Quarterly Claims Journal

Financial Services and Management Liability

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Corporations

Supreme Court to Hear Case that May Allow Parties to Sue Corporations in Any State Where They Are Registered to Conduct Business

Mallory v. Norfolk Southern Railway Company

If a corporation registers to conduct business in a state, does that mean they have consented to the jurisdiction of that state? That is the question before the United States Supreme Court in the Mallory v. Norfolk Southern Railway Company case. The plaintiff, Robert Mallory, worked for Norfolk Southern for decades, and alleges he was exposed to toxic chemicals that lead to his cancer. Mr. Mallory worked for the company in Virginia and Ohio. Norfolk Southern is a Virginia company and has its principal location in Virginia. Where did Mr. Mallory file suit? The Court of Common Pleas, Philadelphia County, PA.

The lower courts ruled that the state’s business registration statute was unconstitutional to the extent it argued that it provided general jurisdiction over registered foreign corporations. On appeal to the Pennsylvania Supreme Court, the plaintiffs argued that not only did the business registration requirement confer personal jurisdiction, but that Pennsylvania’s long-arm statute granted the courts general jurisdiction over foreign corporations even if it was not the state of incorporation, or had established its principal place of business there, so as to be “at home” in Pennsylvania. The Pennsylvania Supreme Court agreed with Norfolk Southern that mere registration to do business within Pennsylvania does not make it “at home” in the state. Relying on other long-time precedential cases regarding personal jurisdiction, Mr. Lowery was rebuffed again.

On April 26, 2022, the United States Supreme Court agreed to hear the case. Supreme Court analysts have noted that the Court is willing to consider the “modern corporation,” the one with many headquarters and operations throughout the globe to reconsider whether or not jurisdictional protections are necessary. In addition, they are a handful of states whose business registration requirements expressly state that the corporation has agreed to personal jurisdiction by virtue of such registration. Were the Supreme Court to disagree with Pennsylvania, this would go against long-standing precedent as regards personal jurisdiction.

What does a ruling in favor of Mr. Mallory mean for business? We certainly expect plaintiff’s attorneys to hone their forum-shopping skills to find the most favorable jurisdictions for their client’s claims. Companies may find themselves in unfamiliar venues, facing risks of being “home-towned” by attorneys ingrained in that local community. Counsel, corporate representatives and witnesses will be travelling to inconvenient or out-of-the-way locales. All this means a greater exposure facing corporations, both in defending and potential liability.

We will continue to monitor this matter and report on the Supreme Court’s decision.

Case No. 21-1168 (U.S. April 25, 2022)

The Third Circuit Rules that Robo-Calling a Pre-Existing Contact List Does Not Violate the TCPA

Panzarella et al. v. Navient Solutions

In 2021, the United States Supreme Court ruled that for a device to be considered an automatic telephone dialing system (ATDS), it must utilize a random or sequential number generator to produce or store telephone numbers and then dial phone them. The Third Circuit’s ruling in Panzarella et al. v. Navient Solutions clarifies the standards of the TCPA even further when it dismissed a class action filed by two individuals who complained of receiving calls from an ATDS.

Matthew Panzarella received multiple calls in connection with delinquent student loans. He alleged these automatically generated calls that he and his references received violated the TCPA.

Navient argued that the calls to those numbers were not sourced from a random or sequential number generator, rather the numbers were drawn from lists collected and kept by Navient in connection with the servicing of the loans, and as such were not in violation of the TCPA.

The Third Circuit agreed with Navient, finding that the telephone numbers that were called were directly associated to customers of Navient’s student loan accounts. The court went on to say that given the relation to the existing student accounts, the plaintiffs were unable to establish that the calls were random or derived from a sequential number generator. Rather, the court ruled that the calls were specifically targeted in relation to the customer accounts.

This ruling is favorable for businesses who use automatic systems to reach out to customers who have provided their telephone numbers, as it can be argued that such contact comes from specific lists and are not random. As such, these businesses can safely reach out to their established customer contacts without fear of violating the TCPA. Given that securing insurance for TCPA claims can be difficult and expensive, this is a welcome reprieve form that exposure.

Case No. 20-2371 (3rd Cir. June 14, 2022)
Colonial Pipeline Dismissed From Cybersecurity Consumer Suit
Dickerson v. Colonial Pipeline Co. et al

On May 7, 2021, a ransomware attack penetrated Colonial’s billing software; in response to the cyberattack, Colonial shut down pipeline operations, which decreased the supply of gasoline and other fuel products to much of the East Coast of the United States and caused the price of gasoline to rise. Colonial subsequently made a $4.4 million ransomware payment to the perpetrators of the hack.

