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Financial Services and Management Liability
Settlement Agreement Reached on $100M Cyber Claim

Mondelez International v. Zurich American Insurance

Mondelez International is a multinational food and beverage holding company. With such prominent product names in their portfolio as Oreo, Cadbury, Dentyne, Ritz and Chips Ahoy, the company has an annual revenue stream of $26B and operates in 106 countries around the world. So, in 2017 when the Chicago-based company fell victim to a cyberattack, the repercussions, as you would imagine, were commensurate with their size.

In June 2017, Mondelez was hit with malicious intrusions of malware known as the “NotPetya” virus. The malware initially infected two of their servers, but eventually proliferated across the company network. The malware successfully destroyed 1,700 servers and 24,000 laptops. Additionally, the company indicates that the hardware and software damages effectively disrupted their distribution and supply operations. In the end, Mondelez calculated they sustained at least $100M in property damage and business interruption losses as a result of the malware attack.

Mondelez had in effect at the time of the loss a property policy (not a cyber policy) from Zurich American Insurance. This policy extended coverage specifically for physical loss or damage to electronic data and programs as well as extra expense coverage due to failure of the insured’s electronic data processing equipment or media to operate as a direct result of malicious malware.

The claim was immediately submitted to Zurich for consideration and adjustment under the policy, but in June 2018, Zurich issued a formal disclaimer to Mondelez. The disclaimer cited what is commonly known as the “war exclusion.” This exclusion precludes coverage for a hostile or warlike action in time of peace or war by a government or sovereign power. Presumably Zurich raised this exclusion, as NotPetya was previously identified by several governments as having been developed by GRU, a hacking group within the Russian Military Intelligence Organization.

Zurich apparently rescinded the disclaimer within a matter of weeks and promised to not only adjust the claim in good faith by fronting a $10M advance to Mondelez as partial payment. However, by October, the payment had not yet been made and Mondelez claims the adjustment process was stagnant.

Zurich, realizing that Mondelez intended to litigate the matter with them, again formally reasserted the exclusion and denied the claim. Mondelez filed with the Circuit Court of Illinois, asserting breach of contract, promissory estoppel, vexatious and unreasonable conduct and an order enforcing Zurich’s promise to rescind its declination.

The particulars of the settlement are not publicly available. However, it should be noted that in February of 2022, pharmaceutical giant Merck (which was also a victim of the NotPetya attack) litigated this very issue with their insurers. The Superior Court of New Jersey sided with Merck.

Judge Thomas Walsh essentially stated that cyber insurers have been aware of these cyberattacks but failed to alter the language of the exclusions to indicate to their policyholders that they intended to exclude cyberattacks.

Perhaps Zurich saw the writing on the wall from the Merck decision, causing them to negotiate a settlement. In all likelihood these cases will probably result in underwriters revisiting and, in some cases, clarifying their war exclusions on future policies.

Court Says Policy Language Does Not Allow Insurer to Take an Offset

**T-Mobile USA, Inc. v. Steadfast Insurance**

In 2015, millions of customers of the communications giant T-Mobile had their private data exposed through a cyber breach. In this instance, the breach was not directly through T-Mobile, but rather through Experian, which had collected information on potential customers applying for credit with T-Mobile. T-Mobile maintained a primary cyber policy with Steadfast Insurance (Zurich), which provides a $15M coverage limit subject to a $10M self-insured retention. Through the remediation and notification process, T-Mobile accrued over $17M worth of expenses, which they submitted to their insurer. However, since the actual breach occurred through Experian, they subsequently reimbursed T-Mobile a total of $10.75M for some of those expenses.

Zurich denied the damages, arguing they now fell within the retention. Although the total expenses exceeded the $10M retention, Zurich argued that there is exclusionary language in the policy indicating that loss shall not include any amounts for which the insured is absolved from paying. The reimbursement from Experian amounted to an “offset” which reduced the total loss, bringing it below the retention.

The Washington State Appeals Court disagreed with the insurer. They found nothing in the policy language which permitted the insurer to offset any damages. As to Zurich’s argument, the court stated “T-Mobile remained directly liable for those obligations and paid them in full. Experian then reimbursed T-Mobile for some of those data-breach-related costs and expenses T-Mobile had already paid.”

They found the recovery did not actually absolve the insured from making those payments in the first place and therefore should not be excluded as a covered loss.


Recent Ruling by Appellate Court Imposes Stricter Guidelines For Employers Collecting Biometric Data

**Mora v. J&M Plating, Inc.**

In 2014, an Illinois company called J&M Plating instituted a new method of timekeeping for employees by collecting their fingerprints electronically. Under the Illinois Biometric Privacy Act (BIPA) employers are required to follow specific guidelines to protect harvested information from consumers and employees. One of those requirements is to have a written data collection and destruction policy which is published and visible to those whose biometric data may be affected. So, in May 2018, J&M Plating developed and posted their written retention and destruction schedule.

In January 2021, employee Trinidad Mora was terminated. Mr. Mora had previously (May 2018) been presented with and consented to the employer’s policy by signing the policy. Approximately two weeks following his termination, Mr. Mora’s biometric information was destroyed in compliance with the employer’s policy.

Following his termination, Mr. Mora filed suit on behalf of himself and all similarly situated employees. He alleged in the lawsuit that while the employer did have a retention/destruction plan in place, that plan was not implemented until almost four years after the employer began collecting the data. The employer filed a summary judgment motion asserting that nowhere in the text of the statute are timeframes stipulated for adopting the policies. They additionally argued that since Mr. Mora’s biometric data was summarily destroyed after his termination, he suffered no harm or damages. The trial court agreed with the employer and dismissed Mr. Mora’s action.

Plaintiff appealed the case, and the Appellate Division of the Supreme Court reversed the trial court decision. In his appeal, the plaintiff argued that while the language of the statute does not specifically outline the establishment of the schedule before implementation of the data collection, doing so retroactively strips the statute of any enforceability. Plaintiff argued that he had no opportunity to consent to the practice before the employer began collecting his biometric data. The Appellate Court agreed, indicating that individuals would have no way of learning what will happen to their private data without a policy to review and consent to, and this defeats BIPA’s notification function. The Appellate Court also ruled that a person need not have sustained any actual breach beyond simply the violation of their rights under BIPA to bring an action. Rather, the violation itself is sufficient to support the statutory cause of action.

The two major takeaways from this case are, first, that employers must have a compliant biometric data policy published and in place either prior to or concurrent with the institution of biometric data collection. That policy must be publicly available to any individuals the collection may involve. Second, plaintiffs need not show that the data collection caused any particular harm or damages in order to prevail on a claim. They only need to prove that the defendant violated the statute.

Undoubtedly the decision from this case will serve to proliferate litigation surrounding this Act.

**Case No. 2-21-0692 (Ill. App. Nov. 30, 2022)**
DIRECTORS AND OFFICERS

SEC Sets New Restrictions on Insider Trading
The US Securities and Exchange Commission (SEC) has unanimously adopted new disclosures and trading restrictions to crack down on potential abuses of insider trading by executives.

The SEC has been working on the amendment for close to a year, having been debated and revised during that time. The amendment is part of the SEC’s continuing effort to curb potential stock transaction abuses by corporations and company insiders.

Several of the key provisions of the amendment are as follows:
- Directors and managers modifying a plan or adopting a new plan must certify that they aren’t aware of any material nonpublic information about a company or its securities and that they are adopting the plan in good faith.
- Safe harbor provisions are revised to institute a cooling-off period of up to 120 days before any trading could commence following the adoption of 10b5-1 trading arrangements. The period will be either 90 days after a plan is adopted or modified, or two business days after certain periodic financial reports are disclosed, whichever is later.
- The new amendments also mandate a cooling-off period of 30 days for trading arrangements for people other than issuers, directors or officers.
- Overlapping trading plans are prohibited in order to prevent corporate insiders using multiple plans to selectively cancel individual trades because of material, nonpublic information.
- Issuers also have to report annually if they have adopted insider trading policies and procedures – or explain why they haven’t – while officers and directors would need to disclose whether a reported transaction was made under an affirmative defense arrangement.

The final rules will go into effect 60 days after publication in the Federal Register. Issuers will be required to comply with the new disclosure requirements in financial reports and information statements that cover the first full fiscal period on or after April 1, 2023.

Fourth Circuit Affirms Dismissal of Shareholder Class Action Suit With Prejudice Against Online Company

The US Court of Appeals for the Fourth Circuit affirmed the dismissal of a putative class action against K12 under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5. The plaintiffs had alleged that the company artificially inflated the cost of its shares by misrepresenting the state of its business, specifically citing claimed business with the Miami-Dade School District which never came to fruition. The district court found that plaintiffs failed to plead falsity and scienter and granted the company’s motion to dismiss with prejudice. The Fourth Circuit affirmed, holding that plaintiffs failed to allege actionable misrepresentations or facts giving rise to a strong inference of scienter.

The plaintiffs alleged they relied on statements made by the company that K12 was well positioned to cope with pandemic-induced conditions given how the education market was likely to change and its ability to provide online learning services. The plaintiffs allege these statements were misleading because a contract was never actually signed.

The Fourth Circuit found most of the alleged misrepresentations were nonactionable puffery, opinion statements or forward-looking statements. The court held that the company’s statements reflected “the kind of general positivity” investors would not rely on. The panel also found the statements amounted to nonactionable opinions because the company consistently used the language “we believe” when describing its competency. The court found that the company’s statement that it was well-positioned during the pandemic was about the company’s future economic performance and thus a nonactionable forward-looking statement protected by the Private Securities Litigation Reform Act safe harbor. While K12 never had an executed contract with the school district, the court said that the plaintiffs never alleged that K12 had a signed agreement.

Finally, the Fourth Circuit found that while statements regarding the contract status, the plaintiffs never plead facts giving rise to a strong inference of scienter.

Case No. 21-2351 (4th Cir. Nov. 22, 2022)
On the Other Hand…

**Indiana Public Retirement et al v. Pluralsight et al.**

The US Court of Appeals for the Tenth Circuit unanimously reversed a district court’s dismissal of a putative securities class action against Pluralsight, an online education company. The plaintiffs had brought causes of action for alleged violations of Section 10(b); SEC Rule 10b-5; Section 20A of the Securities Exchange Act of 1934; and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 arising out of what they claimed were the company’s false and misleading statements about the size and productivity of the company’s sales force. The Tenth Circuit reversed and remanded, holding that the Exchange Act allegations as pleaded did support an inference of scienter at least as compelling as any nonculpable inference.

In January 2019, the company’s CFO touted the size and effectiveness of the company’s sales force to analysts and investors, advising that the company’s sales force had grown from 80 to about 250 sales representatives over the course of several years. Pluralsight was alleged to only have 200 sales reps. The plaintiffs also pointed to statements in the company’s February 2019 Form 10-K in which the company stated that it had “a large direct sales force to focus on business sales” and had “been able to drive substantial increases in the productivity and effectiveness of [its] sales personnel” as being false and misleading.

Finally, it was alleged that the company misrepresented their tracking and attention to billings by the sales team as a way to attract additional investors and drive up the sales price.

The Tenth Circuit reversed the district court’s holding that the complaint failed to raise a strong inference of scienter. The circuit highlighted the CFO’s statements regarding the number of sales reps, with a discrepancy of 50 being a material number given the sizes of the sales force. Combined with the CFO’s statements that they closely monitored the company’s sales force numbers, and that he emphasized that sales force capacity to generate billings was at the core of the company’s business model “strongly support[ed] the inference that [the CFO] knew his January 16, 2019, statement was false or misleading when he made it.” The court concluded that the district court erred in finding there was no strong inference of scienter with respect to this statement.

**Case No.: 21-4058 (10th Cir. 2022)**

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Oil Company Stock Fraud Suit Settlement Approved

**Gruber v. Gilbertson et al.**

A federal judge in New York granted final approval to a roughly $14M settlement reached between a class of Dakota Plains Holdings Inc. investors and the now-defunct oil transloading company’s officers and directors. The judge also reduced the potential damages owed by one of the company’s co-founders.

In June, Michael Reger, co-Founder of Dakota Plains Holdings, was found liable for one claim of securities fraud and one claim of control person liability for Dakota Plains’ securities fraud by a New York federal jury. The jury declined, however, to find him liable for a claim of insider trading, according to the verdict form.

The lawsuit claimed Ryan R. Gilbertson (the other co-founder) and Reger used their secret control of the company to artificially inflate its stock price and trigger millions of dollars in bonus payments to themselves and others. The named officers and directors were accused of being complicit in the scheme and failing to disclose material information to investors. The US District Judge issued an opinion and ordered the judgment against defendant Michael Reger be reduced by the $14M settlement amount and offset by 50% to reflect Gilbertson’s share of the responsibility in the alleged scheme.

Gilbertson was convicted in 2018 and sentenced to 12 years in prison. The class reached a nonmonetary settlement with Gilbertson in May in exchange for his testimony during Reger’s trial.

The certified class of investors who will receive relief includes those who purchased Dakota Plains stock between March 23, 2012, and August 16, 2016, as well as a subclass of investors who bought shares contemporaneously with certain defendants.

**Case No. 16-cv-09727 (S.D.N.Y. Dec. 21, 2022)**
SPAC Investors, HEIC, Sued in Delaware

_Luis Diaz Valdez v. Douglas L. Braunstein et al._

A special-purpose acquisition company that merged with online therapy platform Talkspace in 2021 has been hit with a class action suit. The proposed class action filed in Delaware Chancery Court alleges breaches of fiduciary duty related to the combined company’s post-merger plunge in value. The proposed class action also accuses the defendants of filing a false and misleading proxy statement with the US Securities and Exchange Commission in May 2021, alleging that the board did not execute the extensive due diligence that it publicized.

In this case, the special purpose acquisition company (SPAC), Hudson Executive Investment Corp., or HEIC, announced in January 2021 its plan to take public and merge with Talkspace, a mental and behavioral health online platform founded in 2012, in a $1.4B merger. The merger was completed in June 2021. The complaint alleges that at the time the proxy was issued, Talkspace had already been experiencing a “dramatic increase” in its advertising costs and was suffering from matching and retention problems. The lead plaintiff investor states that stockholders who paid more than $10 per share to join the investment group wound up with assets worth $0.84 per share at the time of the filing.

A SPAC raises money from investors in an initial public offering and uses the proceeds to acquire businesses. If no target business is identified, or no transaction is completed, the SPAC is required to liquidate.

_Case No. 2022-1148 (Del. Ch. Dec. 14, 2022)_
Supreme Court to Hear Two Employment-Related Cases

During this term, the Supreme Court will hear two employment-related cases, a wage-and-hour case, and an employer’s petition in an ERISA case.

**Helix Energy Solutions Group, Inc. v. Hewitt**
In Helix Energy Solutions Group, Inc. v. Hewitt, the Supreme Court will decide whether a supervisor earning over $200,000, paid on a daily basis, still qualifies as a salaried employee.

Hewitt was employed by Helix, a Houston-based oil and gas company, as an oil-rig worker. He worked 28 consecutive days, for 12 hours each day, and was paid a daily rate ranging from $963 to $1,341 per day, for a total of over $200,000 annually. Although Hewitt worked 84 hours a week, he was not paid overtime wages. After his termination, Hewitt filed a class action suit against Helix, alleging that he was owed overtime pay under the Fair Labor Standards Act. In turn, Helix argued that Hewitt was not entitled to overtime pay because he was a “highly compensated employee according to 29 C.F.R. § 541.601 and was considered a bona fide executive.

The district court granted summary judgment in favor of Helix, finding that Hewitt was both an executive and a highly compensated employee paid on a salary basis and, therefore, was not entitled to overtime pay. Hewitt appealed the decision to the US Court of Appeals for the Fifth Circuit, which reversed the lower court's finding, holding that Hewitt was paid on a daily rate basis and, therefore, entitled to overtime pay.

On January 7, 2022, Helix filed a petition for a writ of certiorari. The United States Supreme Court granted certiorari on May 2, 2022.

Oral arguments were held on October 5. The appeal is pending before the Court.

**Cintas Corporation v. Hawkins**
In Cintas Corporation v. Hawkins, the Supreme Court must decide whether arbitration agreements in employment contracts requiring employees to arbitrate ERISA claims are enforceable, even though the plan was not a party to the arbitration agreements.

Cintas is a national uniform and business-supply company. Cintas offers its employees a retirement plan. The plan, the Cintas Partners’ Plan, is a “defined contribution plan,” which means that Cintas, as the plan’s sponsor, selects a “menu” of investment options in which the participants may invest. Each participant in the plan maintains an individual account, which is determined by the participant’s contributions, market performance and fees. Under ERISA, all plans must have one or more fiduciaries who is responsible for managing and administering the plan, setting forth the duties of the fiduciaries as the duty of loyalty and the duty of prudence.

Plaintiffs Raymond Hawkins and Robin Lung are Cintas employees and plan participants, who entered into various employment agreements which contained arbitration provisions as well as a provision preventing class actions.

Plaintiffs filed a putative class action against Cintas, the plan's administrator, the Cintas Investment Policy Committee, the Cintas board of directors and plan participants, alleging that Cintas breached its duties of loyalty and prudence by offering the participants the ability to invest only in managed funds, rather than more cost-effective passively managed funds, and by charging imprudently expensive recordkeeping fees. Cintas filed a motion to compel arbitration and stay the federal proceedings. The district court denied both motions, concluding that the class action was brought on behalf of the plan, and therefore the plaintiffs' consent to arbitrate was irrelevant. Additionally, because the plan itself did not consent to arbitration, it was not prevented from filing a class action.

Cintas appealed to the Sixth Circuit Court of Appeals, which affirmed, holding that the claims are not covered by the arbitration provisions in the plaintiffs’ respective employment agreements, and that breach of fiduciary claims under ERISA belong to the benefit plan and not to individual plan participants.

Cintas thereafter filed a petition for writ of certiorari on September 12, 2022.

_Hawkins v. Cintas Corp., Case No. 21-3156 (6th Cir. Apr. 27, 2022)_
DOL Restored the Totality-of-the-Circumstances Approach For Independent Contractor Classification

The Department of Labor has issued a new proposed rule revising its classification of independent contractors and employees under the Fair Labor Standards Act. The 2022 proposed rule will replace the department’s prior rule published in 2021, which departed from the department’s longstanding “totality-of-the-circumstances test” and imposed a test in which those factors were to be separated into a set of “core factors” and “non-core factors.”

The 2021 rule focused on two “core factors” — the nature and degree of control over the work and the worker’s opportunity for profit and loss. If those core factors resulted in the same classification (i.e., both either employee or independent contractor), then there was a substantial likelihood that the respective classification was accurate for determining the worker’s status. The 2021 rule also imposed three additional “non-core” factors: (1) the amount of skill required for the work, (2) the degree of permanence of the working relationship between the worker and the employer, and (3) whether the work is part of an integrated unit of production. These additional non-core factors were considered in instances where “core factors” were at odds.

The 2022 proposed rule would do away with the core and non-core factors and reinstate the standard multi-factor “totality-of-the-circumstances” test, which no longer assigns a predetermined significance on any factor, and where no factor is singularly dispositive.

The department stated that “[a]fter further consideration, the department believes that the 2021 OC Rule does not fully comport with the FLSA’s text and purpose as interpreted by courts and departs from decades of case law applying the economic reality test.”

The Department published the proposed rule on the Federal Register on October 13, 2022.

BIPA Trial Verdict

Rogers v. BNSF Railway Co.

A jury in federal court in Chicago returned a verdict for a plaintiff class in the first trial of a case involving claims under the Illinois Biometric Information Privacy Act (BIPA).

Plaintiff, Richards Rogers, alleged that his former employer, BNSF Railway Co. (BNSF), violated BIPA’s privacy policy, data retention/destruction, notice and consent requirements when it collected and stored his and other truck drivers’ biometric data without obtaining their consent or informing them of the company’s data retention policies. He alleged that the truck drivers were fingerprinted when entering BNSF’s railyards, and that BNSF violated Section 15(b) of BIPA by collecting his biometric data without first giving him written notice and obtaining his informed consent.

The jury found that BNSF recklessly or intentionally violated BIPA 45,600 times, one time for each member of the class.

The presiding judge, Judge Matthew Kennelly, then entered judgment in favor of the plaintiff class and against BNSF in the amount of $228M, which amounts to $5,000 per class member.

BIPA has been the law in Illinois since 2008. Section 20 of BIPA allows individuals aggrieved by a violation of the statute to bring a private right of action. BIPA further provides that a prevailing party may recover for each negligent violation liquidated damages of up to $1,000 or actual damages, whichever is greater. The statute also provides that, for each reckless or intentional violation, a prevailing party may recover liquidated damages of up to $5,000 or actual damages, whichever is greater.

BNSF is likely to appeal the verdict.

Case No. 1:19-cv-03083 (N.D. Ill. Oct. 12, 2022)
Third Circuit Bolsters Federal Whistleblower Protections


On November 30, 2022, the US Court of Appeals for the Third Circuit confirmed that the 2010 statutory expansion of the anti-retaliation protections for whistleblowers under the False Claims Act (FCA) prohibits retaliation against employees who undertake lawful efforts to stop a violation of the FCA, even if there is no “distinct possibility of an FCA lawsuit being filed.”

