and coverage changes somewhat tempered, we’re predicting increased competition amongst carriers for profitable and desirable target classes of business resulting in over-subscription of capacity offerings. This is further emphasized by London and Bermuda continuing to offer competitive capacity for shared/layered programs.</td>
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<td>Claims</td>
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<td>Carrier claims advocacy continues to be challenged, a lot of which can be attributed to increasing loss estimates and reported losses from previous loss events (i.e. loss creep). This trend is expected to continue, which is why underwriters are continuing to heavily target accounts and certain occupancy classes where significant concerns exist around low/poor valuation.</td>
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