Plaintiffs brought suit against Colonial, alleging they purchased gasoline at retail and paid higher prices as a result of Colonial’s shutdown. Plaintiffs brought claims for negligence, declaratory judgment pursuant, violations of the North Carolina Unfair and Deceptive Trade Practice Act, breach of public duty, public nuisance, and unjust enrichment.

The court dismissed the claims finding that Colonial did not owe any common law or statutory duty to plaintiffs to maintain uninterrupted service. The court also found there was no special relationship between the parties as the plaintiffs were neither shippers nor Colonial’s direct customers. Regarding the alleged violation of the North Carolina Unfair and Deceptive Trade Practice Act, the court found that plaintiffs’ alleged unfair practices they attribute to Colonial of shutting down the pipeline (of which there is no duty to maintain continual operation), violating industry standards, and undertaking inadequate cybersecurity measures did not meet the high standard of unethical or unscrupulous practices recognized as unlawful under the Act.

Finally, regarding the public nuisance allegation, the court found that plaintiffs failed to demonstrate that they have a private or common right to purchase retail gasoline in general, much less gasoline transported by Colonial.

Case No. 21-cv-02098 (N.D. Ga. June 17, 2022)

Federal Judge Allows Employee Lawsuit Over Concerns Regarding Voice Recognition Software
Barton v. Walmart Inc.

An employee sued Walmart in Illinois state court in July 2021, alleging they violated the Illinois Biometric Information and Privacy Act by requiring employees speak into a headset with software that captures and uses their voiceprints as part of their jobs, without ever outlining its data collection practices or obtaining their informed consent.

Walmart filed a motion to dismiss arguing that the system used relies on keywords that are spoken along with employee numbers entered into the system, as opposed to the voices themselves.

The court declined to grant the motion, stating the plaintiff’s allegations were plausible, and that additional discovery would be necessary to determine whether or not Walmart was indeed collecting voiceprints in violation of BIPA. As such, Walmart will continue to incur defense costs as the litigation progresses.

This matter continues the trend of BIPA litigation involving voice recognition software and how companies are dealing with such in the absence of a definition of “voiceprint.” As with all BIPA litigation, the recurring theme is that the companies didn’t obtain consent before collecting biometric data, nor did they publish a data retention and destruction policy.

Other well-known names contending with similar claims include McDonald’s, Amazon, Google and American Airlines. Not all of the litigation is being brought by employees. Customer claims make up a good percentage of litigants. Many companies are exploring how to address individual concerns and better comply with BIPA so that they may take advantage of available technology to run their businesses in a more efficient manner and better serve their customers.

Case No. 21-cv-04329 (N.D. Ill. May 31, 2022)

Herff Jones Data Breach Leads to Multimillion Dollar Settlement
In re: Herff Jones Data Breach Litigation

The data security incident, which occurred from August 2020 through April 2021, arose from a third-party criminal cyberattack involving the placement of malware targeting customers’ payment card information. The suit, filed in 2021, contained allegations of negligence that Herff Jones failed to protect customers during a 2021 data breach. The class asserted that due to the careless acts and omissions and the failure to protects customers’ data, the customers now face a lifetime risk of identify theft.

A potential settlement has been reached in which Herff Jones will pay $4.35 million to resolve the class action lawsuit. The settlement will benefit the individuals who credit card information was exposed due to the breach. The settlement does not establish an admission of fault and Herff Jones has not admitted to any wrongdoing. The settlement approval hearing is scheduled for July 2022.

A number of universities confirmed that their students were affected by this breach. As Herff Jones is the leading provider of educational products, this data breach is the latest hit to the educational institution sector.

Case No. 21-cv-1329 (S.D. Ind. Apr. 29, 2022)
Employment Practices

Medical Leave Can Be a Reasonable Accommodation Under the ADA

King v. Steward Trumbull Memorial Hospital

In a decision rendered on April 7, 2022, the United States Court of Appeals for the Sixth Circuit held that medical leave could constitute a reasonable accommodation even when in-person attendance is required to perform the essential functions of the job.

Plaintiff Jeanne King was employed as a registered nurse with Defendant Trumbull Memorial Hospital from 2002 until her termination on June 2, 2017. Plaintiff suffered from asthma, which she alleged was often triggered by stress and seasonal allergies, causing intermittent flare-ups and severe asthma attacks. She alleged that at times the flare-ups left her unable to perform her work duties, and required her to call in sick and request time off from work.