The FCA prohibits any person from, inter alia, knowingly presenting a “false or fraudulent claim for payment or approval” to the US government. The government may bring direct action to recover damages resulting from the alleged fraudulent claims, or, alternatively, a private plaintiff may bring a qui tam action on behalf of the government in exchange for an award of up to 30% of the recovered funds. The FCA also protects whistleblowers from retaliation “because of” conduct protected by the FCA. Prior to 2009, protected activity included only lawful acts done by the employee… in furtherance of a qui tam action. Known as the “distinct possibility” standard, this required plaintiffs to show that their employer had notice of the distinct possibility that a plaintiff was contemplating filing a False Claims Act suit.

In 2009, Congress extended the whistleblower protections to include individuals who lawfully try to stop violations of the FCA, without regard to whether the whistleblower files a qui tam action. The whistleblower protections were further amended in 2010 and extended to the protection of “lawful” actions “in furtherance of” either “an action” under the FCA or “other efforts to stop one or more violations of” the Act. The legislative history and amendments confirm the changes were made to “protect[] not only steps taken in furtherance of a potential or actual qui tam action but also steps taken to remedy the misconduct … whether such steps are clearly in furtherance of a potential or actual qui tam action.” 155 Cong. Rec. E1295-03, E1300 (June 3, 2009).

In July 2014, the US Department of Housing and Urban Development (HUD) awarded a $30M grant to the Philadelphia Housing Authority for the construction of a housing project. The Housing Authority designated Shoemaker Construction Co. and Shoemaker Synterra JV, a joint venture, as construction managers for the project, which then subcontracted McDonough Bolyard Peck (MBP) to oversee quality control. Plaintiff Ascolese worked for MBP as the quality assurance/quality control manager for the project. During his employment, he observed several project deficiencies, following which he advised Shoemaker and MBP management that under the circumstances it would be wrongful or fraudulent for Shoemaker and MBP to be paid government funds and that certifications of their contract compliance to obtain payments would be false and fraudulent. When neither Shoemaker nor MBP acted in response to his internal complaints, Ascolese continued to voice his concerns regarding the deficiencies, and MBP thereafter terminated his employment. Ascolese believes that his termination constituted unlawful retaliation for whistleblowing activities protected by the FCA.

Following his termination, Ascolese filed a qui tam action on behalf of the government under the FCA alleging that MBP and Shoemaker defrauded the government by falsely certifying compliance and safety requirements to get paid by the Housing Authority. He further alleged that he was retaliated against for trying to stop the alleged fraud, which was protected activity under the FCA. Ascolese later withdrew certain claims applicable to the government after it declined to intervene. MBP then moved to dismiss the suit for failure to state a claim. The district court granted MBP’s motion to dismiss. Ascolese moved for leave to file a second amended complaint, which was denied, with the court applying the “distinct possibility” standard. They concluded that an amended complaint would be futile because Ascolese failed to show that MBP was on notice that he would file an FCA action or report fraud to the government, or that he acted to stop one or more of MBP’s alleged FCA violations. Ascolese thereafter filed a motion for reconsideration, which was denied.

On appeal, the Third Circuit Court of Appeals determined that the district court’s reliance on the old “distinct possibility” standard, which required Ascolese to show that MBP had notice that he was either contemplating FCA litigation or reporting to the government that MBP had committed fraud, was no longer the sole basis for liability. The court recognized that the 2009-2010 FCA amendments expanded the anti-retaliation standard and determined that the proper standard was whether Ascolese showed that “(1) he engaged in protected conduct (in furtherance of an [FCA] action … or other efforts to stop one or more violations of the [FCA] and (2) that he was discriminated against because of his protected conduct. Armed with the new standard, the appellate court determined that Ascolese sufficiently pled that he engaged in protected conduct when he went outside his chain of command and reported the alleged fraud to the Housing Authority. The court also found that Ascolese sufficiently alleged that MBP was on notice of his efforts to stop MBP and Shoemaker’s alleged FCA violations and retaliated against him because he complained to MBP and Shoemaker’s management, as well as to the Housing Authority’s management.
Given the court’s **recognition** of the **expanded standard**, employers should exercise **increased care** when responding to employee complaints about **potential** fraudulent conduct, **especially** when the alleged conduct involves **government** funds.

*Case No. 21-2800 (3d Cir. Nov. 30, 2022)*

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**Football Coach May Publicly Pray After Football Games**


The US Supreme Court held that a school district infringed on the rights of an assistant football coach under the free exercise clause of the First Amendment when it suspended him for continuing to pray after football games. Plaintiff Joseph Kennedy was a high school assistant football coach at Bremerton High School. Kennedy, a practicing Christian, had a tradition of kneeling and praying on the football field’s 50-yard line after each game. Many others, including other coaches, students and spectators, joined Kennedy in prayer. Kennedy also led his team in prayer before each game. The school district learned of Kennedy’s tradition of praying and told him to keep his addresses to the team secular so as not to alienate students who held different religious views and practices.

Kennedy temporarily stopped praying; however, he publicly challenged the school district’s actions through various media avenues and eventually resumed his prayers. The school district thereafter placed Kennedy on paid administrative leave. Rather than reapplying for his position after his contract ended, Kennedy sued the school district, alleging that it had violated his rights under the free exercise clause of the First Amendment.

The court agreed with Kennedy, holding that the **free exercise** and **free speech** clauses of the **First Amendment** protect an individual engaging in a **personal** religious observance from government reprisal; and that the Constitution neither **mandates** nor **permits** the government to suppress such **religious expression**.

*Case. No. 21-418 (US June 27, 2022)*
Insurance Giant Faces ERISA Suit

*Popovchak et al. v. UnitedHealth Group Incorporated et al.*

Insurance giant UnitedHealth has been sued by two plan participants alleging the company violated federal benefits law through a scheme that caused insureds to be overcharged for out-of-network medical services.

The lead plaintiffs filed suit against UnitedHealth Group Inc., alleging it violated the Employee Retirement Income Security Act (ERISA) by dumping steep bills on plan participants for out-of-network medical services by utilizing third-party repricer services to discount its reimbursement obligation. It is alleged that in 2016, UnitedHealth enacted a “shared savings initiative” for self-funded plans that featured savings fees. The savings fees are calculated by finding the percentage difference between the medical provider’s bill and the eligible expense covered by UnitedHealth.

The plaintiffs claim UnitedHealth realized that it could use repricer data instead of FAIR Health charge data to set far lower eligible expenses, allowing it to collect higher savings fees. It is alleged that the insurance company doesn’t secure savings for anyone through this plan besides itself because medical providers haven’t agreed to accept the repriced amount.

They seek to represent a class made up of all participants and beneficiaries with competitive fee provisions in their plan agreements whose benefit claims for out-of-network services were administered by UnitedHealth using repricer data. They estimate the class will represent thousands of people.

The plan participants alleged UnitedHealth has earned billions of dollars through this scheme at the expense of the plan members.

*Case No. 22-cv-10756 (S.D.N.Y. Dec. 21, 2022)*

State Farm Settles Class Action Life Insurance Suit For $325M

*Rogowski et al. v. State Farm Life Insurance Co.*

A proposed class action was filed in March 2022 against State Farm alleging that the insurer was continuing to overcharge life insurance policyholders for their cost of insurance, despite the carrier losing a similar class action several years ago. The suit sought to represent a class of anyone in Missouri who owned certain types of State Farm universal life insurance policies after the previous jury verdict in June 2018, as well as anyone who owned the same policies at any time in nearly every other state in the country.

The original class action alleged State Farm was calculating policyholders’ cost of insurance rates based on commonly used factors such as age and sex but also added other, unauthorized factors to determine the rate, resulting in higher charges. A federal jury awarded the class of roughly 43,000 policy holders a total of $34.3M back in 2018, which was upheld by the Eighth Circuit in 2020.

State Farm filed a motion to dismiss the non-Missouri class allegations for lack of subject matter jurisdiction and argued that the class plaintiffs lacked standing to assert claims arising under other states’ laws since they didn’t allege that they suffered any injury outside Missouri. In November, the class plaintiffs filed an unopposed motion for approval of the settlement, telling the court they’d agreed to a deal during mediation sessions.

The US District Judge granted an unopposed motion for preliminary approval of a settlement involving a proposed class of roughly 760,000 policyholders. State Farm will pay up to $325M to the proposed class members and their attorneys.

*Case No. 22-cv-00203 (W.D. Mo Dec. 16, 2022)*
Regulatory Fines Surpass $2B Over Wall Street’s Failure to Preserve Personal Messaging App Communications

In the Matter of Barclays Capital, Inc.

As we have reported in prior Claim Journals, the SEC and Commodity Futures Trading Commission (CFTC) have aggressively pursued major Wall Street firms for their recordkeeping failures in preserving employees’ texts and other personal messages when discussing business matters. The SEC and CFTC recently announced additional fines as part of settlements with eleven Wall Street firms. The total fines now surpass $2B.

In announcing the settlements, SEC Chair Gary Gensler remarked, “Finance, ultimately, depends on trust. By failing to honor their recordkeeping and books-and-records obligations, the market participants we have charged today have failed to maintain that trust... As technology changes, it’s even more important that registrants appropriately conduct their communications about business matters within only official channels, and they must maintain and preserve those communications.”

From January 2018 through September 2021, the firms’ employees routinely communicated about business matters using text messaging applications on their personal devices. The firms did not maintain or preserve the substantial majority of these off-channel communications, in violation of federal securities laws. By failing to maintain and preserve required records relating to their businesses, the firms’ actions likely deprived the commission of these off-channel communications in various commission investigations. The failings involved employees at multiple levels of authority, including supervisors and senior executives.

The following eight firms agreed to pay penalties of $125M each: Barclays Capital Inc.; BofA Securities Inc. together with Merrill Lynch, Pierce, Fenner & Smith Inc.; Citigroup Global Markets Inc.; Credit Suisse Securities (USA) LLC; Deutsche Bank Securities Inc. together with DWS Distributors Inc. and DWS Investment Management Americas, Inc. Goldman Sachs & Co. LLC; Morgan Stanley & Co. LLC together with Morgan Stanley Smith Barney LLC; and UBS Securities LLC together with UBS Financial Services Inc. Jefferies LLC and Nomura Securities International, Inc. each agreed to pay $50M and Cantor Fitzgerald & Co. agreed to pay a $10M penalty.

Mr. Gensler stated that the SEC will continue to ensure compliance as part of the SEC’s examinations and enforcement work. Sanjay Wadhwa, SEC Deputy Director of Enforcement, warned that “The time is now to bolster your record retention processes and to fix issues that could result in similar future misconduct by firm personnel.” Many predict that regulators will target midsize broker-dealers, investment advisers and hedge funds next.

CFPB Appeals to Supreme Court Over Stunning Fifth Circuit Funding Ruling

Community Financial Services Association of America Ltd. et al. v. Consumer Financial Protection Bureau et al.

Consumer Financial Protection Bureau et al. vs. Consumer Financial Services Association of America Ltd. et al.

The Biden Administration has moved swiftly to appeal a Fifth Circuit decision that stunned the financial sector in October. The Fifth Circuit decision found that the Consumer Financial Protection Bureau’s (CFPB) funding structure was unconstitutional and has called into question the past, present and future of the CFPB in the Fifth Circuit.

In appealing the decision to the Supreme Court, the CFPB stated:

This Court’s review is warranted because the court of appeals’ decision declared an Act of Congress unconstitutional . . . and because it threatens to inflict immense legal and practical harms on the CFPB, consumers and the Nation’s financial sector. Given the gravity of those consequences and the uncertainty that the court of appeals’ decision has already created, the United States is filing this petition less than one month after the decision.

The Fifth Circuit decision held that “Congress’s decision to abdicate its appropriations power under the Constitution (i.e., to cede its power of the purse to the CFPB) violates the Constitution’s structural separation of powers.”

As background, in response to the 2008 financial crisis, Congress enacted the Consumer Financial Protection Act, 12 U.S.C. §§ 5481–5603. The Act created the CFPB as an independent regulatory agency housed within the Federal Reserve System, and it was charged with “implement[ing]” and “enforce[ing]” consumer protection laws to “ensur[e] that all consumers have access to markets for consumer financial products and services” that “are fair, transparent and competitive.” Id. § 5511(a). Congress transferred to the CFPB administrative and enforcement authority over 18 federal statutes which prior to the Act were overseen by seven different agencies.

As stated by the Fifth Circuit, “the CFPB’s funding scheme is unique across the myriad independent executive agencies across the federal government.” It is not funded with periodic congressional appropriations. Rather, the CFPB receives funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments.

The Fifth Circuit decision found this so-called double-insulation unconstitutional:

So Congress did not merely cede direct control over the Bureau’s budget by insulating it from annual or other-time limited appropriations. It also ceded indirect control by providing that the Bureau’s self-determined funding be drawn from a source that is itself outside the appropriations process—a double insulation from Congress’s purse strings that is “unprecedented” across the government. And where the Federal Reserve at least remains tethered to the Treasury by the requirement that it remit funds above a statutory limit, Congress cut that tether for the Bureau, such that the Treasury will never regain one red cent of the funds unilaterally drawn by the Bureau.

The reaction to the Fifth Circuit decision has been swift. Defendants in multiple CFPB enforcement cases across the country have already sought dismissal or similar relief based on the decision. As stated by the CFPB, in its Petition for Writ of Certiorari:

New challenges to the Bureau’s rules and other actions can be expected to multiply in the weeks and months to come...Those legal consequences have major practical effects. The CFPB’s critical work administering and enforcing consumer financial protection laws will be frustrated. And because the decision below vacates a past agency action based on the purported Appropriations Clause violation, the decision threatens the validity of all past CFPB actions as well.

The Supreme Court justices are likely to vote as soon as next month on whether to hear the appeal. The CFPB is hopeful the case is heard before the current term ends in June.

Case No. 21-50826 (5th Cir. Oct 19, 2022)
Case No. 22-448 (US Nov. 14, 2022)
OCC Releases Bank Supervision Operating Plan For 2023

The Office of the Comptroller of the Currency (OCC) released its bank supervision operating plan for fiscal year 2023 on October 6, 2022. The plan provides the foundation for policy initiatives and for supervisory strategies as applied to individual national banks, federal savings associations, federal branches, federal agencies and technology service providers. The OCC uses this plan to guide its supervisory priorities, planning and resource allocations.

For FY 2023, examiners will focus on “the impacts of volatile economic conditions,” including inflation, increasing recession possibilities and rising interest rates. Examiners will also consider geopolitical events that may have adverse financial, operational, and compliance implications.

Other key areas of heightened focus for supervisory strategies in FY 2023 include:

- Strategic and operational planning
- Operational resiliency
- Third parties and related concentrations
- Credit risk management
- Allowances for credit losses
- Interest rate risk
- Liquidity risk management
- Consumer compliance
- Bank Secrecy Act
- Fair lending
- Community Reinvestment Act
- New products and services
- Climate-related financial risks

Wells Fargo Ordered to Pay $3.7B For Mismanagement of Auto Loans, Mortgages and Deposit Accounts

In the Matter of Wells Fargo Bank

The CFPB recently ordered Wells Fargo to pay $3.7B in redress and penalties relating to its mismanagement of auto and mortgage product lines, as well as checking and savings account fees. Under the terms of the order, Wells Fargo will pay redress to the over 16 million affected consumer accounts and pay a $1.7B fine.

According to the CFPB, consumers were illegally assessed fees and interest charges on auto and mortgage loans, had their cars wrongly repossessed and had payments to auto and mortgage loans misapplied by the bank. Wells Fargo also charged consumers unlawful surprise overdraft fees and applied other incorrect charges to checking and savings accounts.

According to a statement from the CFPB, Wells Fargo had “systematic failures” in its servicing of automobile loans, including incorrectly applying borrowers’ payments, improperly charging fees and interest, and wrongfully repossessing borrowers’ vehicles. In addition, the bank failed to ensure that borrowers received a refund for certain fees on add-on products when a loan ended early. These actions resulted in $1.3B in harm across more than 11 million accounts.

Over at least a seven-year period, the bank also improperly denied thousands of mortgage loan modifications, which in some cases led to Wells Fargo customers losing their homes to wrongful foreclosures. The bank was aware of the problem for years before it ultimately addressed the issue.

Wells Fargo also wrongly charged surprise overdraft fees on debit card transactions and ATM withdrawals. The CFPB has warned financial institutions against the practice known as authorized positive fees since as early as 2015. CFPB Director Rohit Chopra announced in December 2021 that the CFPB would take action against big banks engaged in unlawful overdraft fee practices. The CFPB found that banks were collecting more in these fees than in ATM fees and regular account service charges.

Insurance Coverage

California Supreme Court Opines that TCPA Claims May be Covered Under Commercial General Liability Policies

*Yahoo Inc. v. National Union Fire Insurance Co. of Pittsburgh PA*

The California Supreme Court found that the personal injury coverage provision in Yahoo’s policy with its AIG insurer is ambiguous, saying that commercial general liability policies may sometimes cover claims brought under the Telephone Consumer Protection Act.

Yahoo sued AIG in California federal court seeking coverage under their general liability policy for multiple proposed class actions alleging that Yahoo sent its customers unsolicited text messages in violation of the Telephone Consumer Protection Act of 1991. The trial court dismissed the litigation, and after appeal to the Ninth Circuit, it was referred to the Supreme Court, posing the question as to insurability of TCPA claims under California law.

The Yahoo policy was amended via endorsement and distinguished between coverage for personal injury offenses and advertising injury offenses. Perhaps most importantly, the endorsement also removed a TCPA claim exclusion that was in the base form.

The Supreme Court ruled that the personal injury coverage provision in Yahoo’s policy was ambiguous and could not be resolved by the standard rules of contract interpretation. Commercial general liability policies that provide coverage for injuries arising out of the “oral or written publication” of “material that violates a person’s right of privacy” may also trigger an insurer’s duty to defend if the alleged TCPA violation amounts to a right-of-seclusion violation under California law, the justices said.

In considering the argument that the language of the policy was ambiguous, the justices determined that the provisions in the policy must be read in a way that is consistent with Yahoo’s reasonable expectations of coverage.

While the court said the question of Yahoo’s expectations was to be considered in the lower courts, it was consistent with the general proposition that ambiguities in contracts are interpreted against the drafter, the contra proferentum rule.

As Insurers generally draft their contracts to limit or altogether avoid the risks and expenses associated with TCPA litigation, this ruling is potentially significant, at least regarding California entities, where there is an active and aggressive plaintiff’s bar.

*Case No. S253593 (Cal. Nov. 17, 2022)*

Coverage For COVID Losses Remains Elusive

*Goergio Cosani Menswear Inc. et al. v. AmGuard Insurance Co. et al.*

The Ninth Circuit rejected an appeal from several California businesses seeking to resurrect their COVID-19 coverage suit against AmGuard Insurance Co., determining that a virus exclusion clearly prevents coverage. The policyholders’ arguments that the exclusion doesn’t apply because it wasn’t specifically a pandemic exclusion were unpersuasive, the panel finding that the language of the exclusion was broad enough to include pandemics.

The panel determined that “There is no question that the virus exclusion — which applies ‘whether or not the loss event results in widespread damage or affects a substantial area’ — bars coverage for pandemic-related losses.”

The Ninth Circuit has been consistent in dismissing these matters where there are clear virus exclusions within the policies. In addition, they have consistently rejected the argument that the virus exclusion doesn’t apply to losses from pandemic shutdown orders.

More than half of COVID-19-related coverage suits have been dismissed at the Federal district court level, and appellants have not fared any better before the panels.

*Case No. 22-55541 (9th Cir. Dec. 12, 2022)*
**Second Circuit Upholds Applies Crime Policy’s Suit Limitation Period**

**Sportsinsurance.com, Inc. v. The Hanover Insurance Company, Inc.**

The Second Circuit Court upheld a commercial crime policy’s suit limitation period in finding that an insured’s coverage action was not timely. Sportsinsurance.com discovered the loss in 2016, but ultimately did not institute cover litigation against Hanover Insurance until 2020, which was outside the policy mandated two-year period in which to bring suit against the insurer.

In January 2017, Hanover denied coverage for the claim. The insured chose to pursue the bad actor, who happened to be their CFO, who was ultimately found to have misappropriated funds from the company. Sportsinsurance.com resubmitted the matter to Hanover in 2019, providing the legal determination the CFO’s embezzlement in support of their claim. Hanover again concluded that the claim was not covered (theft by principals such as CEOs, CFOs or owners are typically excluded under commercial crime bonds). Sportsinsurance.com filed suit against Hanover in 2020.

Hanover moved to dismiss the litigation, arguing that Sportsinsurance.com failed to comply with the suit limitation provision in the policy, which dictates that a policyholder may not bring any legal action against the insurer unless such suit is brought within two years from the date you discovered the loss.

The Second Circuit agreed with Hanover, finding that the loss was discovered back in 2016 when the insured uncovered the embezzlement. The court concluded that Sportsinsurance.com would have had to file the coverage litigation by 2018, as per the policy provisions, which it regarded as “especially clear language.”

Sportsinsurance.com also argued their coverage litigation was timely based on waiver and estoppel arguments. It argued that Hanover’s statements that they “remained available to consider any additional information should new information come to light” and as such that somehow resulted provided the insured with additional time to bring their claim. The court rejected the waiver and estoppel arguments, finding Hanover’s invitation to submit additional information did not constitute a waiver of their rights under the policy.

**Late Notice to Excess Carrier Results in Finding of No Coverage**

**Harvard v. Zurich**

One of the basic components of a claims-made policy is that coverage is almost always predicated upon notification of a claim during the policy period. Unlike occurrence-based policies which allow the policyholder to go back and submit claims under policies that may have expired years before, claims-made policies outline very stringent constraints on when a claim must be reported after the insured has notice of the trigger. With little exception, the window to submit a claim usually coincides with the termination date of the subject policy.

What may not be evident is that the excess policies that sit over these claims-made primary policies are often follow-form, meaning they adopt the coverage provisions of the underlying policy. In such case, the excess or, in some cases, multiple excess layers are claims-made as well. Insureds who may not anticipate the ultimate value of a claim or potential claim when initially reporting to their primary insurer, and who opt to defer reporting to excess layers until it is appear they may be implicated, may do so at significant risk.

In 2014, Harvard University was sued by a group claiming that the university racially discriminated against Asian students in their admissions process. The allegations asserted that the university created racial quotas to artificially deflate the number of Asian students and increase the number of other minority groups in violation of Title VI of the Civil Rights Act of 1964.

Harvard immediately notified their primary policy with AIG, but for reasons unclear, failed to concurrently notify their excess layer. Harvard ultimately prevailed in the underlying federal trial, and the US Court of Appeals denied the plaintiff’s appeal.

In 2017, Harvard’s broker sent formal notification of the complaint to Zurich, their excess insurer. Zurich responded by advising that since the first notice of the lawsuit arose in 2014, notice was not timely, and they disclaimed coverage. It is noted that by the time Zurich was notified, Harvard had only spent about $2.5M in legal costs, which was just their primary retention and still well within the $25M primary limits afforded by AIG under their policy.

*Case No. 2022 WL 16706941 (2d Cir. Nov. 4, 2022)*
However, plaintiffs in the case petitioned and were granted a hearing of the matter by the US Supreme Court. It is estimated that by March of 2021, Harvard had fully eroded their $25M primary limits on legal costs alone. The oral arguments were heard before the Supreme Court in October 2022, and Harvard was now demanding that Zurich reconsider its denial and offer up its $15M excess coverage.

When Zurich refused to alter their original coverage position, Harvard filed suit against them. The basis of their argument was that while Harvard had not provided formal notice of the claim, Zurich in fact had actual notice of the matter. They argued that since 2014, major news outlets had carried the story of the lawsuit challenge to their admissions policy. Additionally, they argued that many of the individuals working at Zurich and involved on the Harvard account would have had knowledge of the lawsuit through the news reports and that knowledge would have been acquired during the 2014 policy period.

In the Summary Judgment Order, the judge was unimpressed with Harvard’s argument. The court ruled that the Zurich policy provisions were unambiguous, requiring notice within the policy period as condition precedent to coverage. There was no dispute that Harvard did not give notice to Zurich until May 2017, some 18 months after the policy had expired. The insured’s failure to notify the insurer within the policy period serves to preclude coverage, and Harvard’s case against Zurich was dismissed.

Harvard signaled its intent to appeal the case to the First Circuit.

*Case No. 21-cv-11530 (Mass. Nov 2, 2022)*
Specialty Spotlight

Management, Cyber and Professional Liability

Public Company D&O, Private and Not for Profit Company D&O, General Partnership, Fiduciary, Employment Practices, Cyber
Management, Cyber and Professional Liability – Q4 2022 Summary

The market continued to improve for policyholders in the latter part of 2022, notably Q4 2022, across all product lines within the Management, Cyber and Professional Liability practice space. When new entrants enter the marketplace, it’s not uncommon for this competition to lead to reduced premiums, reduced retentions and improved coverage as carriers try to retain their clients and attract new business. This is especially true in the directors and officers (D&O) insurance market, where new entrants may offer more competitive pricing in an effort to establish themselves in the market — which puts tremendous pressure on the legacy D&O markets. We started to see these trends play out in cyber and other key lines of business as a result.

Key trends we saw in Q4 2022 in the management, cyber and professional liability lines of business are as follows:

- D&O rate increases have decreased considerably if not disappeared in all segments of D&O (public, private, nonprofit) for companies with good risk profiles. New entrants and excess capacity continues to be readily available and is driving downward pressure, contributing to the accelerated softening we saw this quarter. We expect this trend to continue in 2023.

- Fiduciary liability rates started to moderate versus the prior quarter, mostly driven by excessive fee litigation and unique exposures surrounding an account. Insurance carriers are focused on plans with assets greater than $100M, where previously the threshold was much higher. Employee stock ownership plans (ESOP) will see even greater rate increases along with those that have challenged risk profiles. This line of business continues to be challenging for insureds.

- In better news for cyber, the market continues to improve from prior quarters, given more capacity entering the market similar to public D&O. As we witnessed in Q3, there have been significant reductions from the large swings of the 2020 and 2021 hard market. Typical rates for Q4 ranged from flat to 25%. Markets are more comfortable offering terms for new business opportunities; however, terms are still rooted in a client’s ability to demonstrate strong cybersecurity controls and overall strong cyber hygiene. Insureds that fail to showcase an investment in cybersecurity will continue to face less favorable outcomes.

In the privately held and not-for-profit company space, rates ranged from -5% to 5% in Q4 2022, compared to -5% to 10% in Q3 2022. Carriers have, for the most part, achieved their limit management and rightsizing goals, so we anticipate insurance limits will remain relatively consistent on a go-forward basis and pricing to continue to stabilize if not decrease further in 2023.

The carriers continue to monitor retention levels and adjust those on an account-by-account basis.

Public company D&O is experiencing a greater level of capacity inflow than the private company space, which has brought our rate forecast down to annual average rate change of -20% to flat in Q4 2022 compared to -10% to 10% in Q3 2022.

While increases of 5% to 10% still permeated the majority of primary general partnership liability (GPL) placements, rate increases did trend downward for the sixth consecutive quarter. Excess layers continues to show diminished rate pressure due in part to an increase in excess-only market capacity. Retentions remained stable year over year, with some general partnerships (GP) seeing material increases in response to significant fundraising or claims activity. Employment practices liability (EPL) retentions are being raised by some carriers to be in line with GPL retentions in response to an increase in material EPL litigation at the GP level. Regulatory and EPL claims have become the leading source of litigation as it relates to the private equity space as bankruptcy-related claims emanating from the pandemic did not materialize as expected. Fiscal year 2022 saw 26% of enforcement actions brought against investment advisors, down from 28% the prior year. Total enforcement actions filed up 9% year over year, with total disgorgement and penalties up to $6.5B, the highest in SEC history. We expect these claims trends to continue into 2023 as the SEC focuses on disclosures relating to conflicts of interest, fees and expenses, valuation, and custody and controls surrounding material non-public information.

As we saw throughout 2022, Fiduciary liability continues to see excessive fee litigation. Even with strong governance around this exposure, most markets still require a substantial retention ($1 million to $5 million, usually based on plan asset size) for this specific exposure. Premium increases also continued in Q3 2022 as a result of this litigation, although rates are increasing at slower pace than in the first half of 2022. For Q4 2022 we saw flat to 10% increases versus flat to 25% in Q3 2022.

In Employment Practice 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. For Q4 2022 we saw flat to 10% increases compared to flat to 15% in Q3 2022.

While ransomware continues to be the key discussion topic in all cyber placement negotiations, carriers have seen an increase in other computer-related incidents such as social engineering and funds transfer fraud. Further, while first-party insuring agreements are the most triggered portion of a cyber policy, the often-overlooked third-party insuring agreements may become critical into the fourth quarter and into the new year, in light of recent litigation that arose in the third quarter. First, ride-sharing giant Uber made headlines when Joe Sullivan,
the former CSO, was convicted of two felonies associated with the handling of a security incident that occurred in 2016.* The incident is a cautionary reminder of the implications and potential litigation that can stem from mishandling a cyber incident. Further, social media giant Meta Platforms Inc.’s pixel tracking tool is at the center of several claims alleging the tracking tool sent users’ personal video consumption data from online platforms to Facebook without their consent, violating the federal Video Privacy Protection Act.* The rise in third-party litigation around cyber and media claims is a gentle reminder of the criticality of a comprehensive cyber policy.

All that said, the close of Q2 2022 marked a year from the beginning of the challenged cyber market. With a year behind us, carriers are requesting lower rate increases for clients who experienced rate corrections in Q3 of 2021 and put necessary investments into their cyber hygiene. The anniversary has also seemed to spark the welcome of more entrants into the cyber space as well as carrier desire to see new business. All that said, the carriers’ approach to reviewing client submissions has remained unchanged. A client’s ability to procure cyber coverage continues to be heavily based on the cyber controls implemented across the company’s network.

Clients who want to mitigate market increases and/or have access to comprehensive coverage need to ensure key cyber controls are in place. This might include multifactor authentication, endpoint detection and response, emailing filtering tools and privileged access management. It might also include detailed action plans for employee training and threat response. Clients should also prepare for underwriters to review not just internal security controls but to also conduct vulnerability scans of public-facing domains.

Sources:
Uber Verdict Raises New Risks for Ransom Payments
Meta Pixel’s Video Tracking Spurs Wave of Data Privacy Suits

Management, Cyber and Professional Liability – 2023 Outlook

The D&O insurance market for the balance of 2022 and especially the latter half of 2022 experienced a softening trend, which means that premiums for D&O insurance have been decreasing for most policyholders. We see this trend continuing unabated across most segments (public, private, nonprofit) of D&O insurance in 2023. Given some of the economic headwinds expected, however, we think more bankruptcies and restructurings will take place in 2023. For those companies, we think they’ll face more pricing pressure. Similarly, certain industries such as digital assets, cannabis and other emerging industries won’t see the same reductions as some other policyholders.

The major factor that contributed to the softening of the D&O insurance market was increased competition with new entrants in the market, especially in the publicly traded segment. The lack of IPOs, special purpose acquisition companies (SPAC) and other transactions we saw in 2022 exacerbated this supply and demand trend in the favor of buyers of D&O insurance. Less insureds but more capacity is almost always a recipe for a soft market.

In addition to the softening pricing trend, the trend of increasing self-insured retentions has slowed considerably, and there may be opportunities for companies to lower their retentions for the first time in two years.

Regarding the other key management liability lines of business, Employment Practices and Fiduciary liability, our prediction for 2023 is more stability and fewer increases unless the policyholder has a challenged risk profile or has had recent loss history.

The Cyber market in 2022 was a year of reflection: where would we be after the significant changes and challenges of the prior year. The pandemic created new cyber vulnerabilities, accelerating risk and the mechanisms for bad actors to create havoc in a company’s technology environment. This led to increased ransomware activity, increased premiums and many companies scrambling to meet the cyber security needs of the insurance market. The beginning of 2022 did not offer much relief in terms of premium or ease around cyber controls. This was further exacerbated by the Russia/Ukraine conflict, which left carriers even more concerned about systemic risk across their cyber portfolio. We saw the market double down on the emphasis of cyber security controls and many carriers re-evaluate policy wording around war exclusions and systemic events.

Despite all the concerns of the year, we did see a slow down in ransomware events. Possible contributing factors include increased cyber security controls of Insured’s, the Russia/Ukraine conflict and the changes in the cryptocurrency world. However, as ransomware events slowed down, a resurgence of social engineering, business email compromise, and privacy litigation occurred.

Given our dependency on technology, cyber continues to be an insurance market driven by constant change. In 2023, we expect new market entrants and the stabilization of ransomware to cause more market competition and many insured’s should see price reductions.
The market continued to stabilize in the fourth quarter. After a lengthy hard market in the D&O space, we expect rates for the remainder of 2022 to flatten or decrease over prior year (the latter for those companies that have strong risk profiles). New capacity has led to increased competition in the space, with carriers offering more competitive terms to either retain business or win new business.

We expect continued pressure on pricing given the new capacity effect and the reduction in securities class action filings. The slowdown in the IPO market has put pressure on carrier's year-over-year growth metrics and, in turn, competition has increased across the entirety of the public D&O market.

Carriers have been maintaining their average limits deployed for over two years, and we anticipate a stabilization over the next 12 months. In Q4, we did see limit tranches increase, with expiring tranches of $2.5M moving to $5M and $5M moving to $10M after major reductions in past years. Carriers are still limiting capacity in certain industries, especially on difficult risk profiles such as digital assets, cannabis, IPOs and SPACs.

Like we saw in Q3, we expect carriers to maintain and, in some cases, increase their capacity over the next 12 months, using the “more limit, more money” philosophy.

We saw carriers generally maintain their retention levels, but in some cases there were some decreases throughout the quarter.

We expect to see potential reductions in retentions as the competition continues to increase and intensify in the next 12 months. Certain events and classes will most likely maintain their retention levels, such as IPOs, SPACs, digital assets and cannabis.

Breadth of coverage is stable in comparison to prior year and quarters.

Barring any unexpected event-driven occurrences, we expect the breadth and scope of coverage to remain unchanged. We expect appetite for coverage expansion given the new capacity trying to get market share.

Capacity continues to enter the public D&O market, which has started to increase the pricing and retention pressure. New entrants continue to put pricing pressure on incumbent excess layers.

The entry of new capacity into the excess market will result in the introduction or reshuffling of carriers onto multilayered programs.

We have seen a decrease in the past two years in federal securities class actions. However, derivative actions such as books records (Section 220) demands, among other allegations, continue to increase. The continued trend of social inflation makes it more costly to defend these matters, and plaintiffs’ attorneys are seeking larger fee awards.

We expect claims volume to increase in connection with increased SEC scrutiny, new regulations in the Insider Trading Prohibition Act, increased focus on environmental, social, and governance and board diversity. There is increased scrutiny of boards and individual directors and officers in connection with cyber risks and how they address and respond to such incidents. Uncertainty in the economy has the potential to lead to increased stock market volatility and bankruptcies.
# Private and Not for Profit Company Directors and Officers Liability

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
<th>Q4 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
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</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>-5% to 5%</td>
<td>The private and nonprofit company sectors continued to stabilize in the fourth quarter. Pricing adjustments continue to be made directly in response to events related to COVID-19, industry sector, capitalization, cash burn and regulatory environmental factors. The length of the hard market and increased competition is having an impact on the overall market, which is great for buyers. We have also seen new entrants enter the market — notably, insurtech companies that will continue to increase the pressure on overall rates. However, for financially distressed risks and risks in certain industries (such as cannabis, digital assets, etc.), above-average rate increases still exist.</td>
<td>-10% to 0%</td>
<td>Pricing will continue to improve in 2023 given the amount of capacity in the marketplace for clients with good risk profiles. Given current and predicted economic conditions, we expect to see a rise in bankruptcies and restrucuturings in this segment.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>Carriers continue to maintain limit capacity. We are seeing stabilization due to corrective action taken over the last 24 months during the hard market.</td>
<td></td>
<td>Similar to the publicly traded segment, we do expect carriers to increase limits (e.g., $5M to $10M) for those companies with strong risk profiles.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>We saw carriers generally maintain their retention levels, but in some cases there were some decreases throughout the quarter.</td>
<td></td>
<td>We expect to see retentions remain the same and in some cases decrease given new capacity interested in writing more business.</td>
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<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>The retraction of coverage terms is trending towards leveling. Portfolio corrections appear to be plateauing for preferred risks. High-risk industries and emerging industries are still seeing more restrictions and exclusions being put on their programs.</td>
<td></td>
<td>Trend continues toward maintaining the status quo. We expect appetite for coverage expansion given the new capacity trying to get market share.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>We continue to see the emergence of new market capacity in the private company sector. The post-pandemic appetite for established business with less than $100M in revenues is becoming a carrier focus.</td>
<td></td>
<td>Similar to last quarter, 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>
<tr>
<td><strong>Claims</strong></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.</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. Given the current and expected macro environment, we do expect more claims as a result of bankruptcies.</td>
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## General Partnership Liability

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
<th>Q4 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>While increases still permeated the majority of primary placements, rate increases did trend downward for the sixth consecutive quarter. Excess layers continues to show diminished rate pressure, due in part to an increase in excess-only market capacity.</td>
<td>$</td>
<td>We expect rate increases to continue to come down over the balance of the year as the market continues to level off.</td>
</tr>
<tr>
<td>Limits</td>
<td>✓</td>
<td>Capacity still remains strong within the GPL marketplace. The market of carriers willing to write primary is still limited but broad enough to generate steady competition. Carriers continue to push to maintain strict capacity management and are generally unwilling to offer more than $5M on new programs. Existing towers are able to maintain $10M tranches.</td>
<td>✓</td>
<td>We have not seen a reason to believe that limits profiles are increasing for carriers.</td>
</tr>
<tr>
<td>Retentions</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. EPL retentions are being raised by some carriers to be in line with GPL retentions in response to an increase in material EPL litigation at the GP level.</td>
<td>☐</td>
<td>We have not seen a reason to believe that retentions will increase materially.</td>
</tr>
<tr>
<td>Coverage</td>
<td>☝</td>
<td>Breadth of coverage is stable in comparison to Q4 2021, with a focus on broadening regulatory and investigations coverage. Carriers are looking to specifically exclude exposure to SPACs and pull back any cyber-related coverage that had been granted previously.</td>
<td>☝</td>
<td>Subject to an unexpected event-driven occurrence, we expect the breadth and scope of coverage to remain unchanged.</td>
</tr>
<tr>
<td>Carrier</td>
<td>🔺</td>
<td>The market of primary carriers in the US remains stable. New excess capacity has entered the market but has not materially impacted pricing.</td>
<td>🔺</td>
<td>New capacity is expected to enter the excess market, which will result in the introduction or reshuffling of carriers onto multilayered programs.</td>
</tr>
<tr>
<td>Claims</td>
<td>🔺</td>
<td>Regulatory and EPL claims have become the leading source of litigation as it relates to the private equity space as bankruptcy-related claims emanating from the pandemic did not materialize as expected. Fiscal year 2022 saw 26% of enforcement actions brought against investment advisors, down from 28% the prior year. Total enforcement actions filed up 9% year over year, with total disgorgement and penalties up to $6.5B, the highest in SEC history.</td>
<td>🔺</td>
<td>We expect these claims trends to continue into 2023 as the SEC focuses on disclosures relating to conflicts of interest, fees and expenses, valuation and custody and controls surrounding material nonpublic information.</td>
</tr>
</tbody>
</table>
## Fiduciary Liability

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
<th>Q4 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>▲</td>
<td>0% to 10%</td>
<td>Fiduciary liability rates will begin to stabilize as we approach the anniversary of the larger correction taken to address 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.</td>
</tr>
<tr>
<td>Limits</td>
<td>✔</td>
<td>▼</td>
<td></td>
<td>Given the reduction in limits over the past 24 months, we’re starting to see a stabilization, particularly on programs that have seen structure changes over the past few years. We are still seeing carriers reduce capacity on programs that still have higher limits ($10M+), even in historically consistent and solid client relationships, given the claims environment (especially excessive fee litigation) for this line of coverage.</td>
</tr>
<tr>
<td>Retentions</td>
<td>✨</td>
<td>▲</td>
<td></td>
<td>Carriers are increasing retentions substantially due to the claims environment mostly driven by excessive fee litigation. Depending on the size of plan assets, retentions – particularly class action retentions – are often in the high six-figure to seven-figure range for this exposure.</td>
</tr>
<tr>
<td>Coverage</td>
<td>🚴</td>
<td>▼</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrier</td>
<td>🇺🇸</td>
<td>—</td>
<td></td>
<td>There is no expectation of a shift in market leadership among the carriers.</td>
</tr>
<tr>
<td>Claims</td>
<td>📂</td>
<td>▲</td>
<td></td>
<td>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 further increase the burden.</td>
</tr>
</tbody>
</table>
## Employment Practices Liability

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
<th>Q4 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td></td>
<td>Employment practices liability has remained relatively stable at this time despite the pandemic and ensuing shutdowns. Concerns over reductions in force (RIF) as a result of the pandemic and global lockdowns have not yet materialized like we initially thought might happen. Carriers are closely watching return-to-office and vaccination issues that could potentially lead to future claims.</td>
<td><img src="%E2%96%B3" alt="Increase" /> 0% to 10%</td>
<td><img src="%E2%96%B3" alt="Increase" /> 0% to 10%</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
<td>Limits remained stable in the third quarter.</td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
<td>Carriers are and will continue to make adjustments on a state basis (NY, NJ, CA) and risk-specific basis primarily influenced by legislation and loss trends.</td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td><img src="%E2%96%BC" alt="Decrease" /></td>
<td>We continued to see event-driven restrictions being introduced (Biometric Information Privacy Act, or BIPA) in response to COVID-19 (in IL). Carriers are beginning to present uniformity in approach as well as restricting the scope of coverage countrywide.</td>
<td><img src="%E2%96%BC" alt="Decrease" /></td>
<td><img src="%E2%96%BC" alt="Decrease" /></td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
<td>There is no expectation of a 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.</td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
<td><img src="%E2%96%A1" alt="Stable" /></td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
<td>There has been increased volume 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.</td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
<td><img src="%E2%96%B3" alt="Increase" /></td>
</tr>
</tbody>
</table>
## Cyber