The Hospital offered a medical leave policy that provided for up to twelve weeks of unpaid leave under the FMLA, or up to one year of non-FMLA leave. The hospital also enforced an attendance policy that utilized progressive discipline, including verbal and written warnings, probation, and ultimately termination for “excessive absenteeism.”

Throughout the years, plaintiff’s asthma flare-ups required her to be absent from work on several occasions, some of which were covered by either FMLA or non-FMLA leave. While she was given several written and verbal warnings for attendance issues, those warnings were occasionally withdrawn after the absences were excused under one of the two available medical leave policies.

Plaintiff’s lawsuit arises out of a series of incidents that began in April 2017 and continued through to her termination in June 2017. In April 2017, plaintiff suffered an asthma attack while working and was unable to complete her shift. Over the following five weeks, she continued to suffer from severe asthma-related symptoms, which on occasion required emergency medical attention. She thereafter called in sick for her next fourteen shifts. During this time, plaintiff was under the care of a physician, who advised that she not return to work until they had developed a better treatment plan. When she did not improve, plaintiff contacted the hospital’s third-party administrator to request medical leave; however, she was informed that she was ineligible to apply for leave because she had not worked the requisite number of hours, and was then directed to the hospital’s Human Resources department. HR ultimately determined that there was an error with the calculation of plaintiff’s hours, and advised her that they would rectify the error so that she could then apply for leave to which she was entitled. In the interim, plaintiff continued to call in sick for work. While she was waiting for the issue to be resolved, the hospital terminated her employment “for failure to apply timely for a leave of absence.”

The plaintiff sued the hospital alleging three causes of action: interference and retaliation in violation of the FMLA; failure to accommodate and disability discrimination in violation of the ADA; and failure to accommodate and disability discrimination in violation of the Ohio Revised Code. The Hospital moved for summary judgment on all counts. As to her federal claims, the district court found that plaintiff was ineligible for FMLA leave and that she failed to exhaust her ADA claims. The district court then found that plaintiff abandoned her wrongful termination claim arising under Ohio law because she expressly “limit[ed] her arguments to those under Ohio law.” The district court granted summary judgment in the hospital’s favor on all counts, and plaintiff appealed.

The plaintiff argued that defendant failed to accommodate plaintiff’s asthma flare-ups by making a request, and that plaintiff made several requests for medical leave, triggering the hospital’s duty to engage in an interactive process. Finally, the court found that while keeping an employee’s job open indefinitely may cause undue hardship, keeping the job open long enough to allow the employee to apply for leave does not.

To establish a prima facie claim for failure to accommodate, “a plaintiff must show that (1) she was disabled within the meaning of [the statute]; (2) she was otherwise qualified for her job, with or without reasonable accommodation; (3) the defendant knew or had reason to know about her disability; (4) she requested an accommodation; and (5) the defendant failed to provide the necessary accommodation.” Whether she was qualified for her position seems to be the crux of the issue. The plaintiff argued that she was well-qualified for her position by virtue of her education and experience, and that she could perform the essential functions of her position if given the reasonable accommodation of time off of work. She argued that agreed extended absences do not automatically make her unqualified. The hospital in turn argued that plaintiff’s asthma flare-ups made her unqualified for her job because “an essential element of her job as a nurse…required regular, in-person attendance,” and thus, her preferred accommodation, medical leave – which required extended absences – was per se unreasonable.

The appellate court disagreed with the hospital’s position, finding its logic flawed. If the court were to agree with the hospital’s logic, then the argument would bar any in-person employee from obtaining temporary medical leave as an accommodation. This conclusion runs afield of the plain language of the ADA. The court noted that the “plain language of the ADA defines a qualified individual as an individual who, with or without reasonable accommodation, can perform the essential functions of [the job].” The court also noted that the ADA’s reasonable accommodation requirement is to require employers “to change the way things are customarily done to enable employees with disabilities to work.”

The court continued that “[l]eave as a reasonable accommodation is therefore consistent with that statutory purpose because it enables the employee to return to work following the period of leave requested as an accommodation – i.e., it enables the employee to perform the essential function of attendance.” Citing another of its holdings, the court determined that “[a] provided medical leave may be a reasonable accommodation and an inability to work while on such leave does not mean that an individual is automatically unqualified.”