### METRICS | Q4 2022 YOY CHANGE | Q4 2022 COMMENTARY | 12 MONTH FORECAST | 12 MONTH FORECAST COMMENTARY
--- | --- | --- | --- | ---
**Pricing** | $0% to 25% | While there has been a drop in ransomware events (with many commentators tie to the refocus of major threats of incidents occurring in Ukraine/Russia and the general decrease of ransomware in the summer), cyber claims and concerns have not slowed down. Business email compromise continues to be a severe loss driver and network compromises remain frequent. For Q4 2022, controls and claim history were the main driver of rate needs across all industries. Many clients were able to see flat or marginal increases as excess carrier rates became more competitive (bringing down the price of the overall tower). Primary carriers are still seeking rate. | -5% to 20% | Ransomware, privacy regulation (e.g., BIPA and Video Privacy Protection Act), and systemic and supply chain cyber risk continue to be at the forefront of claims and actuary concerns. Rates are expected to scale back for those insureds that experienced rate corrections in 2022 and have invested in appropriate cyber controls. Carriers will continue to seek rate at a primary level, but at far lower rates than the previous year. Further, the slowing down of severe ransomware incidents have left carriers eager to bind new capacity, and thus we expect to see reduced rates for excess limits and more competition among primary carriers. |

**Limits** | $ | Carriers continued to manage their capacity to $5M or below across their portfolios. Sublimits are becoming more common and should be expected, particularly for dependent business interruption. Carrier's criticize dependent business interruption as a coverage area lacking proper underwriting and are therefore scaling back the once-considered "throw in" coverage. Sublimits or coinsurance may be applied to ransomware-related loss when cyber controls are not optimal. |  | We expect this trend to continue throughout 2023. Carriers will continue to strategically deploy capacity for accounts that maintain favorable cyber hygiene. Cyber extortion and ransomware limits will continue to be sublimited, with a potential coinsurance for high-risk industries or if controls are not optimal. Clients who want to mitigate decreases to dependent business interruption should prepare to demonstrate strategic initiatives to mitigate vendor dependency and risk. |

**Retentions** | $ | Carriers continued to seek retention increases on tougher industry classes, companies lacking controls or with claims activity. Waiting periods are also rising on the business interruption coverages. In some instances, between 24 and 48 hours. |  | Given the new entrants into the cyber market and after two years of a hard market, we expect retentions to stay the same and potentially have downward movement in 2023. |

**Coverage** | $ | Carriers continued to reduce or exclude ransomware coverage when controls were less favorable. Many carriers are looking to address aggregation concerns by amending policy language. Notable changes include Chubb's inclusion of "widespread event" coverage and other carriers tightening of exclusionary wording, particularly around war and infrastructure loss. Media and BIPA concerns seem to have temporarily taken a backseat to bigger concerns around potential causes for widespread loss. |  | Trend continues toward more restrictive policy wordings and coverages, especially around ransomware and systemic events. Clients will need to focus more on cyber hygiene controls (particularly multifactor authentication [MFA], endpoint detection and response [EDR], email filtering, secured/tested backups and privileged access management solutions), as well as media and biometric information handling to gain coverage. We expect continued focus on war exclusion language. |

**Carrier** | $ | Continued tightening of underwriting guidelines, including the mandatory need for favorable ransomware responses. Coverage will be paired down when controls are lacking. MFA and EDR has become a critical component in the underwriting process. Emergence of several new managing general agents (MGA)/managing general underwriters (MGU) in the marketplace, which could help replace capacity or markets that are pulling out of specific industries. |  | Carriers will emphasize the requirement for quality ransomware and cybersecurity controls. Use of noninvasive scans (BitSight, SecurityScorecard and Cyence) during the underwriting process will continue, and questions about findings and 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. We expect to see an increase in capacity due to additional carriers entering the market. |

**Claims** | $ | Significant increase in frequency and severity of cyber claims, especially ransomware, continued. Social engineering and financial fraud claims continue to target companies in all industries. Large ransomware events such as those affecting commercial carrier CNA. A resurgence in privacy litigation has begun with claims related to violation of the Video Privacy Protection Act for pixel tracking from many Meta-based websites. |  | Cyber claims activity is expected to continue to increase. The impact of large or headline cyber events will impact carrier capacity and underwriting changes well into 2023. The continued work-from-home environment and return-to-work will continue to test cyber infrastructure across various industries, leading to increased claims activity. However, with our continued dependence on technology, it's hard to tell what the “next thing” will be. |
Construction – Q4 2022 Summary

In the early morning hours of September 23, 2022, a tropical depression formed in the Caribbean Sea just off the ABC Islands. The following morning, Tropical Depression Nine had grown in strength, surpassing the 40-mph wind speed threshold, triggering the World Meteorological Organization to formally recognize Tropical Storm Ian. The events that would ensue from that point forward, ending on October 2 some 1,300 miles to the north, would lead to an estimated insurable loss of $40B – $60B USD.

We open with this because it is the most impactful event to the construction insurance market of not only Q4 but the entirety of 2022. We have discussed the hard market in the construction insurance space consistently now since the inception of the NFP Trend Report, with the slow but steady shift towards rate moderation and equilibrium in the major primary insurance lines. We have also paid close attention to the evolution of construction property coverage, more specifically catastrophic (CAT)-exposed builder’s risk, as it has experienced rate increases, limit capacity contraction, increased quota-share utilization, reductions in sublimits, and the ever-expanding list of conditions (e.g., fencing, lighting, security, technology implementation, etc.) required to obtain coverage.

Optimistically, the primary insurance lines (workers’ compensation, general liability, auto liability) continue to normalize.

Markets continue to heavily scrutinize risk control and safety processes and procedures which heavily influence insurability. For general contractors, it’s contractual risk transfer (CRT), subcontractor insurance review and verification (prequalification), subselection/buyout, standards enforcement and oversight, and loss history. For trades, it’s training and oversight of employees and documentation of standard operating procedures (SOPs), both operational and safety, and the oversight and enforcement of those standards.

And for all entities, the approach to safety and the culture of the organization, and a “Do you say what you do and do what you say?” review.

Workers’ Compensation
Workers’ compensation (WC) continues to be the easiest line to place. There are several markets offering monoline comp with a multitude of program/pricing structures. The construction insurance markets offering multi-line programs continue to utilize WC to balance risk across product lines. There has been some discussion in the marketplace regarding the sustainability of the current rate environment in the workers’ compensation product line. Some markets have indicated that they may look to push rate early in 2023 in an effort to get ahead of loss development, which they believe will shift loss ratios over 100% due to the low premium-to-exposure environment of the last 36 – 48 months.

General Liability
Q4 was, in most cases, similar to the prior three quarters of 2022 in the general liability line. Underwriters push rate at the onset of placement discussions. Accounts that did not risk control well saw the consistent renewal rate increase targets of 3%-8%, which we have seen throughout 2022. However, more so than in the past 12 – 18 months, accounts that had favorable loss history and which risk controlled well were sought after, and favorable renewal terms were attainable. This is a good indication that the markets have achieved a comfort level with their core book pricing and are looking to be selectively aggressive when opportunity presents itself.

Auto Liability
Auto liability (AL) has experienced consistent rate increases for the better part of a decade. We saw the early stages of rate increase moderation in the AL line at the end of Q2 and early into Q3 of 2022. That trend has continued with several caveats. Unfavorable loss experience impacts AL tremendously. The steady increase in large jury verdicts (nuclear verdicts), and the sheer frequency of severe losses, continue to destabilize the market.
However, in Q4 we saw a continued moderation of rate increases on accounts with favorable loss history, thorough driver training and oversight (continuous motor vehicle records monitoring/notification is best in class), and the implementation of onboard technology. Monoline AL still has very low market participation with few if any options for heavy or large fleets.

**Excess Casualty**
The excess market began to normalize after several years of increasing rates and shortening of limit positions. Market participation and capacity is abundant, yet it continues to be protected. Markets have zeroed in on rate-per-million targets for specific scopes/jurisdictions. Excess pricing continues to be influenced by underlying layer pricing, further contributing to the stabilization of line pricing, as the primary lines have continued to moderate.

**Builders Risk**
The course of the builders risk insurance market realized a sudden and undeniable event in Hurricane Ian that would become the topic of conversation of Q4 2022. Leading up to Ian, the 2022 Atlantic Hurricane Season had been relatively quiet, with three hurricanes, of which only one was considered a major storm prior. There was a false sense of optimism, as the increasing scrutiny of CAT-exposed risks that had been expanding for the previous 24 – 36 months may normalize in the aftermath of a favorable hurricane season. The latter half of Q4 has reaffirmed the continuity of the hard market in coastal construction property and left uncertainty around 2023. With major hurricanes making landfall on the continental US in five of the last six years, recarriers are looking at the once-considered phenomena with increased scrutiny and questioning the existing predictive modelling. Also weighing on the market are the continued effects of global inflation and supply chain delays. Reinsurance treaties, which insurance companies utilize to insure their own books, are normally agreed to and signed by now, but in many cases currently are not. These treaties are the behind-the-scenes contracts that ultimately shape capacity and underwriting appetites. With the lack of treaty guidelines finalized, the true nature of the CAT-exposed property market remains in question entering Q1 2023. In non-CAT-exposed property, wood frame, alternative building material and renovation to historically significant buildings are difficult placements.

**Surety**
The US domestic surety market continued to produce satisfactory results, consistent with the previous 24 – 36 months. Underwriters from major surety markets maintain a disciplined underwriting approach, within their appetites, yielding favorable returns in their respective portfolios. That being said, there are indications of potential market headwinds on the horizon in the form of rising inflationary pressures, continued supply chain issues, availability of labor and managerial talent, and expanding backlogs of work. Through Q4 2022, suitable surety capacity remained available within consistent and reliable pricing models for contractors who maintain sufficient balance sheet profiles. We continue to maintain open dialogue with underwriters to stay ahead of potential market shifts as we enter 2023.

**Subcontractor Default Insurance**
The North American subcontractor default insurance (SDI) market remained consistent through Q4 2022. The need for managing project risk at the contractor level, due to inflationary pressures and operational concerns such as supply chain delays and staffing shortages, continues to drive the expansion of the number of contractors seeking SDI coverage. This demand has been met by a stable market of insurance companies offering SDI coverage and sufficient capacity at limits up to $50M+ per loss. First time SDI buyers are scrutinized by underwriters and should look to partner with brokers experienced in the underwriting process in order to put themselves in the best position to successfully navigate the due diligence process.

**Construction Professional**
The market for construction professional continues to yield consistent capacity availability and deployment, as well as coverage terms and conditions. Some markets have begun to limit capacity deployment at the project level, but limits of $10M – $25M were still accessible throughout the quarter. There is a delta in underwriting approach forming between annual or practice programs and project-specific placements, so we will look to monitor and expand on this as it develops early in 2023. For design professionals and contractors, stringent monitoring of contractual obligations for both liquidated and consequential damages are critical to limit downstream responsibility for professional liability. For construction managers, general contractors and trades, continued education of professional risk exposures are needed to understand the extent of exposure not covered under their general liability policies. Our recommendation is to be cerebral about tailoring master programs to your core business (average job size and scope) and look to supplement outliers with project-specific placements. We advise contractors to seek the consult of their broker’s construction professional specialists and legal counsel when addressing professional coverage of any type to ensure they are managing the risk appropriately.
Wrap-Ups – Q4 2022 Summary

What started out very promising has turned into a nail-biter. Purely from a rate standpoint, we had seen markets stabilize with consistent numbers from indications that you could rely on. During the latter part of Q3 into Q4, we also saw rates even lowering on accounts with positive results. But as we have all experienced, Q4 really turned things for a loop. There are two primary culprits, and both will need to be on our radar heading into 2023.

• Hurricane Ian and the re-underwriting of FL exposure
• Inflation and the continued eating away of carrier combined ratios

Ian has been a turning point for underwriters.

While we are all very familiar with hurricanes in FL, there seemed to be a feeling that “it really was an east coast of FL” kind of risk. Florida rates have consistently been higher than other states for a while, particularly with property exposure, but we could find markets and procure pricing that would fit most models. That has changed. Since the hurricane, there seems to be a “realization” that almost any location in FL can be at risk. This realization, combined with the further analysis of the Champlain Tower’s collapse, and the concern of that happening to other buildings, has created a real insurance pricing challenge. You could almost say we are getting close to a crisis.

• “For Rent” residential pricing has increased almost 25% over the last quarter.
• “For Sale” residential has mirrored this cost increase. New condos are seeing liability rates, all in, at 5% – 6% construction value or more.
• Commercial pricing has likewise taken this rate increase in FL, although not at the same level.
• Anything on the water will need to be completely re-underwritten. If the project involves serious renovation, then you might be looking at a complete self-insured risk, depending on the size and scope involved.
• Wood frame pricing, in general, was a challenge before, and is even more so now.

Inflation and combined ratios are causing carriers to look closely at pricing and terms.

This re-underwriting is not just a FL anomaly. The overall effects of Ian, combined with inflation challenges, has also affected underwriting in other states. This past quarter has seen more carriers draw hard lines in the sand regarding CO, TX and CA. What’s different here, as opposed to FL, is that one carrier’s evaluation of a particular state won’t necessarily match another’s. As an example, there are carriers now saying that they won’t write new construction in CO, for instance, but will accept TX, while others shy away from TX but underwrite in CO. Similar evaluations are being done in CA as well.

Everything was not doom and gloom in 2022.

Going into 2022, we had anticipated the following trends:
• Residential coverage and pricing would continue to be a challenge, but carrier rates were expected to be much better when only “For Rent” coverage was needed. “For Sale” coverage would still be as much as three times higher though. Certain parts of the country, like FL, would have more challenging rates and subjectivities still and we would continue to see this to be the case with even as much as 5% to 10% increases.
• Umbrella markets would still be a challenge from a pricing and review standpoint. The difficulty of dealing with excess layers would be staying with us for the foreseeable future.
• We expected longer periods for renewals and project-specific placements. We are still seeing many risk managers work from the old model of taking 90 – 120 days to place business. We are seeing that become more and more difficult.

Our predictions held true. To that we have added future challenges, from a war in Ukraine to increasing inflation and a major hurricane helping to drive up insurance costs or, at a minimum, create instability.

With all of this said, everything is not doom and gloom. We are closing out the year on some positive notes. In terms of Ian, the construction side of the risk held up well. While there were some builders risk claims, most of the carrier exposure was from in-place commercial and personal lines of business. We are closing out Q4 with interest rates and inflation seeming to stabilize. If that continues, it could be a positive trend going into next year. Likewise, if rates and inflation continue to rise, we can almost assuredly see rates increase further.
Construction – 2023 Outlook

Looking ahead to 2023, we see the market landscape remaining consistent in the primary lines (workers’ compensation, general liability, auto) through the first two quarters and potentially year long. Markets have posted profitable results in the casualty lines and will continue their current strategy of scrutinizing risk control reviews, pushing rate wherever they can and being selectively aggressive on target accounts.

The CAT-exposed builders risk market will continue to adjust as the losses attributed to Hurricane Ian become more defined. We see most of this market-tightening skewed towards Q1 and tailing off into Q3 and Q4, as the paid losses are transferred through balance sheets and the increased cost of treaty reinsurance is priced into the market. Markets will look to more detailed modeling technology and climatology experts to develop capacity deployment strategies. The non-CAT-exposed builders risk market will be less volatile than the CAT-exposed market, year over year. Fire resistive non-CAT risks will see more competitive pricing as markets compete for these projects.

The surety and SDI markets may experience market tightening as the result of continued material cost escalation, labor shortages and expanding backlogs that are being met with abundant construction demand towards the latter part of 2023. Firms that prioritize balance sheet strength and maintain less risk in their buyouts will be impacted less.

Construction professional, like the primary lines, will experience market normalcy and consistency throughout 2023. Design professionals and contractors should prioritize monitoring of contractual obligations for both liquidated and consequential damages, which are critical to limit downstream responsibility for professional liability. Construction managers, general contractors, and trades should continue to educate themselves on professional risk exposures which are not covered under their general liability policies.

NFP Construction and Infrastructure will continue to monitor markets and advise of changes as they arise. We maintain an optimistic outlook for 2023 as construction demand remains robust and the construction industry nimble, responsive and ready to meet the demands of the global economy.

Wrap-Ups – 2023 Outlook

Moving into 2023, the current state of the economy is only adding to the increasing layers of concern. Everyone will have to continue to monitor market changes and stay on top of global influences. We will continue to give quarterly updates and are always available for a deeper discussion. This current market is very fluid, and we recommend consistent updates from your broker.

We want to highlight seven major influence areas that we feel will dominate construction and project risk.

The construction market maintains a robust level, with infrastructure spending increasing and industrial dropping. The first influence is simply that construction dollars are still forecast to be very high with demand increasing for infrastructure projects. Many large projects that have been sitting on the sideline are now moving into active planning and negotiations. According to Dodge Construction, the construction starts for 2023 will look like the chart on the following page.

While this is very positive news and will keep construction moving, we do feel this can spell other challenges that owners and contractors should be aware of when planning their construction risk.
### Dodge Construction Starts Forecast: 2023 ($ Bil)

<table>
<thead>
<tr>
<th>Total Construction</th>
<th>Actual 2021</th>
<th>Estimate 2022</th>
<th>Forecast 2023</th>
<th>% Chg. '21 - '22</th>
<th>% Chg. '22 - '23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Construction</td>
<td>928.2</td>
<td>1,085.9</td>
<td>1083.4</td>
<td>+17.0</td>
<td>-0.2</td>
</tr>
<tr>
<td>Residential</td>
<td>425.3</td>
<td>425.0</td>
<td>426.9</td>
<td>-0.1</td>
<td>+0.4</td>
</tr>
<tr>
<td>Single-Family Housing</td>
<td>306.1</td>
<td>273.7</td>
<td>273.5</td>
<td>-10.6</td>
<td>-0.1</td>
</tr>
<tr>
<td>Multifamily Housing</td>
<td>119.2</td>
<td>151.3</td>
<td>153.4</td>
<td>+26.9</td>
<td>+1.4</td>
</tr>
</tbody>
</table>

| Non-Residential                 | 298.0       | 417.8         | 375.7         | +40.2            | -10.1            |
| Office Buildings                | 40.1        | 49.1          | 48.8          | +22.4            | -0.6             |
| Hotels And Motels               | 8.7         | 11.9          | 12.2          | +36.8            | +2.5             |
| Stores And Shopping Centers     | 14.8        | 19.4          | 20.2          | +31.1            | +4.1             |
| Warehouses                      | 48.2        | 57.1          | 51.3          | +18.5            | -10.2            |
| Manufacturing                   | 30.2        | 89.4          | 51.2          | +196.0           | -42.7            |
| Educational Buildings           | 63.5        | 69.0          | 72.7          | +8.7             | +5.4             |
| Healthcare Facilities           | 30.2        | 37.2          | 42.3          | +23.2            | -13.7            |
| Other Non-Residential           | 63.1        | 84.9          | 76.7          | +34.5            | -9.7             |

| Non-Buildings Construction      | 204.8       | 243.1         | 281.1         | +18.7            | +15.6            |
| Highways And Bridges            | 81.9        | 100.8         | 121.0         | +23.1            | +20.0            |
| Environmental Public Works      | 54.1        | 60.1          | 68.8          | +11.1            | +14.5            |
| Other Non-Building              | 27.7        | 29.7          | 35.0          | +7.2             | +17.8            |
| Power Plants/Gas/Communications | 41.2        | 52.5          | 56.4          | +27.4            | +7.4             |

### FMI Construction Put-in-place Forecast: 2023 ($ Bil)

| Total Construction              | 1,626,446   | 1,752,800     | 1,729,477     | +7.8             | -1.3             |
| Total Residential               | 802,933     | 908,866       | 848,048       | +13.2            | -6.7             |
| Single-Family                   | 430,381     | 472,590       | 416,905       | +9.8             | -11.8            |

Source: Dodge Data & Analytics
Some contractors were backlogged and saw challenges to project scheduling.

Residential will still be a strong part of the construction economy, and the pricing and capacity challenges will remain. The primary difference with 2023 is there will be lower industrial (manufacturing and warehouses) and healthcare facilities, but a significant increase on highways/bridge and other non-building sectors.

We are coming off a strong year in construction, and this will only continue into 2023, indicating a continued need for a robust labor force to meet this market demand. Heading towards the end of 2022, many large contractors had significant backlogs of work while also feeling the challenge of meeting schedules because of the labor force challenges. Because of the stress on labor, markets will still need to manage expectations appropriately.

We touch base on this risk in both our surety and SDI sections of our trend reports. From a project perspective, you will need to make sure you build in appropriate schedules with your projects and make sure you monitor on a month-to-month basis effectively.

Residential markets continue with challenges both on coverage and capacity.