In medical leave cases, the focus then becomes the reasonableness of the leave request. The court stated that “[w]hen assessing reasonableness, this Court considers: (1) the amount of leave sought; (2) whether the requested leave generally complies with the employee’s leave policies; and (3) whether the employee’s progress, treatment, and likelihood of recovery.” The court determined that viewing the facts in the light most favorable to the plaintiff, non-FMLA leave would have been a reasonable accommodation for her asthma flare-up. First, the court acknowledged that while requests for indefinite leave are likely unreasonable, plaintiff’s requested amount of leave – five weeks – was reasonable, and was within the hospital’s permitted leave of up to one year of non-FMLA leave. Second, the court found that plaintiff’s request for retroactive emergency leave was also a reasonable accommodation. The court also found that an employee need not use the “magic word” “disabled” or “accommodation” in making a request, and that plaintiff made several requests for medical leave, triggering the hospital’s duty to engage in an interactive process.

State Law Remedies Not Available for FLSA Violations

Devaney v. Zucchini Gold, LLC

Departing from several lower court decisions, the Massachusetts Supreme Court held that employees who assert wage claims under the Fair Labor Standards Act (FLSA) cannot recover remedies available under the Massachusetts Wage Act (MWA). The issue before the court was whether the comprehensive remedial scheme provided by the FLSA for recovery of damages when an employer violates federal overtime law precludes an employee from alternatively pursuing remedies under the MWA for the unitemary payment of overtime wages due solely pursuant to the FLSA. The court held that because awarding such state law remedies would conflict with the federal remedies provided in the FLSA, and because it must construe its state laws to avoid preemption, if possible, then such state law remedies are not available in these circumstances.

The three plaintiffs were employees of a Needham-based restaurant called the Rice Barn, which was owned and operated by Defendant Zucchini Gold, LLC. The restaurant was open seven days a week, including lunch and dinner on weekdays and during weekends. While the restaurant failed to keep complete records of the plaintiffs’ work hours and wages, it was agreed that each plaintiff routinely worked more than forty hours per week. The plaintiffs were paid a fixed daily rate on weekdays, and on weekends, when the restaurant was open from 11 a.m. to 11 p.m., at the rate of $13.50 per hour. However, the record showed that plaintiffs were not always paid flat sums per day or per half day.
CA Court Rules Board Diversity Requirement Unconstitutional

Robin Crest v. Alex Padilla

On September 30, 2020, California Governor Gavin Newsom signed into law AB 979, the Corporate Code § 301.4, which requires boards of directors of publicly held companies headquartered in California to include a certain number of directors from "underrepresented communities." A "director from an underrepresented community" is defined in the law as "an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self identifies as gay, lesbian, bisexual or transgender." Specifically, Corporations Code § 301.4 requires corporations with nine or more directors to have at least three directors from an underrepresented community, corporations with five to eight directors to have at least two directors, and corporations with four or fewer to have at least one director from an underrepresented community.

Almost immediately, Judicial Watch, a conservative activist group, filed a Complaint for Declaratory and Injunctive Relief against Alex Padilla in his official capacity as Secretary of State on behalf of three California taxpayers, arguing that the law is facially unconstitutional. They argued that the law violates the equal protection clause of California’s Constitution by treating similarly situated individuals differently based on race, sexual orientation and gender identity. The group further argued that there is no compelling government interest to justify the law, and that it is not narrowly tailored because imposing such diversity requirements on corporations was not the least restrictive means. In turn, the State of California argued that the law was intended to remedy discrimination in the selection of corporate board members, relying on anecdotal testimony in affidavits and 10-K filings.

In an April 1, 2022 decision on Judicial Watch’s motion for summary judgment, or in the alternative, summary adjudication on the sole cause of action in the Complaint, Los Angeles Superior Court Judge Terry Green decided in favor of Judicial Watch, ruling that Corporations Code § 301.4 violates the Equal Protection Clause of California’s Constitution. Prefacing its decision, the court noted, “The court held that Corporations Code § 301.4 violates the Equal Protection Clause of the California Constitution on its face because ‘it treats similarly situated individuals – qualified potential corporate board members – differently based on their membership (or lack thereof) in certain listed racial, sexual orientation, and gender identity groups. It requires that a certain specific number of board seats be reserved for members of the groups on the list — and necessarily excludes members of other groups from those seats.’ In so holding, the court first found that the state failed to meet the specific and compelling interest evidentiary requirements, as set forth in Grutter v. State Personnel Bd. (2001) 92 Cal.App. 4th 16. The state offered two potential compelling interests — remedying discrimination in corporate board selection, and obtaining representation from workers. But the court found that the first was too broad, and the second was not a compelling interest.