While the total residential market is staying consistent, there is an expected increase in multi-family housing. The market is already tight with coverage, and pricing for all residential and multi-family will not improve that position. We can expect residential coverage to continue to be tight and, particularly for states like FL, CO and CA, to continue (if not increase) rates over the coming 12 months.

Commercial market rates should stay consistent with potential for lower rates.

Over the last two years, one of the bright spots on the construction insurance end is the level of continued participation and markets supporting wrap-ups. Altogether, there have been close to 20 new, or increased capacity, markets supporting wrap programs. We are seeing more admitted markets willing to give GL-only program options, on top of the existing recognition, that insuring project risk is a solid way to manage large construction programs.

Interest rates and inflation staying level will be key. We feel we should see the increase in competition keep rates competitive, if not some level of decrease, particularly for those programs that have solid risk management controls.

Inflation and general market instability remain challenges.

In many ways the ability to predict rate levels over the next twelve months, for anyone, will be next to impossible. We still have a war happening in Ukraine. We have increased levels of COVID-19 in China. We continue to have supply chain challenges. And on top of this, we have continued uncertainty in the overall global economy and inflation. This is a really challenging period for everyone and will require a doubling down of the risk you can influence and manage. Owners and contractors should be evaluating best-in-class procedures and see how well your own company is managing your risk. Starting renewals early will still be a valuable tool and help you organize your submissions and allow for direct discussion of your risk with your underwriters.

Nuclear verdicts are on the rise.

As mentioned in the recent US Chamber of Commerce Institute for Legal Reform, nuclear verdicts, as defined as jury verdicts of $10M or more, are on the rise. The study referenced looked at claims over the last 10 years and determined that the median nuclear verdict increased 27.5% over the last 10 years, far outpacing inflation. While most of these verdicts were in product and medical liability, we also see very large verdicts for auto liability and premises liability, where the mean nuclear verdicts are $33.8M and $31.7M, respectively. This understanding should have an influence on large infrastructure projects that begin in 2023. For all construction risks, owners and contractors should take a fresh look at the levels of insurance being purchased and consider raising their level of insured risk.

Harnessing Data and Analytics for Better Risk Management Outcomes

A growing number of construction stakeholders are beginning to harness the power of their project management and insurance data to drive better risk management outcomes. A primary focus for these firms is designing a data architecture for their organizations that is project centric. This means having the ability to search the data by key filters like asset type (residential tower, commercial tower, transit project, bridge, highway, etc.) and project delivery model (design-bid-build, design-build, progressive design-build, construction management, integrated project delivery, and alliance).

Through a project-centric data architecture, construction stakeholders can more easily identify the major risk issues (primarily through the insurance incident/claims data) for different asset types and delivery models. This allows for better risk control decision making whereby the stakeholders can match top project risks to top risk controls, and thus be in a much better position to reduce frequency and severity of risks that could derail their projects. With top risks matched to top risk controls, the stakeholders to the project are in an ideal position to determine ideal risk finance decisions and obtain best terms from the risk transfer marketplace. A key secondary data and analytics path is ensuring you have access to the largest inventory of the various risk controls that mitigate top project risks, and even have data on the mitigating impact of these various risk controls on specific risk (the mitigation delta of each risk controls). The inventory of risk controls can be broken down into three categories: i) contractual risk controls, ii) operational risk controls, and the rapidly growing category of iii) technology risk controls. Ensure you have a project risk advisor with knowledge and access to the vast inventory of risk controls and their ability to mitigate your project’s biggest risks.
### Primary Casualty (WC, GL, Auto)

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
<th>Q4 2022 COMMENTARY</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>GL experienced rate targets in the 0% – 7% range. WC witnessed mostly flat renewals with some rate reductions in the loss-sensitive space, while AL rate moderation continued with rate targets at 5% – 6% increases. Loss experience will drive these rate increases up an additional 8% – 14%, depending on frequency and severity.</td>
<td>Markets may seek rate across all profit centers to recoup some of the CAT-exposed property losses caused by Hurricane Ian. Certain markets were impacted worse than others, but the theory of &quot;a rising tide lifts all boats&quot; could create a hardening effect if markets do, in fact, look to book-underwrite at the enterprise level.</td>
</tr>
<tr>
<td>Limits</td>
<td>✓</td>
<td>Limit deployment strategies remained constant throughout the quarter. Markets weaponizing lead umbrellas to win business that is highly sought after. Look to our 2023 forecast for more on what to expect from the excess markets in 2023.</td>
<td>Limits on the primary lines will remain consistent year over year. Most markets have implemented lower limit position strategies over the past 48 – 60 months. $3M+ per occurrence limits, in primary GL, are only offered on large retention programs or fully fronted programs where the retentions equal the limits.</td>
</tr>
<tr>
<td>Retentions</td>
<td>○</td>
<td>Retention targets remained static on most programs.</td>
<td>Firms with adverse loss history may want to explore increased retentions to manage insurance costs, but large savings should not be expected unless retentions of $150K+ are implemented.</td>
</tr>
<tr>
<td>Coverage</td>
<td>○</td>
<td>No major coverage changes in Q4.</td>
<td>We continue to monitor coverage as markets absorb the large losses witnessed in the property lines. Indications lead us to believe no major changes will occur, but coverage is something that can change quickly, and minor changes can create major impact.</td>
</tr>
<tr>
<td>Carrier</td>
<td>○</td>
<td>Q4 was stable, with ample market participation in all primary lines, with monoline auto liability being the only tough placement.</td>
<td>New capacity will come online in early Q1 2023 as filings are approved for managing general underwriters in the admitted and excess and surplus (E&amp;S) markets. There are markets entering the primary space that are introducing technology-influenced pricing, which has been discussed but never realized. The pricing impacts of technology utilization is yet to be confirmed.</td>
</tr>
<tr>
<td>Claims</td>
<td>○</td>
<td>Claim activity and the influence of claim history on underwriting is still paramount. One shift in Q4 is that firms with outstanding loss history are beginning to see the benefits of their efforts as markets look to take on new premium by seeking the best-performing programs.</td>
<td>With the emphasis on risk control reviews and meetings increasing, firms that have an airtight process for loss control, training (preemployment, pre-mobilization and ongoing), and post-incident cost containment are putting themselves in the best position to receive preferential program pricing.</td>
</tr>
</tbody>
</table>
## Excess Casualty

<table>
<thead>
<tr>
<th>METRICS</th>
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<tbody>
<tr>
<td>Pricing</td>
<td>▲ 0% to 50%</td>
<td>Excess underwriters continue to seek rate. There has been a slight change in that flat renewals are attainable on best-in-class risk.</td>
<td>▲ 0% to 50%</td>
<td>The excess market is somewhat hard to predict entering into 2023. Excess profit centers were turned upside down due to the large losses in the property book. It is almost certain that excess markets will look to re-underwrite their book positions to recoup from those losses.</td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td>No major changes in Q4. There were talks of markets looking to expand their layer limit targets in search of premium dollars, but that may be in conjunction with revised attachment targets.</td>
<td></td>
<td>If markets transition to book underwriting to increase rate across product lines to recover for losses in the property line, limits will be one area they can manipulate risk profiles. We will be monitoring this closely as we enter Q1. Markets looking for rate may increase layer limit targets.</td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>Retentions remained constant throughout the quarter but became a talking point in late November and December.</td>
<td></td>
<td>To try to increase premium dollars, some markets are entertaining expanding their layer limit deployment at higher attachment points. This will not develop until Q2 of 2023.</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td>Coverage remained constant throughout the quarter.</td>
<td></td>
<td>No coverage changes expected. However, we will be monitoring this closely as reinsurance treaties have the potential to tighten terms and conditions.</td>
</tr>
<tr>
<td>Carrier</td>
<td>▲</td>
<td>Capacity and overall participation remained robust.</td>
<td></td>
<td>As we transition into 2023, we are monitoring the alternative investment opportunities for capital. As interest rates rise, the risk-adjusted rate of return on alternative investments may become a factor that leads to a contraction of capacity.</td>
</tr>
<tr>
<td>Claims</td>
<td>▲</td>
<td>Claim activity in the primary lines was in line with the previous three quarters of 2022.</td>
<td>▲</td>
<td>Claim activity in or near the excess layers will continue to drive rate.</td>
</tr>
</tbody>
</table>
# Builders Risk

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<tr>
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<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>▲ 0% to 15%</td>
<td>Wood frame and CAT-exposed property continued to be very tough placements. A quiet start to the Atlantic hurricane season was upended by Hurricane Ian. Pricing on extensions escalated. Pricing on non-CAT conventional construction-type exposures remained static.</td>
<td>▲ 0% to 15%+</td>
<td>Pricing targets for CAT-exposed risks will drive the rate conversation throughout 2023. Fire-resistant non-CAT risks will see more competitive pricings as markets compete for these projects. Property markets will look to recoup their Q4 2022 losses by book underwriting, driving rate across all CAT-exposed property placements.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>Layer limits and deployment strategies remained constant.</td>
<td></td>
<td>Markets will look to adjust their exposure, especially on CAT risks. The effect on non-CAT-exposed risk is harder to predict. This will develop as treaties are finalized and appetite discussions begin early in Q1.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>Attachment points remained consistent. CAT-peril deductibles became more of a talking point as the Atlantic hurricane season turned on mid-quarter.</td>
<td></td>
<td>With major storms making landfall in the continental US in five of the last six years, CAT deductibles and program structures could realize substantial changes.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>Coverage remained consistent. Protective safeguards required to obtain coverage continued to take a predominant role in the underwriting process.</td>
<td></td>
<td>Markets that experienced large CAT losses throughout Q4 2022 may look to adjust their exposure profiles by contracting coverage. We expect this to be the case in CAT-exposed property and will monitor the non-CAT-exposed market throughout the early part of 2023. Protective safeguards are transitioning to policy warranties and can lead to restriction of coverage.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>Builders risk market participants remained static. Markets continued to expand the implementation of technology utilization into their underwriting. Technology-influenced pricing, where packaged technology bundles and coverage were sold with the purpose of driving premium reductions, is an emerging product.</td>
<td></td>
<td>The slow development of property treaties has left the market in question. Standard market participants are less volatile, while the E&amp;S market may experience a more significant capacity change. Markets utilizing technology to influence pricing will expand.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td>▲</td>
<td>Claim activity remained heavily water related. Smart water technology is becoming the standard as markets look to contain this peril. Results are being documented but are not mature enough to develop a trend.</td>
<td></td>
<td>The losses attributed to Hurricane Ian (estimated insurable loss of $40B – $60B USD) harden the market with CAT-exposed risk taking the brunt of the market impact. Some markets have indicated that the losses attributable to Ian will impact the entirety of the builders risk market through 2023.</td>
</tr>
<tr>
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</tr>
<tr>
<td>Pricing</td>
<td>$</td>
<td>Pricing targets remained static through Q4 2022.</td>
<td>$</td>
<td>Pricing expectations are for the current rates to continue throughout 2023. Factors that may influence pricing towards the middle of the year are tied to inflationary pressure, supply chain issues and the shortage of labor (low and high skill). As backlogs continue to grow, these factors become more taxing on balance sheets.</td>
</tr>
<tr>
<td>Capacity</td>
<td>⚡</td>
<td>Capacity was abundant throughout the quarter.</td>
<td>⚡</td>
<td>Capacity will remain abundant. Large contractors with strong balance sheets are positioned to leverage their financial strength, translating into opportunities.</td>
</tr>
<tr>
<td>Carrier</td>
<td>🌐</td>
<td>The surety market remained well-supported by major carriers. The top 25 – 50 regional and national surety carriers continued to drive growth and profitability in the post-pandemic environment, with underwriting terms, conditions and pricing metrics remaining stable across the spectrum of construction classes.</td>
<td>🌐</td>
<td>The surety market will continue to be supported by a vast number of participants, and carriers will continue to apply consistency to their various underwriting appetites throughout the next 12 months.</td>
</tr>
<tr>
<td>Claims</td>
<td>📑</td>
<td>Q4 surety claim activity has been consistent in the last 12 – 18 months, with similar frequency and severity experienced throughout the country.</td>
<td>📑</td>
<td>The mounting pressure of material cost escalation and labor shortages may begin to impact frequency and severity towards Q2/Q3 2023. Trade contractors are carrying the bulk of the exposure as jobs that were estimated and bought out upwards of 6+ months prior are faced with thin to no margin due to increased material cost and labor constraints.</td>
</tr>
</tbody>
</table>
## Subcontractor Default Insurance

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<tr>
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<tbody>
<tr>
<td>Pricing</td>
<td>▲ 0% to 5%</td>
<td>Pricing remained consistent based on risk profile. First-time buyers are looking at rates on par to slightly higher than buyers with existing programs and clean loss history.</td>
<td>▲ 0% to 5%</td>
<td>The SDI market will continue to be supported by multiple carriers with abundant capacity. Rates will remain competitive on new business and renewals.</td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td>Limits of $25M – $50M per loss remain available from multiple markets. Limits down to $5M make sense in scenarios where jobs are bought out at smaller contract values per scope. Program structure should be designed to address the average contract value, and ulterior risk management tools (bonding, etc.) can be utilized to manage outliers as they arise.</td>
<td></td>
<td>Capacity in the market remains strong, with several markets actively writing SDI. This will continue unless there is a major event that leads to a market shift.</td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>Retentions and copayment targets remained static.</td>
<td></td>
<td>We don’t anticipate any major changes in retention or copayment strategies.</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td>Coverage remained consistent.</td>
<td></td>
<td>As market participation continues to expand, preferential terms and conditions may become available.</td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td>The markets offering SDI coverage remained the same.</td>
<td></td>
<td>Additional entrants to the space are anticipated to come online in the latter half of Q1 or early in Q2 of 2023.</td>
</tr>
<tr>
<td>Claims</td>
<td>▲</td>
<td>Claim activity remained static on the frequency side but had a slight uptick in severity as inflationary pressures influenced valuations. Supply chain delays and raw material cost escalations were the key contributing factors.</td>
<td>▲</td>
<td>Claim severity will continue to creep up as inflationary pressure remains and increased labor costs factor in. We see increased labor costs affecting the market throughout 2023 and into early 2024.</td>
</tr>
</tbody>
</table>
## Construction Professional

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td><strong>$</strong> Pricing</td>
<td>▲ 0% to 10%</td>
<td>Construction professional pricing targets remained consistent throughout the quarter in master and project-specific placements.</td>
<td>▲ 0% to 10%</td>
<td>Pricing target expectations for construction professional coverage will remain static.</td>
</tr>
<tr>
<td><strong>✓</strong> Limits</td>
<td></td>
<td>Limits remained constant on master program placements. Project-specific placements witnessed a slight market contraction as carriers utilized capacity, allocated for projects, to support their master program clients.</td>
<td></td>
<td>Master program placements will continue to have abundant limit/capacity. Project-specific placements may experience some capacity contraction heading into early 2023.</td>
</tr>
<tr>
<td><strong>〇</strong> Retentions</td>
<td></td>
<td>Retention structures were unchanged.</td>
<td>▲</td>
<td>If capacity available to project-specific buyers contracts, buyers will need to retain more risk to access limits. This will be more prevalent in large projects with integrated delivery methods, requiring large limit towers.</td>
</tr>
<tr>
<td><strong>🚴</strong> Coverage</td>
<td></td>
<td>Coverage remained consistent with increased scrutiny of limitation of liability in contract wording and rectification.</td>
<td></td>
<td>Markets may look to utilize coverage to control risk in the large infrastructure and complex project-specific space.</td>
</tr>
<tr>
<td><strong>💍</strong> Carrier</td>
<td></td>
<td>Carrier participation remains abundant.</td>
<td></td>
<td>Market participation will remain strong throughout 2023.</td>
</tr>
<tr>
<td><strong>🗂</strong> Claims</td>
<td>▲</td>
<td>Claim activity remained strong in the complex project delivery space, with large infrastructure projects being the loss leaders.</td>
<td>▲</td>
<td>The claim activity in large infrastructure projects with advanced delivery methods will continue to be troublesome as federal money flows into the municipal space and project starts increase.</td>
</tr>
</tbody>
</table>
## Wrap-Ups (OCIP and CCIP)

<table>
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<tr>
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<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td></td>
<td>Primary rates continue to remain stable for commercial risk. Residential rates have also remained stable except for projects in FL, CO and CA. Those states have had swings of 10% or more.</td>
<td>-5% to 10%</td>
<td>Projecting for 2023 is very challenging, given the current economic environment. We feel strongly, however, that risk with poor controls, or very difficult exposure (FL oceanside or renovation) can expect to see additional rate increases. If inflation does not stabilize, we may also see rate increases for commercial risk as well.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>Limits for primary and excess layers continue to stay consistent. We continued to see longer periods to place layers.</td>
<td></td>
<td>Expect excess capacity to stay consistent. Markets continue to underwrite heavily, so expect to need additional lead time and make reservations to meet with your underwriters face to face to help explain your risk.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>Retentions levels available have remained consistent.</td>
<td></td>
<td>Retentions will continue to stay at current levels with pricing stabilization. If inflation continues to increase, we expect to see a push for alternative risk options, including higher retentions and deductibles.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>While coverage is stable, risk in FL and CO are experiencing challenges. More carriers are not willing to write FL exposure or are doing so with very strict requirements.</td>
<td></td>
<td>Coverage challenges in certain states will continue. Otherwise, expect relatively few changes to coverage.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>While wrap carriers have remained consistent, we do anticipate increased competition for commercial risk. Over the past few years, we have seen close to 20 new markets enter the wrap space with either new paper or additional capacity.</td>
<td></td>
<td>Except for residential, carrier participation is expected to remain consistent.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td></td>
<td>Overall claims for construction continue to escalate, both medical inflation and with completed operations.</td>
<td></td>
<td>Nuclear claims (claims over $10M) have continued to increase, over 27% over the last 10 years, far outpacing inflation. This will continue as more claims come up after COVID-19 delays. Owners and contractors should be looking to place additional limits of coverage where appropriate.</td>
</tr>
</tbody>
</table>
Energy and Marine

Casualty, Property, Power Generation, Marine

Casualty – Q4 2022 Summary

The US energy casualty market continued to improve into Q4. With new entrants in the market, capacity continues to increase, driving competition among underwriters. Rate rises continue to soften as large market insureds can expect flat-to-small reductions in some cases. Middle market insureds with good loss history should expect 5% to 10% rate increases, and insureds with poor loss history can still expect rate increases from 15% to 25%.

The frequency of severe ($15M or greater) liability losses is expected to continue to grow as a result of social inflation, which is the phenomenon of increasing claims costs due to changing societal factors, such as legal advertising, litigation financing, the appeal of class action lawsuits and growing public distrust of corporations.

With the continued interest rate increases from the Fed, inflation seems to be cooling. The elevated interest rate environment has improved insurance carriers’ investment income, which should promote competition and broader terms from the underwriting side.

The energy commodity market outlook is stable for the next 2 – 3 years. Barring any catastrophic events, the market should continue to stabilize for the foreseeable future.

New technology continues to enter the market, and energy underwriters will take a conservative approach when pricing these risks until products and procedures are proven. The energy transition and the Inflation Reduction Act have earmarked large sums of governmental spending which will be the catalyst in billions of new green energy and carbon-friendly developments. Markets will need to be thoroughly educated on the new tech and most likely will take a quota share approach until the developments trend in the right direction.

It is highly recommended that the renewal process starts early and you connect the carrier with the client. The more educated underwriters are with the impending uncertainty will only help the marketing cause and provide a better deal for the insured.

Property – Q4 2022 Summary

Hurricane season ended differently from what forecasters predicted. The National Oceanic & Atmospheric Administration called for a busier-than-average year but ended with 14 named storms. While the number of named storms was fewer than expected, Hurricane Ian caused extreme losses. Ian is projected to produce as much as $65B in insured losses. This will make it the third-most expensive season on record. Impact on reinsurance is starting to have ramifications on direct carriers as they work through their January treaty renewals.

Losses that occurred earlier this year have continued to impact carrier profitability, forcing some to amend their underwriting guidelines. Supply chain issues further impacted loss reserves as business interruption (BI) losses increased due to longer-than-expected lead times. Carriers are looking to protect their profitability by amending terms to their BI coverage extension. This could result in longer waiting periods or shorter indemnity periods. Both could have significant financial ramifications for clients, as clients are expecting longer lead times on essential equipment. Scrutiny over BI values will increase as carriers seek to understand mitigation abilities or vulnerabilities that could increase their potential risk of loss.

Reduction in capacity or carriers who start to impose stricter restrictions could leave clients scrambling for capacity if they are not proactive in their renewal strategy. Clients should start their renewal strategy well in advance of their inception date, as many are expecting 2023 to harden once again. As reinsurance markets are further impacted by losses many expect direct carriers to incur larger rate increases on their treaty renewals or be forced to renew with less reinsurance protection.
External factors continue to drive and impact claims. Insurable losses have increased due to inflation, conflicts between nations and other variables that were not considered when estimating a client’s loss estimate. This led to carriers extending larger line sizes or implementing lower-than-adequate retentions. Many carriers are looking to finish Q4 “as is” but are expecting to implement stricter discipline starting Q1 2023.

Power Generation – Q4 2022 Summary

The Power Gen sector has not been able to avoid losses in 2022 and is being impacted by many of the same factors that the Energy market is encountering.

While the hurricane losses did not directly impact Power Gen clients, they are reeling from the effects this had on their reinsurance carriers. Many treaties renew at the end of the year or early January. The full impact on direct carriers is not quite known, but as reinsurance costs increase and less favorable terms are established, the expectation is that clients will face the same result.

As carriers’ terms become less favorable, differential terms may be required to obtain full capacity. It is imperative that clients engage with their carriers early and ensure that they control the messaging. Clients who have spares or solutions to mitigate BI claims may receive more favorable terms. Carriers have seen issues with supply chains and long lead times to critical equipment like gear boxes, transformers, etc. These delays have increased BI reserves, further deteriorating underwriter profits.

Power Gen assets have been plagued by aging equipment and vulnerable systems. Carriers are focusing on accuracy of values and the actual cost to replace a damaged facility. Rate rises can be expected, but if values are not deemed adequate, the rate rise could be significantly higher. Q4 has been readily stable, but many anticipate that stricter guidelines will be enacted effective Q1 2023.

Focus on loss estimates may highlight larger exposure than previously calculated due to new external factors not yet accounted for. Valuation/supply chain issues could increase loss estimates, which could lead to reduced line sizes from carriers. If renewals are not handled with ample time, clients will be forced to accept opportunistic capacity which could be more expensive and more restrictive.

Marine – Q4 2022 Summary

The hull and machinery market with brown water (inland and coastal trading) is showing rate stabilization of 5% to 10% on profitable marine accounts. Blue water (international trade) is still being a challenge to hull and machinery underwriters with frequency down and severity up due to the large size of vessels. The protection and indemnity (P&I) market within the P&I clubs have now placed the mutual club reinsurance agreement with IGA looking for 11.4% increase in cost that is passed along to the individual clubs. This has put pressure across the entire protection and indemnity sphere.

Rates for both the P&I club group as well as the open market are resulting in rises beyond those caused by inflation. Another interesting twist is the pending merger of North of England and Standard Club, creating a super club tier.

Chinese ports are still working on a reduced basis due to COVID-19. Quarantine restrictions have again created supply chain delays. Chinese ports are now reporting various degrees of business as usual. COVID-19 restrictions being put in place by the Chinese government, with whole cities placed under operating restrictions, is complicating transit throughout China. A port operating as usual can be shut down very quickly. This can quickly change the dynamics of the port and potentially cause supply change delays to start.

Black Sea ports are operating, with restrictions being placed on Russian-flag or Russian-owned vessels and with all European ports and US ports placing a moratorium on Russian-flag vessels. This has created bottlenecks and supply chain issues via the reduction in Russian commercial vessels on the open market. There are a limited number of insurance carriers offering coverage for these moments along with the war risk associated with the movements. Coverage for coal shipments to Europe has also been impacted, with restrictions placed on Lloyd’s underwriters to follow environmental, social and governance (ESG) guidelines. The liquified natural gas cargo market is still robust in terms of capacity and rating structure.
Casualty – 2023 Outlook

P&C carriers have benefited from a conservative overall approach to loss-reserving over the last 15 years. That said, the potential for pricing errors is heightened in an extended period of higher inflation. Natural catastrophe risks remain a prime source of uncertainty that bears monitoring, which P&C carriers will approach conservatively in 2023. The effects of high inflation combined with supply chain challenges, nuclear judgements and ESG initiatives due to global warming concerns create continued uncertainty in the market. But increased competition paired with new technology and strong combined ratios due to improved investment income results have lessened the impacts of these challenges.

Auto
Despite rate increases over the past 5 years, carriers have failed to make a profit on this line of coverage. Cost of vehicle repairs, aggressive litigation and distracted driving will keep rates up modestly for 2023.

General Liability
The outlook for this line of coverage varies greatly depending on class of business. Higher-risk products and services will see increases, where general casualty with good losses will see decreases.

Excess Liability
Nuclear verdicts continue to hinder the excess market.

Workers’ Compensation
Probably the best-performing lines of coverage for carriers. Good performance equates to rate decreases.

Property and Power Generation – 2023 Outlook

Expectations for Q1 is that the insurance market is headed towards a hard market. Carriers will be pushing rates, restrictive terms and higher retentions to achieve underwriting profitability. Many large energy clients renew in the first two quarters of 2023 and are starting to engage with carriers. As clients seek to obtain the best terms, they need to distinguish themselves from their peers and show why they are best in class. While hard market conditions are expected, best-in-class clients will be able to obtain reasonable renewals as carriers seek to support clients they perceive as less risky.

Carriers may seek profitability by renewing a lower line size on a certain type of occupancy, which could leave clients scrambling to complete programs. Q1 will be a strong indicator of how aggressively carriers will push their underwriting guidelines. Expect quotes to be delayed as more referrals occur. Terms being discussed with carriers may not be the final quote released. New insurance carriers are not expected to enter this space to help offset the expected hard market.

Clients with adverse loss history should expect further alterations to their terms and rates. Clients who have assets that do not engineer well or are deemed to be in an unfavorable occupancy should consider addressing any outstanding recommendations and engaging with their carriers to help address any outstanding concerns. Profitability is crucial for the Power Generation sector as carriers continue to insure an aging, over-utilized industry. It is unclear how hard the market will turn next year, but all signs are pointing to a tougher renewal season for clients. Carriers once again are tasked with profitability and are working to underwrite risks that continue to introduce unexpected external elements.

Marine – 2023 Outlook

Depending on the class of business, the cargo market capacity is slightly up with rates stabilizing. Cargo markets are reviewing aggregate limits and limiting capacity across specific types of cargo products and locations. Rates are showing inflationary increase of 5% to 12%, depending on class of product.

Compliance with Russian sanctions and bank regulations is still impacting the world insurance market for quoting risks along with the additional time that is now needed to get a response.

The marine liability marketplace is showing early signs of rate competition. Rates are still holding at inflationary rise of 5% to 8%.

Excess liability is following the primary liability markets with insurance carriers starting to come back into the market but requiring higher underlying and limited lines. So more insurance carriers are needed for similar limits of liability.
# Casualty

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q4 2022 YOY CHANGE</th>
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<th>12 MONTH FORECAST</th>
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</tr>
</thead>
<tbody>
<tr>
<td><img src="https://example.com/symbol" alt="Pricing" /></td>
<td><img src="https://example.com/triangle" alt="三角形" /> 0% to 10%</td>
<td>The energy casualty sector is experiencing rate stabilization. We’ve seen flat to single digit rate increases contingent upon individual loss experience.</td>
<td><img src="https://example.com/triangle" alt="三角形" /> 0% to 10%</td>
<td>Insureds should anticipate slight rate increases as the downstream casualty markets are privy to nuclear judgements, inflation and global refining capacity shortage.</td>
</tr>
<tr>
<td><img src="https://example.com/symbol" alt="Limits" /></td>
<td><img src="https://example.com/triangle" alt="三角形" /></td>
<td>Casualty capacity has remained relatively stable over the quarter even though there are some new carriers who have entered the market with a broadened appetite from existing carriers.</td>
<td><img src="https://example.com/triangle" alt="三角形" /></td>
<td>Casualty capacity should remain at current levels throughout the rest of the year.</td>
</tr>
<tr>
<td><img src="https://example.com/symbol" alt="Retentions" /></td>
<td></td>
<td>Carriers were able to utilize the hard market to revise retention levels, and clients elected to increase retentions to offset rate rises. After going through prior cycles of retention increases, carriers are comfortable with the current levels.</td>
<td></td>
<td>Inflation is becoming a concern which is highlighting that retentions may not be sufficient. This could potentially be an issue in 2023.</td>
</tr>
<tr>
<td><img src="https://example.com/symbol" alt="Coverage" /></td>
<td><img src="https://example.com/triangle" alt="三角形" /></td>
<td>The energy contractor markets have been moving to a combination (GL/CPL/E&amp;O) form. This approach provides broader coverages on a non-auditable basis, driving rate increases at renewal. The excess energy casualty markets are following form but offering reduced capacity and are usually capping limits at $5M.</td>
<td></td>
<td>Terms should remain stable but anticipate an end to the non-auditable form and transition back to auditable policies in the contracting servicing sector.</td>
</tr>
<tr>
<td><img src="https://example.com/symbol" alt="Carrier" /></td>
<td><img src="https://example.com/triangle" alt="三角形" /></td>
<td>There are a few new entrants in the market who are very selective about the types of business they write.</td>
<td></td>
<td>Clients could eventually benefit from the entrance of new carriers, but not yet.</td>
</tr>
<tr>
<td><img src="https://example.com/symbol" alt="Claims" /></td>
<td></td>
<td>Large loss activity for the quarter has been minimal, which has set a positive foundation for the year.</td>
<td><img src="https://example.com/triangle" alt="三角形" /></td>
<td>The increased commodity pricing for hydrocarbon products and inexperienced oil and gas personnel looks to be a recipe for heightened claim activity.</td>
</tr>
</tbody>
</table>
## Property

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>✅</td>
<td>Flat renewals and rate increases are starting to trend upwards as carriers received updated news on their reinsurance treaties. Q4 was still showing steady renewals and sufficient capacity to finalize programs albeit with a modest rate rise.</td>
<td>✅</td>
<td>Reinsurance costs have increased, and terms have not improved. Expect direct carriers to pass those costs to clients. Clients with adequate values can expect single-digit rate rises.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>-</td>
<td>Limits are steady as carriers look to finish the year without further deterioration, so not looking to amend terms too much.</td>
<td>✅</td>
<td>Carriers looking to reduce capacity on clients with significant BI values or simply reduce loss exposure by reducing their participation.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td>✅</td>
<td>Supply chains and inflation have highlighted the need for higher retentions and longer waiting periods on risks with minimal spares and limited mitigation protocols.</td>
<td>✅</td>
<td>Inflation and supply chain issues will continue to be of concern. Increased waiting periods may help relieve carrier apprehension.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>✅</td>
<td>Given the increased severity of certain losses, many carriers are becoming more selective with deployment of capacity and holding firm on their quoted terms.</td>
<td>✅</td>
<td>Carriers are under increased pressure to renew accounts under new underwriting guidelines.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td>-</td>
<td>No notable entrants or exits in the space, but capacity is being reigned in from management.</td>
<td>-</td>
<td>Do not expect new entrants or any major exits in the space, but we will continue to see carriers be more selective with their capacity deployment.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td>✅</td>
<td>Losses from earlier in the year are trending higher than anticipated and affecting profitability for many carriers, especially leaders in the space.</td>
<td>-</td>
<td>Inflation and supply chains and other external factors could further impact claims.</td>
</tr>
<tr>
<td>METRICS</td>
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</tr>
<tr>
<td>$</td>
<td>$</td>
<td>Flat renewals and rate increases are starting to trend upwards as carriers received updated news of their reinsurance treaty renewals. Looking to end the year without too much push on rate.</td>
<td>$</td>
<td>Reinsurance costs have increased, and terms have not improved. Expect direct carriers to pass those costs to clients. Clients with adequate values can expect single-digit rate rises.</td>
</tr>
<tr>
<td>✔</td>
<td>✔</td>
<td>Limits for BI have been highlighted as an item to review more deeply.</td>
<td>✔</td>
<td>Carriers looking to reduce capacity on clients with significant BI values or simply reduce loss exposure by reducing their participation.</td>
</tr>
<tr>
<td>☐</td>
<td>☐</td>
<td>Supply chains and inflation have highlighted the need for higher retentions and longer waiting periods on certain occupancies.</td>
<td>☐</td>
<td>Inflation and supply chain issues will continue to be of concern. Increased waiting periods may help relieve carrier apprehension.</td>
</tr>
<tr>
<td>✈️</td>
<td>✈️</td>
<td>Given the increased severity of certain losses, many carriers are becoming more selective with deployment of capacity and holding firm on their quoted terms.</td>
<td>✈️</td>
<td>Older assets with aging infrastructure and clients with outstanding recommendations may struggle to maintain current limits.</td>
</tr>
<tr>
<td>✈️</td>
<td>✈️</td>
<td>No notable entrants or exits in the space, but capacity is being reigned in from management.</td>
<td>✈️</td>
<td>Do not expect new entrants or any major exits in the space, but we will continue to see carriers be more selective with their capacity deployment.</td>
</tr>
<tr>
<td>📑</td>
<td>📑</td>
<td>Claims continue to plague this industry and external factors further increasing loss quantum.</td>
<td>📑</td>
<td>Future claims could be impacted by inflation, and inability to obtain essential equipment may further drive BI losses.</td>
</tr>
</tbody>
</table>

**Power Generation**
## Marine

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>0% to 13%</td>
<td>Pricing on hull and machinery is trending upwards alongside inflationary pressures (about 5% to 8%). Protection and indemnity and cargo and excess limit pricing are seeing rate increases in the 11% to 13% range. Cargo premiums increasing 5% to 10%.</td>
<td>0% to 13%</td>
<td>Will see continued pressure on rates due to claims activity and inflation. New capacity entering the marine market is going to place pressure on underwriters to continue requiring rate increase. End of first quarter 2023 will be interesting.</td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td>Overall excess limits have been climbing over the last five years due to large jury awards and costs of excess limits. Those trends are slowing, if not stopped.</td>
<td></td>
<td>We will continue to see reduction in excess limit, with increasing rates. Increased frequency of high limit placements via quota share to adjust to carrier capacity.</td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>Increasing retentions as a mechanism to offset premiums has been the model in the marine market for the past five years. This trend is beginning to slow, as the market continues to offer higher retentions having minimal changes in premium.</td>
<td></td>
<td>We anticipate increased pressure on retentions going forward with minimal change in premiums.</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td>Terms and conditions are remaining stable for hull and machinery as well as protection and indemnity. Cargo is seeing restrictions and tighter coverage on strikes, riots and civil commotion due to the ongoing Russia-Ukraine war.</td>
<td></td>
<td>Terms and conditions should remain stable on marine coverages, with ongoing cargo sanctions restrictions as the overseas conflict continues.</td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td>Capacity is beginning to increase with the entrance of new insurance carriers entering the marketplace. This added capacity has not had its intended effect on reducing premiums.</td>
<td></td>
<td>We will continue to see capacity increase throughout marketplace. Cargo carriers will also review year-end losses and claims activity and adjust their preferred risk appetites accordingly.</td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td>Hull and machinery frequency has decreased, but severity has increased due to the size and complexity of vessels. Protection and Indemnity claims are increasing in severity. Cargo claims are being impacted by mis-declared bill of ladings and battery-related claims, causing high-impact claims.</td>
<td></td>
<td>Claims are likely to continue to increase in frequency and severity. Underwriters will make rate adjustments accordingly.</td>
</tr>
</tbody>
</table>
Environmental
Contractors Pollution Liability, Site Pollution Liability

Environmental – Q4 2022 Summary

Interest rate creep has led to volatility in the capital markets. Commercial debt is virtually nonexistent, which is reverberating in commercial real estate markets. At best, transactions are stalled and, at worst, collapsing. This uncertainty propels opportunities for purchasers to pump the brakes and re-evaluate pro formas based upon several factors: 1) increased cost of funds, 2) slowing commercial/industrial lease rates and 3) slowing economy.

One can argue the recent growth in environmental insurance is fueled by commercial real estate transactions. In instances where sites have a checkered past, environmental insurance is an effective tool to transfer environmental risk. In recent years, carriers have relied upon transactional risk to meet budget.

Given the slowdown in transactions, carriers may encounter headwinds meeting premium goals.

If transactions continue to stall, one could also argue underwriters may begin to reduce rates and expand coverage as an inducement to closing. Conversely, increasing costs of funds are producing favorable returns to carriers via investment vehicles which could also lead to rate softening. Much uncertainty exists and suspect capital markets will begin to stabilize over the next three to six months.

Emerging contaminants are becoming more problematic as carriers and insureds are becoming painfully aware of their impacts on society. Many carriers are blanketly restricting coverage without exception.

Generally speaking, premium increases are holding steady at anywhere from 5% to 10% depending on type of environmental insurance coverage. Carriers will continue to place greater emphasis on shorter policy terms for certain classes of operational risk as we go into 2023. Longer policy terms remain available for transactional policies.

Environmental – 2023 Outlook

The environmental insurance industry will continue to grapple with issues surrounding emerging contaminants and anticipate doing so throughout 2023. Emerging contaminants are becoming more problematic as carriers and insureds are becoming painfully aware of their impacts on society. Many carriers are blanketly restricting coverage without exception.

Premiums continue to harden across all environmental product lines, with renewal premiums up 5% to 10%. Markets will continue to gravitate towards shorter policy terms for certain classes of risk, such as habitational; however, longer terms are still available for a price. We do expect more markets to continue pulling away from 10-year terms as we head into 2023.

We also anticipate interest rate creep to continue, which we expect will lead to further volatility in the capital markets. As a result, we expect that commercial debt will be difficult to secure in the near term, which will inevitably have an impact on the commercial real estate market.
## Contractors Pollution Liability (CPL)

<table>
<thead>
<tr>
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<tr>
<td>$</td>
<td>$</td>
<td>Abundant capacity continues to pressure rates downward. Practice policies are experiencing slight increases ranging from 3% to 5% on average.</td>
<td>$</td>
<td>We expect the rate on CPL to increase anywhere between 5% to 10% over the next 12 months.</td>
</tr>
<tr>
<td>Pricing</td>
<td>$</td>
<td>Limits remain abundant, with most carriers offering up to $25M in the aggregate. Additional limits at competitive pricing are rampant.</td>
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</tr>
<tr>
<td>Retentions</td>
<td>A wide range of retention levels are available. Lower retentions available through online portals for practice policies.</td>
<td>A 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>
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</tr>
<tr>
<td>Coverage</td>
<td>Coverage remains broad for CPL, and exclusive coverages are available to NFP, including delay expense which results from work stoppage caused by known or unknown pollution events.</td>
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</tr>
<tr>
<td>Carrier</td>
<td>No new entrants into the marketplace; however, CPL coverage remains a desirable product for carriers given the favorable loss ratios.</td>
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</tr>
<tr>
<td>Claims</td>
<td>Claim frequency continues to increase as projects come online.</td>
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</tr>
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<td></td>
</tr>
<tr>
<td>Pricing</td>
<td>▲ 3% 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>▲ 5% to 10% Markets will continue to approach business selectively and will 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>
<td></td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td>Ample limits available for most risks. Abundant capacity in the marketplace with new entrants in the 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>
<td></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 carriers to accept higher retentions.</td>
<td></td>
</tr>
<tr>
<td>Coverage</td>
<td>▼</td>
<td>More and more 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. New EPA regulations will have an impact on underwriting. Concern around environmental and social governance continues to be a concern for carriers as states impose new laws to address the concerns. Carriers are also expressing greater concern in lead-based paint in New York City.</td>
<td>Handling remediation coverage knowns vs. unknowns and crafting coverage accordingly is becoming increasingly 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>
<td></td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td>No new entrants into the marketplace in Q3 and no carriers have exited.</td>
<td>No significant changes forecasted in the next 12 months.</td>
<td></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 continue to trend upwards.</td>
<td>Claims activity remains steady.</td>
<td></td>
</tr>
</tbody>
</table>

Site Pollution Liability (PLL)
Legal Practice

Lawyers Professional Liability (E&O), Cyber for Law Firms, Employment Practices for Law Firms, Management Lines for Law Firms (D&O, Fiduciary and Crime)

Legal Practice – Q4 2022 Summary

Lines of business particular to the practice and the business of law continued to stabilize during Q4 2022. Rates and overall changes in the cyber market have begun to stabilize. The market for lawyers professional liability (LPL) and employment practices liability (EPL) continues to flatten.

Lawyers Professional Liability (E&O)
The LPL market continued to soften in Q4 2022, with rates needed by our carrier partners beginning to flatten during the quarter. Our clients are averaging flat rate renewal from a primary layer perspective. Many carriers are putting an increased emphasis on firm revenues to determine pricing and retentions, instead of relying solely on headcount to determine rate. Excess market pricing remains competitive, with capacity in the market space continuing to expand.

Risk capacity remained steady, with few carriers willing to offer more than $5M primary limits on any one firm. Market capacity continues to increase within the LPL space with Palms and Fair American being the latest to enter. Continued underwriting personnel changes have also led to a competitive marketplace.

Terms and conditions remained relatively steady. Carriers continued to add supplemental “value add” coverages such as subpoena coverage, crisis management, pre-claims assistance and privacy coverage.

Some carriers are beginning to exclude social engineering and silent cyber, making the coordination of E&O and cyber coverages more important than ever.

Claims counts among carrier partners remained lower than normal due to the slow down in litigation and transactional services but concerns about severity and future frequency as a result of COVID-19 and economic slowdown are driving underwriter concern.

Cyber for Law Firms
As with the broader cyber market, the cyber market for law firms continues to harden with price increases ranging from 10% to over 60%. Higher price increases should be expected in firms that handle higher than average amounts of personally identifiable information (PII) or information protected by HIPAA, as well as firms that have had breaches or ransomware claims in the past. Increased ransomware claims and breaches targeting law firms have made this a less attractive class historically. Underwriting has become stricter as most carriers are requiring multi-factor authentication and offline back-up systems with limited personnel access. Increased retentions and lower available limits are also common.