The court stated further that even if the state could meet the strict scrutiny requirement, there is also an evidentiary requirement, as noted in Connerly, which requires that the state “have convincing evidence” of discrimination and that their remedial action is necessary. The court found that neither the state nor the plaintiffs offered any guidance as to how courts are to determine if the legislature has “convincing evidence” that their action was necessary. Nonetheless, it determined that “when the court is looking for ‘convincing evidence’ it is checking to see what kind of investigation has been done, either before passage of the bill or since. It is looking for a detailed consideration of past practices in the affected area. Statistical evidence is ‘significant’ but by itself insufficient to support a finding of discrimination. Likewise, anecdotal evidence in the form of testimony from individuals who have observed discrimination in the defined area is not by itself sufficient to prove discrimination.”

Turning to the specific evidence presented by the state, the court first found that the anecdotal evidence offered by the secretary in the form of affidavits, when combined with proper statistics, could support a finding of discrimination. However, the statistical evidence was absent. The statistics offered as evidence did not have a proper comparison group — “they have no measurement of the qualified talent pool, and thus they cannot show a proper statistical disparity.” The court attempted to satisfy this requirement by offering evidence to show that there is an issue in the pipeline — “that the ‘C-suite’ executive jobs that are the most common ‘feeders’ for board positions belong disproportionately to straight, cisgender white males,” and that the board selection process was “secretive, exclusive, and dependent on the personal networks of those already holding board positions.” The court found this evidence to be insufficient.

The court held that “[t]he Secretary’s anecdotal evidence is all right as far as it goes, but it cannot be convincing by itself. It needs the support of either (1) a properly established statistical disparity or (2) a properly traced statistical history showing that, from a time of formal discrimination until now, the selection process has remained unchanged.” Because the law does not define a sufficiently specific area, and is not supported convincing evidence of discrimination, the State’s interest in remediating discrimination cannot be used to justify this measure.”

In this case, the arena in which the alleged discrimination has occurred is “in corporate board selection.” The court noted that Connerly forbids general assertions of discrimination “in a particular industry or region.” The court found that to be “neither confined nor specific because it covers the entire nation and all business.”

The plaintiffs sued Rice Barn alleging violations of the FLSA for failure to pay overtime wages, violations of the MWA for failure to pay the FLSA overtime wages in a timely manner, and violations of the federal and state wage laws. Summary judgment was granted in favor of the plaintiffs as to Rice Barn’s liability under the federal overtime law and the MWA, and a jury trial thereafter commenced solely on the issue of damages. The trial judge instructed the jury that damages under the federal overtime law should be calculated by multiplying the plaintiffs’ regular rate by one and one-half. After the jury returned a verdict in favor of each plaintiff, the trial judge then awarded treble damages and attorneys’ fees and costs pursuant to the MWA. Under the FLSA, a prevailing plaintiff is entitled to double damages, whereas the MWA provides for a mandatory treble damage. The remedies available under the MWA are, in some instances, more generous than those available under the FLSA.

Rice Barn appealed, arguing, among other things, that the trial judge erred in permitting plaintiffs to elect the remedies provided by the MWA where, as here, the plaintiffs did not pursue a claim for a violation of the state overtime law, and the sole basis for Rice Barn’s liability was pursuant to the federal overtime law, which itself provides a remedy. In response, the plaintiffs argued that a “host of cases” have construed that the MWA allows employees to recover under the wage act when their employers failed to timely pay overtime compensation owed exclusively under the FLSA. On appeal, the Supreme Court reversed and remanded the case, concluding that the trial court improperly instructed the jury on the calculation of actual damages and in awarding treble damages under the MWA for overtime claims made under the FLSA.

Regarding the trial court’s award of treble damages, the Supreme Judicial Court held that where the plaintiffs’ sole claim for overtime wages rests on the FLSA, they are limited to the remedies provided by the FLSA. The court noted, quoting Aldridge, 990 F.3d at 827, that federal “courts are all over the map on whether plaintiffs may bring [S]tate law claims in addition to FLSA claims for the same conduct. … [t]he common thread is this: When the FLSA provides a remedial measure, it conflicts with similar [S]tate law causes of action and thus preempts them; when the FLSA does not provide a remedial measure, there is no preemption. The court concluded that “allowing an employee aggrieved by a violation of the federal overtime law to elect State wage act remedies for untimely payments of wages due solely under the FLSA would present an obstacle to the accomplishment and execution of the full purposes and objectives of the FLSA,” and would amount to “circumvention of the remedy prescribed by Congress.”

Case No. S.C.113-76 (Mass. Apr. 14, 2022)
Turning now to the state’s public benefits argument, the state attempted to lay out the benefits that a business gets from having a diverse board, i.e. diverse boards lead to better decision-making and higher profits. However, the court questioned whether the state’s “generic interest in healthy business” is sufficiently specific, determining that it is not. The court found that “[i]t is not difficult to accept the proposition that diverse boards may be ‘good for business’… But if these downstream, indirect effects were to be compelling interests, there is no limit to what might be allowed, provided the economic data were properly massaged.”