Employment Practices for Law Firms
Law firms continue to see increasing rates in the employment practices liability market, with rate increases from 5% to 20%. As the workforce continues the “return to work” phase of COVID-19, it will be interesting to see if claims frequency rises. 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)
Limits and retention structures are being closely monitored to ensure risk sharing. Social engineering and business email compromise are also generating claims activity in these segments. Pricing increases continue to range from 0% to 20%.

Legal Practice – 2023 Outlook

The LPL market has shifted quite substantially over the past 24 months. 2023 is looking to bring more of what we saw in 2022 from a competitive rate standpoint. We expect rates to continue to flatten next year, with carriers shifting their focus to increasing self insured retention/deductible levels for mid-size and large law firms. We have also seen carriers shift their attention to the potential effects a financial downturn could have on law firms. It is anticipated that law firms will see high growth in expenses next year, with a small number of law firms expecting growth in profits.
Risk capacity will remain steady, with few carriers willing to offer more than $5M primary limits on any one firm. New market capacity is expected to slow compared to the unprecedented growth we saw in 2022. There will likely be new carrier entrants in the market, but nowhere near the level that we saw in 2022.

Terms and conditions will remain relatively steady. Carriers will continue to ask firms about their plan for a possible recession. If we are already in a recession, or one is looming on the horizon, law firms that are putting plans in place now will outpace their peers. Firms need to consider putting both short- and long-term strategies in place to combat a shifting economic and inflationary environment.

One change that firms are making includes changes to their fee structures. Firms are considering offering clients a blended rate between work done by both partners and associates on a related matter. Other strategies include marking changes to hourly rates, moving towards monthly retainers, and performing certain work on a contingency fee basis.

As clients tighten their belts ahead of a recession or look to bring potential work in-house, law firms need to reinvent and reimagine their offerings to their client base.

We anticipate 2023 to look a lot like a “pre-pandemic” year in terms of the movement of insurance placements. We expect law firms to focus on expense saving initiatives in 2023 with insurance spending, among other things, high on their list of priorities.
## Lawyers Professional Liability (E&O)

<table>
<thead>
<tr>
<th>METRICS</th>
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<tbody>
<tr>
<td><strong>$</strong></td>
<td>0% to 5%</td>
<td>Overall rates have begun to flatten, but this varies greatly depending on the size, location and specialty of the firm. Small firms may see flat to slight increases, where middle market are seeing 5% 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>0% to 5%</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 new carriers entering the line of business.</td>
</tr>
<tr>
<td><strong>✓</strong></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>
<td>A conservative approach to primary limits is expected to continue and the increased utilization of quota shares to manage carrier risk.</td>
</tr>
<tr>
<td><strong>🎯</strong></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>More carriers are expected to shift their focus to revenue and attorney count to determine adequate retention for firms.</td>
</tr>
<tr>
<td><strong>🔍</strong></td>
<td></td>
<td>Coverage remained relatively stable throughout the first half of 2022. Some increased add-in coverages with low sub-limits (subpoena, crisis management) are becoming standard.</td>
<td></td>
<td>Increased exclusions related to silent cyber and social engineering are expected as these claims continue to rise.</td>
</tr>
<tr>
<td><strong>💼</strong></td>
<td></td>
<td>Market capacity continues to increase within the LPL space with Palms and Fair American being the latest to enter.</td>
<td></td>
<td>Many carriers that entered the market to take advantage of hardening cyber and D&amp;O prices are beginning to explore professional lines. We expect more carriers to enter this segment in 2023.</td>
</tr>
<tr>
<td><strong>นม</strong></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>
<td></td>
<td>Carriers are expecting an increase in the number of claims as a result of a possible economic downturn. Severity of claims is expected to continue to increase.</td>
</tr>
</tbody>
</table>
Cyber for Law Firms

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>10% to 60%</td>
<td>As law firms were increasingly targeted by hackers and those seeking ransoms, rates increased substantially to account for the increased exposure. The increases range from 10% to over 100%.</td>
<td>10% to 60%</td>
<td>Pricing is likely to continue to increase due to increases in claims activity and historically inadequate pricing as compared to exposures.</td>
</tr>
<tr>
<td>Limits</td>
<td>▲</td>
<td>Many carriers 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.</td>
<td>▲</td>
<td>We expect carriers to continue to manage limit capacity, particularly on primary.</td>
</tr>
<tr>
<td>Retentions</td>
<td>▲</td>
<td>Upward pressure on retentions continues, particularly when firms lack requisite controls or have experienced claims activity.</td>
<td>▲</td>
<td>Retentions will continue to rise, as well as requirements for coinsurance or other risk sharing techniques.</td>
</tr>
<tr>
<td>Coverage</td>
<td>▼</td>
<td>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.</td>
<td>▼</td>
<td>Continued mandatory requirements for MFA and back-up systems expected for all size firms. Decreased availability of ransomware coverage expected.</td>
</tr>
<tr>
<td>Carrier</td>
<td>▼</td>
<td>Underwriting guidelines tightening and reduced carrier appetite for the class of business was common as activity targeting law firms became more common.</td>
<td>▼</td>
<td>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.</td>
</tr>
<tr>
<td>Claims</td>
<td>▲</td>
<td>Increased ransomware and social engineering claims against law firms continue to become public. Several hacking incidents involving large firms heightened concern about increased claims.</td>
<td>▲</td>
<td>Claims activity is expected to continue to increase and cost of investigation and remediation is expected to continue to rise.</td>
</tr>
</tbody>
</table>
## Employment Practices for Law Firms

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>$</td>
<td>Pricing</td>
<td>5% to 20%</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>
<td>0% to 20%</td>
</tr>
<tr>
<td>✓</td>
<td>Limits</td>
<td></td>
<td>Many carriers are reducing limits available due to ongoing severity concerns.</td>
<td></td>
</tr>
<tr>
<td>○</td>
<td>Retentions</td>
<td></td>
<td>Retentions are increasing, particularly in difficult geographies (CA, NY and NJ).</td>
<td></td>
</tr>
<tr>
<td>🔍</td>
<td>Coverage</td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>🏕️</td>
<td>Carrier</td>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>🔘</td>
<td>Claims</td>
<td></td>
<td>Claims frequency and severity are on the rise as firms struggle with return-to-work issues and historical gender/racial disparity.</td>
<td></td>
</tr>
</tbody>
</table>
**Management Lines for Law Firms (D&O, Fiduciary and Crime)**

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>$</strong> Pricing</td>
<td>▲ 0% to 20%</td>
<td>Pricing increases in these lines of business have begun to stabilize, but concerns remain due to COVID-19 issues, work from home and cyber related events.</td>
<td>▲ 0% to 20%</td>
<td>Primary rates should continue to stabilize, as adjustments were previously made. Economic conditions could push rates further upward.</td>
</tr>
<tr>
<td><strong>✓</strong> Limits</td>
<td>▼</td>
<td>Carriers 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></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><strong>サー</strong> 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>▲</td>
<td>Retentions will continue to be monitored, particularly where there are past claims or policies/processes are inadequate.</td>
</tr>
<tr>
<td><strong>👀</strong> 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 are 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></td>
<td>Coverage expansion not anticipated.</td>
</tr>
<tr>
<td><strong>🎯</strong> Carrier</td>
<td></td>
<td>Market has stabilized in the second half of 2022 with no real shifts in participants or appetites.</td>
<td></td>
<td>Market is expected to remain relatively stable with no real shifts in participants or appetites.</td>
</tr>
<tr>
<td><strong>📝</strong> Claims</td>
<td>▲</td>
<td>COVID-19, return to work and cyber activity have resulted in increased claims counts and severity in these lines.</td>
<td>▲</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>
The life science market has needed to remain flexible with the ever-changing technologies and deliveries of patient care being released into the marketplace. New and old products in the life science space make for an extremely diverse range, from high-risk products like implants and surgical mesh to lower-risk ones like cannabis and beauty products. Carriers and MGAs have had to expand their offerings and, in some cases, get creative with their pricing, retentions and limits in order to remain competitive. Pricing has been consistently increasing, though only slightly, due to higher jury and settlement awards as has proven the norm when it comes to healthcare and healthcare products.

For insureds with favorable loss histories, renewal rates have been stable. Carriers are looking for more in-depth loss history and more information on loss prevention from clients. Product recall is an extremely important, though costly, part of doing business. Those clients that stay ahead of the issues, sometimes doing voluntary recalls for products before it becomes a major issue, tend to fair better when it comes to pricing and capacity.

New and innovative technology continues to consume the industry. Advanced methods and treatments, including wearables, artificial intelligence and virtual reality are being refined and becoming more prevalent in the standard healthcare market.

This November, eight more states legalized the use of cannabis, bringing the total number of states with some form of legalization to 44.

The business of cannabis continues to be one of the fastest-growing industries due to the many ways the product is being refined and used. Along with the recreational aspect, there is emphasis on research and development of new uses in the medical field. This is a very specialized industry to find coverage for, and as more carriers enter the market, we hope to see pricing and limit options fall more in line with your typical business.

In 2023 the life sciences industry will continue to experience high-volume growth and new scientific and operational opportunities. The industry has had to adapt, as we are coming out of the pandemic with new technologies and ways of administering healthcare. Telehealth and online treatment of patients has grown more prevalent and will continue to be a part of healthcare in perpetuity. There have been improvements in drug research and developments, with an emphasis on value. New laws are being passed to help drive down the costs of pharmaceuticals and nutraceuticals, allowing patients access to the care they need.

Due to rising inflation, insureds have had to increase payrolls and prices. Carriers will need to take this into consideration as they rate for exposure. An increase in revenue does not necessarily equate to an increase in risk.

As the courts are starting to clear the backlog of cases due to the pandemic, carriers are focused on loss severity and maintaining an adequate reserve for future claim payouts.

Many carriers are looking to strengthen their relationships with current clients by offering multiple lines of coverage with higher limits and better retentions that offer a better price than stand-alone coverage. This is allowing clients who have had to reduce the amount of coverage or limits as a way of mitigating costs to start purchasing back up to the limits they held previously. The life science market conditions have improved as rate increases are slowing down. In 2023 this will allow carriers to revisit their programs and determine how best they can compete in the market, along with delivering a solid product to their client. This may be a different program structure, drawing back coverage concessions or sublimits that were necessary to get business in the last several years or securing more capacity for their best risks.

We expect to see continued advancement in both the legalization of cannabis and how it is insured. As one of the fastest-growing industries, the market is continually evolving and expanding their offerings.
### Product Liability

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<tr>
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</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>Pricing has stabilized in Q4, largely driven by an increase in competition and capacity.</td>
<td>Most markets will continue to offer competitive premiums.</td>
</tr>
<tr>
<td>Limits</td>
<td>✓</td>
<td>There is ample limit available for most risks in this marketplace for these types of risks.</td>
<td>We expect limit and capacity to increase as clients are better positioned to purchase extra limits.</td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>Retentions have remained static.</td>
<td>We anticipate retentions to remain stable, and we expect current trends to continue for the next 12 months.</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td>Coverage remains broad and flexible.</td>
<td>Availability of relatively broad coverage will continue to be accessible over the course of the next 12 months.</td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td>New carriers and MGAs have entered the space with a focus on certain subsegments of the industry.</td>
<td>No significant changes for the next 12 months.</td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td>Claims activity has remained flat. However, life science business continues to be challenging with the proclivity for class action lawsuits.</td>
<td>Large class actions will continue to be a threat to life science accounts, with large settlements driving litigation.</td>
</tr>
</tbody>
</table>
Private Equity – Q4 2022 Summary

Following the busiest year on record in 2021, representations and warranties (R&W) submission flow has continued to normalize in 2022 and is trending similarly to the first six months of 2021. While submissions remain high from a historical basis, Q4 2022 saw a continued moderation in submission flow. Both rate on line and retentions have leveled off and even come down somewhat to be more reflective of the first half of 2021.

Premiums have continued to moderate and even decreased somewhat in Q4 with an ~3.5% to 4% rate on line as an average. Larger deals of over $1B will see primary rates closer to 4.5%, but with excess, blended rates are closer to the 2.75% to 3.25% range. Claims frequency and severity have increased over the past few years and continued to do so in Q4 2022. This seems to potentially support rate increases over time; however, we have not seen that materialize in 2022. Appetite across the industry is broad, but smaller transactions in particular (under $50M in enterprise value) have become easier to insure. There are a couple newer markets that opened in 2022 that are trying to focus on smaller limit deals (under $50M in enterprise value) which continues to drive this trend.

Q4 2022 has not seen the increase in demand as anticipated. In fact, Q4 did not see activity growth in comparison to the prior three quarters in 2022. While some R&W carriers have made strides to add capacity and underwriting staff to address increased demand for R&W policies, that growth has not materialized. It will be interesting to see if activity increases in 2023 or if the current interest rate environment will continue to dampen activity.

Private Equity – 2023 Outlook

If the trends we have seen in Q4 2022 continue, the outlook for R&W insurance in 2023 will likely be tempered by the current interest rate environment. The current debt market is pushing firms to do smaller transactions and fewer of them. Until there is moderation in interest rates, we do not see this trend changing considerably in 2023.

With the reduction of overall deal activity, there will be competitive pressure on the carriers to write enough business to support their internal needs.

With these competitive pressures, we do not see premiums and retentions increasing in 2023; rather, they are likely to continue to slowly decrease until the market normalizes. While some markets have and will continue to try to hold the line on rates and retentions, there are a number of markets willing to continue to drive pricing and retentions down as they try to get market share.

There were two new R&W carriers in 2022, and it would not surprise us to see a similar trend in 2023. While not at the frantic pace of Q3 and Q4 2022, there remains a considerable market for those looking to establish a new line of insurance for their portfolio.
## R&W Insurance

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</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>-10% to -5%</td>
<td>The R&amp;W insurance market continued to normalize in Q4 2022. While pricing varied from market to market, overall pricing for a customary policy decreased slightly since Q3 2022. Those rates would be somewhat similar to the first half of 2021.</td>
<td>While pricing over the next 12 months will depend on the health and level of activity of the broader economy and mergers and acquisitions market, we would expect premiums to remain somewhat flat in 2023. Similar to Q4 2022, we would expect some rate moderation in early 2023.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>There has been no meaningful change to the limits being offered by carriers. Most primary R&amp;W carriers are able to offer a $30M limit (or larger) policy for any particular transaction.</td>
<td>We do not have reason to believe that carrier limit profiles will change.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>Initial retentions on R&amp;W policies have remained stable at 1% of transaction enterprise value (EV) for most transactions (under $100M – $150M in EV). Lower initial retentions continue to be available in larger transactions and in certain circumstances. Some carriers have increased their minimum retention thresholds for smaller transactions.</td>
<td>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>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>As a general matter, breadth of coverage has been stable in 2022. For target companies in highly regulated industries (including healthcare), some carriers have been more selective to quote opportunities and have been more rigid in requiring deal-specific exclusions or other limitations in their quotes.</td>
<td>We do not have reason to believe that policy coverage will change materially over the next 12 months.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>The Balance Partners facility is up and running as of Q4 2022. There are now 26 domestic carriers.</td>
<td>Balance Partners opened up a new facility in 2022. We anticipate there could likely be additional entrants in 2023.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td></td>
<td>Over the past several years, R&amp;W insurance claim severity and frequency has increased steadily. Some markets report a slight increase in claim frequency, while others report that frequency has not changed materially.</td>
<td>We do not have reason to believe that claims volume or severity will change significantly over the next 12 months.</td>
</tr>
</tbody>
</table>
Casualty – Q4 2022 Summary

Q4 2022 presented some bright spots for real estate risks, although largely contained to favored occupancies such as office/retail and higher excess liability layers. Competition for well-performing insureds in commercial occupancies (depending on geography) and upscale hospitality risks have been able to attract significant competitive interest with favorable results.

Nonrenewals have significantly lessened but still are a threat for habitational-heavy, alternative-use hospitality or poorly performing accounts. Even regional carriers historically providing stable residential renewals are now re-evaluating and reducing exposure due to higher claims. These markets are no longer predictable safe havens. The few active admitted markets considering habitational are strongly favoring newer construction; older buildings regardless of updates are posing new market challenges. Mid-rise, older frame buildings (especially if non-sprinklered) and those with significant subsidized housing and/or poor loss history generally find only nonadmitted market interest, with very significant self-insured retentions and restrictive terms. Crime scores as a critical underwriting criterion continues, with declinations, restricted coverage or coverage sublimits resulting.

Habitational risks with significant exposure in problematic jurisdictions (NY, GA, FL) continue to be heavily impacted. Admitted market incumbents for habitational risks still hold significant leverage and easily retain accounts despite significant increases. Hospitality risks continue to perform unevenly, with options for the higher-end hotels/resorts more plentiful, particularly if supporting lines such as workers’ compensation is available. Budget hospitality risks remain mainly insured in the nonadmitted marketplace. Many carriers are increasing minimum premiums and/or self-insured retentions to remain profitable or in some cases to simply avoid more difficult occupancies/risks.

Underwriter workloads remain extremely heavy, both from incessant broker marketing and general economic labor shortages, with marketing results often hampered by time constraints. Curtailed underwriter interest or less-than-favorable renewal results can be significantly impacted by where the expiration date falls on the calendar. Insureds continue to be stressed by quotes received uncomfortably close to expiration date. There has been some slight improvement in this trend for incumbents that want to retain favorable accounts, leading to earlier negotiation for well-performing and preferred occupancy accounts.

Defensive marketing efforts continue, as brokers are under pressure to deliver positive news after years of difficulty. As a result, insureds with favorable portfolio occupancies/class and clean loss history can potentially achieve flat to slightly reduced renewals due to increased competition. However, insureds with poor loss history regardless of exposures still are experiencing rate corrections, at times severe. While insureds widely recognize the value of stability in primary casualty layers, upper excess liability placements are marketed aggressively to obtain favorable price reductions. While most insureds can now retain current tower limits, the market has not improved nearly enough to encourage buyers to purchase additional limits.

There have been no significant changes regarding how underwriters view opportunities: commercial real estate risks (retail, office, industrial/warehouse) still attract the most potential and concerted competition, particularly if there is significant support of workers’ compensation. Mixed-use occupancies with limited habitational and/or hospitality continue to gain more serious consideration than in the past, but there has been little improvement for habitational-heavy or lower-end hospitality accounts.
Continuing coverage restrictions, depending on occupancy and/or risk profile:

- Assault/battery
- Habitability
- Firearms
- Human trafficking
- Cannabis or controlled substances
- Animals
- Sexual molestation/misconduct

Concerted underwriting continues, with more prevalent focus on crime scores, human trafficking training/protocols and confirming adequate contractual risk transfer practices. There has been a slight uptick in subcontractor warranty language, with penalties ranging from increased deductibles for claims and/or higher rates for noncompliance. Some E&S markets have been pushing for additional subcontractor data at audit to evaluate compliance and enforce these restrictions.

We expect the habitational market to expand into long-term rentals of single-family homes, given the ongoing challenges for individuals to break into home ownership. While providing great investment opportunities for stable income, this trend has presented new challenges for carriers as many consider single-family homes to present more difficulties for consistent risk management and loss control/mitigation than traditional multi-family residential properties.

In addition, the market has significantly contracted for certain geographies, particularly New York. New York labor law and sidewalk claims continue to increase, both in frequency and severity, resulting in the withdrawal of several traditionally strong markets and risk placement groups from writing any new exposures in New York and/or nonrenewing risks regardless of loss performance. New York habitational risks continue to suffer the most in nonrenewal situations, which result in opportunistic and sharp rate increases and adverse terms/conditions, with nearly all replacements being in the nonadmitted space.

Florida and Georgia continue to present challenges as well, with markets underwriting to specific counties/cities or restricting the percentage of risk located in these jurisdictions.

The lead umbrella/excess liability market continues to be challenging, as factors that have caused the working layer to expand beyond the primary general liability (social inflation; claims severity/frequency; and trends around wrongful eviction, assault/battery, sexual abuse/molestation and human trafficking) cause restriction of capacity, nonrenewals and often significant premium increases. Nonrenewals of lead umbrellas remain the most problematic situation, with very few admitted unsupported excess carrier options — particularly for habitational and hospitality risks. Premiums to replace nonrenewed lead layers are still often very significant, and virtually no carriers are deploying more than $10M of new lead umbrella capacity. Well-performing accounts with favorable occupancies such as offices, retail and mixed-use have the best renewal results, with incumbents occasionally offering renewal pricing based only on proportional increases from the primary layer. Many carriers are attracted to the $15Mx$10M layer for nonresidential risks, offering substantial premium savings while providing adequate distance from the new claims working layer of between $1M – $5M. Unfortunately, most admitted excess markets continue to attach at $25M.

The workers’ compensation market continues to be competitive at this point, particularly if adding ballast to larger accounts. Ample capacity and favorable pricing continues — single-digit increases/decreases for insureds with positive loss experience. Labor shortages resulting in lack of staff/experience, especially in the hospitality sector, may well signal the end of this exceptionally favorable market for workers’ compensation.

Automobile liability rates for real estate are continuing to have increases, although generally 10% or less, as insureds in this sector generally do not have large owned auto exposure. If they do, 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 significant premium consideration for the real estate sector. Some carriers have begun to look for significantly larger physical damage deductibles for highly valued vehicles due to escalating costs of car repair/replacement.

There were some success stories in Q4, but only the best-performing and most-favorable classes of business benefited, with either successfully pre-negotiated renewals with incumbent markets or where significant competition could be introduced.

**Property – Q4 2022 Summary**

In the last quarterly update, it was looking like 2023 rate increases would start to slow down but, unfortunately, factors including weather events, inflation, valuations and expected treaty reinsurance renewals have changed this path, and we are expecting a continued hard property market in 2023. Hurricane Ian was the catalyst for this outlook change, hitting the West Coast of Florida as a Category 4 hurricane and with expected damage between $40B – $60B.
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 in Q4, typically in the single-digit range. Similar to Q3, underwriters continued to pull back 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 (e.g., residential and hospitality) or significant exposure in natural catastrophe-prone geographical areas are still seeing premium increases and heightened restriction of terms and conditions, and that is expected to worsen in 2023. Convective storm, again highlighted by the recent devastation from tornadoes in the Midwest in late 2021, continues to be a peril in the spotlight due to frequent and severe loss events. Further, high claims activity from other climate-related losses such as wildfires, flooding and hurricanes continued to impact capacity, retentions and pricing throughout Q4. We are even starting to see some carriers impose 10% to 15% named windstorm deductibles in Florida, where the traditional deductible there is typically 5%.

Valuation, as well as 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 underreported values. To help offset this, margin clauses and coinsurance subjectivities continue to be the norm, particularly in the habitational occupancy class or accounts that continue to push lower valuations. 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, and underwriters are advocating loss-control initiatives, both physical and human-element, as a measure to help insureds control this exposure.

Casualty – 2023 Outlook

The hard market environment ongoing for the past two to three years will continue, unfortunately now spurred on by the increasing economic inflation, which adversely impacts the cost of labor, raw materials and component parts, all which factor into overall claims costs. Economic difficulties add fuel to the social inflation, which will continue to drive up settlements and jury awards, particularly in problematic jurisdictions.

States such as California, New York and Georgia will continue to present difficulties for carriers with expanding bases of liability and overly friendly plaintiff environments. Other states such as Florida, Texas and Colorado follow, along with certain problematic cities such as St. Louis.

Third-party litigation financing, providing resources to chase nuclear verdicts, will continue, contributing to what has become seemingly a never-ending cycle of increasing claims costs, leading to spiraling insurance rates/premiums. One moderating factor is the bolstering of commercial insurance rates over the last few years, but carriers remain concerned over stability and even viability as the overall economic outlook worsens for 2023.

General liability rates will continue to increase in response to inflationary pressures, with the most pressure on habitational risks which, depending on the jurisdiction, can be magnets for escalated litigation opportunities. Some hospitality risks are still finding long-term alternative-use contracts with municipalities useful in hedging uncertain consumer spending, but only a handful of nonadmitted markets are willing to insure these occupancies. We also anticipate the regional markets that seemingly were insulated from heavy residential claims will now join the rest of the market in both nonrenewing and imposing moratoriums on new residential business as these claims have continued to develop. Insureds that up until now enjoyed relatively stable renewals from regional markets will need to be prepared.

Close underwriting attention to crime-related claims, neighborhood crime scores and armed security continue to drive restrictions for assault/battery and sexual abuse/molestation, whether by substantially lower limits ($100,000) or by containment of defense within the $1M limit. Stand-alone products for these coverages will become more prevalent as carriers continue to restrict these coverages.

Workers’ compensation coverage has remained favorable during the last few years, but more carriers are expressing concern if not likelihood of upward pressure over the next 12 months. Economic difficulties and worker financial strain, as well as inadequate staffing levels and experience (especially in hospitality sector), are anticipated to lead to increased claims. Workers’ compensation has been a stabilizing line to support the more volatile auto and general liability coverages, but pricing is anticipated to become more scrutinized in 2023 for profitability.
Automobile liability rates/underwriting will continue to follow the pattern of the last several years, with reasonable increases for most real estate fleets. Hotel shuttle vehicles continue to be of concern, especially giving staffing shortages, and will be carefully underwritten. Physical damage deductibles continue to increase, sometimes significantly for higher-valued vehicles, following the accelerating costs of auto repair/replacement.

Umbrella/excess liability costs have moderated over the last six months, with significantly increased competition for favorable classes of real estate excess of the lead $10M layer. We anticipate this trend to continue over the next 12 months, with excess markets striving to aggressively regain market share for well-performing insureds. While the first $5M–$10M in coverage can be still very problematic, particularly in nonrenewal situations, incumbent pricing has settled into moderate increases. There is ample capacity in the upper excess layers, and we anticipate more flexibility and pricing options. As well, several recent new private equity entrants into this market space will now be into their second year, with projected broader underwriting appetite and goals.

Overall, the casualty market for real estate in 2023 will continue to experience stress for challenging risk profiles or poorly performing insureds, an ongoing reflection of the larger economic and litigation environments. Insureds with stable carrier partnerships and favorable claims history should largely experience moderate and now-customary increases.

Property – 2023 Outlook

The property market in 2023, specifically for real estate, is looking like it will get hit with increases that haven’t been seen in years. One of the main driving factors leading up to this, other than the aftereffects of Hurricane Ian discussed earlier, is the treaty reinsurance renewals that are taking place on January 1, 2023. Increases are expected to be above average, with capacity being cut back and attachment points being pushed up. Expectations are that carriers will pass these increases on to clients while also cutting back capacity. Accounts with exposures in Florida are expected to get hit particularly hard with the increases and reduction in named windstorm limits, something we started to see toward the end of 2022.

If treaty renewal discussions end where expected, softer occupancy accounts with little to no losses will likely see increases of 15% to 20%, while CAT-heavy and loss-sensitive accounts could see increases start around 40% to 50%. Single-carrier CAT capacity has been troubled through much of 2022 and will likely continue to struggle, with carriers such as AmRisc and Velocity further cutting back their wind capacity and, at the same time, charging increased premiums. E&S carriers writing in the CAT space are also expected to cut capacity back drastically. As an example, in the past, where a carrier would offer $5M of excess capacity for a minimum premium of $50,000, we likely could see that same carrier offering $2.5M of excess capacity for that same minimum premium, or even more. It also wouldn’t be crazy to see gaps in programs next year due to a lack of capacity.

All of the terms, or contraction of terms, seen being pushed throughout 2022 will continue be pushed throughout 2023. Valuation will continue to be at the forefront of carriers’ discussions, and accounts that try to push lower valuations will either be declined or pushed to the bottom of the underwriting pile, as submissions will likely continue to overflow underwriter inboxes. In the past, where clients may have made the decision to increase named wind percentage deductibles to save money, that luxury may no longer exist, with carriers pushing increased percentage deductibles at no premium savings.
## Auto

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$1M/$2M/$2M</td>
<td>RE clients’ owned auto exposure generally is limited to private passenger vehicles and light trucks used for local maintenance purposes. The exception is hospitality, where shuttle vans are often used for guest transportation. Renewal rates are now habitually between 5% to 15% for well-performing accounts, with insureds accepting these results as the stable norm.</td>
<td>5% to 15%</td>
<td>Rate increases will continue, although only to a moderate degree in the next 12 months. Hotel shuttle van exposures continue to be carefully underwritten as potential sources of catastrophic claims and concern with staffing/experience of drivers.</td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td>Standard limit offering of $1M/$2M/$2M remains. Umbrella markets that require an attachment point of $2M/$4M/$4M may be problematic for some carriers and necessitate the placement of a buffer layer for umbrella/excess liability placement.</td>
<td></td>
<td>Trend of requiring $2M/$4M/$4M attachment points from the umbrella market is still far from becoming the new norm, although a useful tool in providing ventilation for otherwise interested carriers. Significant fleet exposure will limit the carriers willing to provide lead umbrella or low excess layers.</td>
</tr>
<tr>
<td>Retentions</td>
<td>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. Physical damage deductibles and premiums have steadily increased as cost of repair/replacing automobiles continues to steadily rise.</td>
<td>No widespread change expected in next 12 months.</td>
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</tr>
<tr>
<td>Coverage</td>
<td>Automobile coverages are largely statutorily driven, but there are extensive broadening endorsements available and should be taken advantage of wherever possible. Since most serious claims arise from third-party bodily injury scenarios, coverage enhancement endorsements are not generally difficult to obtain.</td>
<td>Availability of reasonably broad automobile liability and physical damage coverages are anticipated to continue over the next 12 months.</td>
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<tr>
<td>Carrier</td>
<td>Automobile liability is generally written without issue by the carrier providing the supporting casualty lines. If monoline automobile coverage is needed or for clients with adverse loss experience or other risk peculiarities, the market is severely limited, mainly to carriers accessed in the nonadmitted market.</td>
<td>Monoline auto markets will continue to be scarce due to the lack of additional casualty premium needed to balance the potential for severe losses.</td>
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<td></td>
</tr>
<tr>
<td>Claims</td>
<td>The automobile liability claims continue to present very significant exposure to carriers as severe claims can result from a single occurrence, both from owned and non-owned auto exposure. Distracted and/or stressed driving continue to contribute considerably to accidents, and hospitality risks with guest shuttle vans carry the risk of multiple passenger injuries.</td>
<td>Given the inherent danger and potential for severe losses that driving presents overall across industries, flat-to-reduced rates are not anticipated.</td>
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</table>
## General Liability

### METRICS | Q4 2022 YOY CHANGE | Q4 2022 COMMENTARY | 12 MONTH FORECAST | 12 MONTH FORECAST COMMENTARY
--- | --- | --- | --- | ---
| **$** Pricing | 0% to 15% | Competition increased for insureds with well-performing office/retail/industrial portfolios, contributing to relatively stable renewals. Clients with favorable loss history and risk profile experienced flat-to-10% increases. Poorer performing insureds suffered 30%+ increases. Well-performing hospitality accounts had reasonably stable renewals. Nonrenewed habitational accounts continued to experience significant increase of 30% to 50% and higher, with very few participating markets. | 0% to 15% | The competitive trend for well-performing non-habitational/hospitality accounts is likely to modestly increase, providing options and leverage over the next quarter, although incumbents still retain considerable advantage in most cases. Nonrenewed habitational and middle-of-the-road or alternative-use hospitality accounts will continue to struggle to find options.

| **✓** Limits | | $1M/$2M/$2M remained the standard limit offering. Per-location aggregate limits have stabilized, usually with policy caps. Sublimiting assault/battery and/or sexual abuse/molestation (as opposed to remaining silent) or including defense within the limits become more common, particularly for habitational/hospitality risks. | | Umbrella carriers requiring a $2M/$4M/$4M attachment point are expected to remain stable for the time being. The trend toward limiting overall capacity for more problematic occupancies, whether deployed via expansive aggregate limits and/or curtailing exposure to sexual abuse/molestation or assault/battery will continue. Blanket use of restrictive endorsements regardless of occupancy should lighten.

| **✓** Retentions | | Significant casualty retentions for real estate are still mainly the province of the larger accounts with carrier interest and ability to take on risk or in cases of poor loss performance. However, higher retentions regardless of loss experience are being deployed for some classes of business, such as habitational or alternative use in hospitality. | | As carriers continue to struggle with reestablishing healthy profitability margins, pressure against first-dollar coverage for riskier profiles is expected to continue for the next 12 months, although heavily dependent on class of business and loss history.

| **✓** Coverage | | Adverse exclusions (communicable disease, abuse/molestation, assault/battery, New York labor law, human trafficking, etc.) continue to be pushed by carriers, particularly for habitational and hospitality risks. Although possible to successfully negotiate removal in some cases, generally this is possible only in highly competitive situations and often only for an increase in premium. Removal of geographically driven exclusions in some classes of business (e.g., New York City), are nearly impossible to achieve. | | Reducing coverage via exclusions, driven primarily by class of business, crime score or specific loss profiles, is expected to be a continuing trend with little negotiating ability, particularly for those RE occupancy classes that continue to suffer such type losses, mainly habitational and/or hospitality.

| **✓** Carrier | | Carriers continue to seek new business opportunities mainly in favorable RE occupancies such as office/retail/mixed use. Carriers remain very conservative in the hospitality sector for seeking only the best-in-class operations. Carriers for habitational risks continue to constrict, especially for the larger middle-market size portfolios and older garden-style/frame construction. Nonrenewed habitational accounts now nearly universally are finding replacement coverage only in the nonadmitted marketplace. | | While there has been some new carrier capacity entering the market, these tend to be very specific in appetite and, overall, primary market options have not increased. Ongoing economic factors such as inflation, world events such as the war in Ukraine and domestic violence such as school shootings continue to dampen optimism and opportunity. Incumbent carriers that desire to stay on risk are nearly always the most competitive, even with significant rate increases.

| **✓** Claims | | General liability claims and carriercombined ratios are continuing to be driven by adverse litigation trends exacerbated by long-term inadequate pricing. Concern over potential high payouts for violent crimes or catastrophic “deep-pockets” losses for which the insured is tapped to participate continue to drive underwriting focus. | | While carriers have begun to show an interest in deploying capital for well-performing, favorable classes of RE business with limited competition returning in some instances as a result, claim frequency and severity of settlements continue to increase, constraining robust recovery. Muted improvement at best is anticipated over the next quarter. |
## Workers’ Compensation

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<tbody>
<tr>
<td>$</td>
<td>-1% to 5%</td>
<td>The workers’ compensation market has remained stable over the past few years, subject to state of operation, industry and loss experience.</td>
<td>-1% to 10%</td>
<td>We anticipate the potential of rate increases due to uptick in claims driven by labor shortages, particularly in the hospitality sector. The need to scale quickly has led to hiring of less skilled employees and less intensive training, which is likely to translate over time into increased WC losses and premiums.</td>
</tr>
<tr>
<td>☑️ Limits</td>
<td></td>
<td>Workers’ compensation limits are statutory, so not defined by the broker or carrier. The standard limit of $1M for the employer’s liability component of coverage has remained available without issue.</td>
<td></td>
<td>No changes foreseen.</td>
</tr>
<tr>
<td>☿️ Retentions</td>
<td></td>
<td>Guaranteed cost workers’ compensation policies remain common in the real estate sector and widely accessible. Larger and more sophisticated clients with the interest and ability to control claims costs by utilizing strong risk management practices continue to pursue large retention programs. “Hybrid” or structured programs (Sompo, Strategic Comp) are also attractive options that provide certainty in ultimate cost while providing potential for return premium during well-performing years.</td>
<td></td>
<td>No changes foreseen.</td>
</tr>
<tr>
<td>🔍 Coverage</td>
<td></td>
<td>Workers’ compensation coverages are standard regardless of carrier, with few broadening endorsements (e.g., blanket waiver of subrogation and voluntary compensation). 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.</td>
<td></td>
<td>No changes foreseen.</td>
</tr>
<tr>
<td>📈 Carrier</td>
<td></td>
<td>There is robust carrier participation in this line of coverage. Many carriers look to lead with sizeable workers’ compensation exposures/premiums in the real estate sector to bolster the often more challenging general liability performance.</td>
<td></td>
<td>Workers’ compensation has remained a largely profitable line of business, and we anticipate continued strong carrier support for the foreseeable future despite potential increase in claims activity over the next 12 months.</td>
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<tr>
<td>🕒 Claims</td>
<td></td>
<td>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.</td>
<td></td>
<td>As the hospitality industry continues to recover from the pandemic shutdown, claims activity will increase. Labor shortages of experienced hospitality workers may also contribute to an increase in claims as we move into 2023. Lingering questions around working remotely and safe return to work will continue, creating potential for increased claims activity.</td>
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### Umbrella Liability

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>15% to 50%</td>
<td>For incumbent markets willing to renew, lead umbrella placements have settled into a relatively stable position, albeit still with marked increases. Commercial risks (retail, office and light industrial) continue to experience the lowest increases and most stability. Nonrenewed lead umbrella placements (almost universally habitational and/or hospitality accounts) lead to severe pricing correction. Rating emphasis is on cost of capacity, and carriers continue to underwrite to limit and attachment point, regardless of the underlying pricing. Risk purchasing groups continue to take significant increases in premiums at time of master program renewals. For stable renewals, 15% increases are the norm; for nonrenewed accounts, 50%+ is typical. Carriers are more ambitious to retain renewals and write new business, particularly in the layers excess of $10M. Competition for lead umbrella options of all classes will remain limited as this layer is perceived as a working layer and underwritten conservatively, with options for habitational risks anticipated to remain extremely limited. Increasing competition excess of $10M or $15M will contribute to continuing competition and some pricing relief in upper excess layers.</td>
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<tr>
<td>Limits</td>
<td>15% to 50%</td>
<td>As residential and hospitality risks now commonly require a $2M/$4M/$4M attachment, more primary carriers are being pressed to provide larger limits in quotes or lead umbrella options, which can provide considerable advantage. Clients continue to reevaluate total limits purchased as carriers reduce capacity and overall cost of limits increases, although after two years of reductions, insureds are generally purchasing to the most prudent lowest level possible. Carriers continue to restrict per location aggregate limits through the excess tower. We expect current trends to continue for the next 12 months with increased capacity and competition occurring in the higher excess layers. After several renewal cycles of significant pricing increases, obtaining decreases of any level in the excess tower is a welcome development.</td>
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<tr>
<td>Retentions</td>
<td>Minimal standard retentions still apply. Carrier pricing not impacted heavily with primary retention increases. We expect current trends to continue for the next 12 months.</td>
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<tr>
<td>Coverage</td>
<td>Carriers are still pushing adverse exclusions, these are driven most often by occupancy, insured-peculiar loss history, crime scores, etc., instead of simply a knee-jerk reaction to limit exposure to catastrophic loss from whatever avenue. While human trafficking exclusion remains a deep concern for hospitality risks, its use is still not universal. Assault/battery and sexual abuse/molestation exclusions are widespread for habitational risks and, to a lesser degree, hospitality. We are seeing carrier flexibility depending on excess attachment point. Communicable disease exclusions are now expected on all renewals. Coverage restrictions will persist throughout the next year. Formal safety and risk management plans around assault, sexual abuse and human trafficking are key in negotiating exclusion removal. Account-specific claims, including violence and bodily injury, will drive introduction of new exclusions.</td>
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<tr>
<td>Carrier</td>
<td>Carriers revise appetite, capacity and attachment point regularly, although lead umbrella limits provided by the primary general liability carrier are nearly universally more competitive than unsupported carrier pricing. Risk purchasing groups continue to be exceedingly selective with renewals and new business; however, when interested in a risk, risk purchasing groups continue to offer very competitive options. Reliance on crime scores as an underwriting tool and guideline is becoming frequent. Carrier appetites are reactive to loss trends. With no sign of slowing claim frequency and severity, we expect the current course to persist through the year. In areas where appetite is static, we anticipate capacity to fluctuate.</td>
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<tr>
<td>Claims</td>
<td>Two major claim trends continue to contribute to current market pressures: 1) Social inflation drives rising claim payouts, loss ratios and insurance costs. 2) 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.</td>
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With Hurricane Ian damage expected to be over $60B and January 1 CAT treaty renewals expected to be well into the double digits for less capacity, carriers preemptively started seeking rates higher than seen in previous quarters. Accounts with little to no CAT and an attractive loss history are still seeing rate increases in the high single digits. Conversely, less desirable occupancy classes, less profitable accounts and those located in higher-loss-prone states (FL, LA, MS, TX) were seeing pricing conditions pushed more (30%+).

If January 1 CAT treaty renewal results turn out how they are expected, we can expect rates to be pushed like clients haven’t seen since the market started to harden. Accounts with CAT-heavy portfolios, tougher occupancies like multifamily and adverse loss histories are going to be the most challenged, with potential rate increases starting upwards of 50%.

While overall policy limits have seen little change over the year, this quarter saw named windstorm limits on accounts, with Florida exposure being heavily scrutinized, and in a lot of cases, reduced or not completely filled out. Contingent business interruption values for certain account types (i.e., retail) continue seeing a more detailed underwriting review due to supply chain issues.

We will continue to see named windstorm limits, specifically in Florida and Texas, lowered, especially on programs that previously relied on a single carrier writing 100% of their exposure, like AmRisc or Velocity. Expect scrutiny on contingent business interruption values to continue until local/national/international supply chain resolutions are found.

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.

We expect to see the push for higher retentions on accounts with loss experience to continue into 2023. In addition, clients with locations in Florida can possibly expect to see the traditional 5% Named Windstorm deductible increased.

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 exposure. 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.

While overall capacity seemed to be robust in previous quarters, we continued to see significant amounts of carriers shrinking their lines due to recent reinsurance renewals and the devastating effects of Hurricane Ian. Prolonged challenges continued to exist in higher-loss-prone states (TX and FL, emphasis on FL) which may now require a shared/layered program solution rather than a traditional single-carrier approach. AmRisc and Velocity, while not exiting the marketplace, are reevaluating their CAT books and either decreasing capacity, increasing premium substantially or both.

After Hurricane Ian and the expected increases for CAT treaties on January 1, we could very well see carriers exiting the property marketplace in 2023, thus making it more difficult to complete programs.

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.
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