Finally, the court determined that even if it were to find that the state had shown a compelling interest, they would still have to establish that the remedy chosen is narrowly tailored to suit the interest, which the state has failed to do. The court found that Section 301.4 is not the least restrictive means available. Again quoting Connerly, the court found that “[o]nly the most exact connection between justification and classification will suffice. The classification must appear necessary rather than convenient, and the availability of nonracial alternatives – or the failure of the legislative body to consider such alternatives – will be fatal to the classification.’

In summary, the court held that because Section 301.4 treats similarly situated individuals differently based on race, sexual orientation and gender identity, and because the use of suspect categories is not justified by any compelling interest, and because the statute is not narrowly tailored to serve the interests offered, Section 301.4 violations the Equal Protection Clause of the California Constitution.

US Supreme Court Rules that California’s Private Attorney General Act Does Not Override Employer’s Ability to Enforce Arbitration Agreements

Angie Moriana filed a lawsuit pursuant to California’s Private Attorney General Act (PAGA) seeking damages under the state’s wage and hour laws. Ms. Moriana was bringing the action on behalf of herself and other similarly situated employees and the State of California. Viking River Cruises sought to move the case to arbitration based on the terms of the employment agreement with the plaintiff.

The US Supreme Court ruled 8-1 that, in reviewing the law, PAGA claims may go to arbitration where such arbitration clauses are proper and in place. Viking Cruise’s employee contracts included such arbitration clauses. The Supreme Court did go on to say that it would be up to the California legislature to make any changes that would allow PAGA plaintiffs the standing to litigate their claims in court. Alternatively it would be up to the California courts to determine whether or not individuals could pursue representative actions under PAGA.

This decision is expected to impact many pending claims being brought pursuant to PAGA, and those matters may now wind up in arbitration. In addition, the plaintiff’s bar will have difficulty in bringing future PAGA actions given the prevalence of arbitration clauses. This is a favorable development for California employers especially in the wage and hour arena where class actions present a much greater exposure. So long as the law in California does not change, employers should expect that their arbitration clauses will be enforceable.

In a long-awaited decision, the Supreme Court of California held that an employer is responsible for treble the amount of the late wages, and not trebled interest. According to the court, the Wage Act provides that any employee discharged from employment “shall be paid in full on the day of his discharge.” The Act defines “wages” to include “any holiday or vacation payments due an employee under an oral or written agreement.” The court determined that “[c]ombined, these two provisions make clear that a terminated employee is entitled to all accrued vacation benefits on the day of the discharge.” The court noted that, “[t]he scope, requirements, and enforcement mechanisms of the act have varied greatly since it was first enacted, but in understanding it, we have always recognized that it was intended to protect the employees, who are often dependent for their daily support upon the prompt payment of their wages… Because of the potentially severe financial consequences of even a minor violation, the act not only protects wage earners from the long-term detention of wages by unscrupulous employers…but also imposes strict liability on employers, who must “suffer the consequences of violating the statute regardless of intent.”

The plaintiff thereafter filed suit alleging failure to pay her vacation pay on the day of her termination, as required by the Wage Act. She also alleged that the city engaged in a practice of failing to pay departing workers on time, and purported to bring a class claim on behalf of all city employees who were involuntarily discharged or voluntarily left employment; however, the class certification was denied. The case then proceeded to a bench trial. The trial judge ruled that plaintiff was only entitled to treble 12% interest for the three-week delay in receiving her vacation pay, which she had already received, and also awarded plaintiff attorney’s fees. The defendant appealed the attorney fee award, and the plaintiff cross-appealed the judge’s ruling that she was not entitled to treble lost wages.

On appeal the parties disputed the correct measure of damages for the private right of action for Wage Act violations, when the employer pays wages after the deadlines provided in the act, but before the employee files a complaint. The plaintiff argued that the proper measure of damages is treble damages, while the employer argued that the proper measure of damages was treble interest, relying on the oft cited case of Dobin. The Massachusetts Supreme Court held that an employer is responsible for treble the amount of the late wages, and not trebled interest. The court determined that any employee discharged from employment “shall be paid in full on the day of his discharge.” The Act defines “wages” to include “any holiday or vacation payments due an employee under an oral or written agreement.” The court determined that “[c]ombined, these two provisions make clear that a terminated employee is entitled to all accrued vacation benefits on the day of the discharge.” The court noted that, “[t]he scope, requirements, and enforcement mechanisms of the act have varied greatly since it was first enacted, but in interpreting it, we have always recognized it was intended for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages… Because of the potentially severe financial consequences of even a minor violation, the act not only protects wage earners from the long-term detention of wages by unscrupulous employers…but also imposes strict liability on employers, who must ‘suffer the consequences of violating the statute regardless of intent.’

Case No. 20-1573 (U.S. June 15, 2022)

Massachusetts Employers Strictly Liable for Treble Damages for Making Late Wage Payments

In an April 4, 2022 decision, the Massachusetts Supreme Judicial Court held that employers are strictly liable for treble damages for making late wage payments, even when the employee has not filed a civil suit seeking unpaid wages. In so doing, the MA Supreme Court departed from the decision in another case, Dobin v. CIOView Corp., which provided for the payment of trebled interest as opposed to treble damages.

On the date of plaintiff’s discharge from employment, her employer, the City of Methuen, owed her for accrued vacation time. Rather than paying her on the date of her termination, as required by the Massachusetts Wage Act, the defendant paid her three weeks later. The plaintiff unsuccesssfully contested her termination before the Civil Service Commission and appealed to the Superior Court. Over a year later, while her appeal was pending, plaintiff’s lawyer sent a demand to the defendant for an amount equal to trebling of the vacation pay, plus an additional amount for attorney’s fees. The plaintiff’s termination was affirmed, and shortly thereafter, defendant paid plaintiff an additional amount that represented a trebling of the 12% annual interest on the plaintiff’s vacation pay accrued during the three weeks between her termination and payment.

The plaintiff’s complaint alleged that 1) under the applicable IWC, Spectrum was obligated to pay premium pay for each day that Spectrum failed to provide employees a meal break; 2) Spectrum was obligated to make those payments in a timely manner upon discharge (immediately), or resignation (immediately at the time of resignation if the employee gave sufficient notice, and within 72 hours if the employee did not), but failed to do so; and 3) the failure to make those payments was willful, warranting the payment of waiting time penalties. The plaintiff also alleged that Spectrum failed to report the premium pay on employees’ wage statements and timely provide the pay to employees upon their discharge or resignation, in violation of the CA Labor Code.

The trial court initially granted summary judgment in favor of Spectrum, but the decision was later reversed by the Court of Appeal. On remand, the trial court certified a class for the meal break and related timely payment and wage statement claims and then held a trial in stages. The trial court determined that Spectrum owed premium pay and that the untimely payment could trigger statutory penalties, but found that Spectrum did not owe waiting time penalties because its failure to pay premium pay was not willful. However, the trial court found that Spectrum’s wage statement omissions were intentional and awarded statutory penalties.
An Employee with Mild COVID-19 Symptoms Is Not “Disabled” Under California Law

Roman v. Hertz Local Edition Corp.

An employee with mild COVID-19 symptoms is not “disabled” under California Law. Plaintiff Michelle Roman was employed with Defendant Hertz Local Edition Corp. as a management associate in the National City, California branch. Hertz had a policy that required “employees showing...recognized indications of COVID-19 not be admitted to company facilities.” Per the policy, “recognized indications” including “feeling unwell and experiencing cough or shortness of breath.”

On September 1, 2020, plaintiff woke up feeling tired, but otherwise fine. She reported to work as usual. Later that day, she began experiencing mild body aches and fatigue. She did not report those symptoms to anyone at work because they were mild. After work, her symptoms worsened. She scheduled a COVID-19 test for the following day. The following day, September 2nd, plaintiff reported to work again. When she went to work, a colleague took plaintiff’s temperature pursuant to an employee screening policy, which was normal. During lunch, plaintiff took a COVID-19 test and returned to work. Later that evening, she notified her supervisor that she had been feeling ill for two days, with cold symptoms. Plaintiff took the following day, September 3rd, off from work. She believed her symptoms were attributable to a cold because they were mild and not serious enough to be caused by COVID-19. On September 4th, plaintiff felt better but had a headache. She alleged that her supervisor told her to report to work while she awaited the results of her COVID-19 test because they were busy, as it was the start of the Labor Day weekend. However, plaintiff could not produce the test during discovery. Later that day, on September 4th, plaintiff received a positive COVID-19 test, and reported the result to her supervisor, who in turn reported the positive test result to human resources. Plaintiff was then sent home, and quarantined for two weeks until September 18th.

Per company policy, an employee who answered in the affirmative during the employee screening would be sent home, and could return to work after seven days of the symptoms first appearing if the employee was symptom free of fever and free of any respiratory illness (cough, shortness of breath). Plaintiff took another COVID-19 test on September 16th and received a negative result on September 18th. She advised her supervisor of the negative test result; however, plaintiff was not allowed to return to work because defendant concluded that plaintiff violated company policy by reporting to work on September 1st, despite feeling ill, returning to work on September 2nd, despite scheduling a COVID-19 test, returning to work on September 2nd after taking the test, and returning to work on September 4th while awaiting the results of the test. Plaintiff was thereafter terminated on September 29th.

The plaintiff argued that she suffered from a disability (or alternatively was perceived as suffering from a disability) after she contracted COVID-19, and therefore, she was protected against discriminatory and adverse actions under FEHA. Whether contracting COVID-19 qualifies as a disability under FEHA was an issue of first impression. The court looked to the plain language of FEHA. According to Cal. Code Regs. Tit. 2, § 11065(d)(2)(C), FEHA’s definition of physical disability is construed broadly, and includes conditions such as deafness and blindness, and chronic or episodic conditions such as epilepsy, seizure disorder, diabetes and multiple sclerosis. The court also reviewed Cal. Code Regs. Tit. 2, § 11065(d)(9) (B), which excludes from the definition of disability under FEHA those “conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis.” “Mild conditions” are ones which have “little or no residual effects,” and lists conditions such as “the common cold… seasonal or common influenza…”

The plaintiff also argued that the defendant’s treatment of her; i.e. prevented her from working, transformed her COVID-19 infection into a disability.

The court granted summary judgment in favor of the defendant, finding that plaintiff’s symptoms were mild with little residual effects, and presented with temporary symptoms akin to the common cold or seasonal flu; and therefore, excluded from FEHA’s definition of disability. Further, an employer’s treatment of an individual cannot form the basis of a finding of a disability.

Case No. 20-cv-2462 (S.D. Cal. May 16, 2022)

Home Depot Wins Ruling Rejecting Right to Wear Black Lives Matter Imagery at Work

National Labor Relations Board v. Home Depot USA

The complaint, filed in 2021, contained allegations that the company violated workers’ rights by prohibiting them from wearing Black Lives Matter (BLM) imagery while in the course of employment. A staffer in the Minneapolis, Minnesota store alleged he was suspended after wearing the logo on his apron and encouraging colleagues to join him. The National Labor Relations Board (NLRB) claimed that this violated federal labor law and Home Depot was alleged to have threatened and retaliated against employees for participating in this collective action. Federal labor law protects the rights of employees, with or without a union, to engage in collective action about workplace conditions.

Home Depot’s policy is that it prohibits employees from wearing anything that promotes causes or political messages unrelated to workplace matters. The NLRB’s argument was that BLM should not fall under this policy and the employee was engaging in protected concerted activity. An administrative law judge dismissed the case in June 2022. The judge explained that BLM message in not inherently concerted and the rhetoric lacks an objective and sufficiently direct relationship to the terms and conditions of employment.

Similar suits were filed against Amazon.com Inc and Whole Foods Market. Rulings by NLRB agency judges can be appealed to the full NLRB in Washington, D.C. From there, the matter can be settled in federal court.

Case No. 18-Ca-273796 (N.D. Cal. June 10, 2022)

Both sides appealed. The Court of Appeal affirmed the trial court’s determination that Spectrum had violated meal break laws, but concluded that even a willful failure to pay premium pay could never trigger waiting time penalties, because the payment of premium pay was not payment for labor, but rather a statutory remedy.

The California Supreme Court granted review to consider the issue. The primary issue before the court was whether the extra pay for missed breaks constitutes “wages” that must be reported on statutorily required wage statements during employment, and paid within statutory deadlines when an employee leaves the job. The Supreme Court held that premium pay is both wages and a statutory legal remedy, because “an employee becomes entitled to premium pay for missed or noncompliant meal and rest breaks precisely because...” the employee was required to remain on duty without an appropriate agreement in place authorizing on-duty meal breaks. The court reasoned that “[a]n employee who remains on duty during lunch is providing the employer services; so too the employee who works without relief past the point when permission to stop to eat or rest was legally required...” The statutory provision that provides for premium pay reflects a determination that work in such circumstances is worth more – or should cost the employer more – than other work, and so requires payment of a premium.

On the issue of whether premium pay should be reported on required wage statements, the Supreme Court determined that premium pay owed must be reported on the wage statement, and that an “injury has occurred whenever the employee cannot easily determine certain required information, including rates of pay and ‘all hours worked’ at each rate, that would allow the employee to ascertain whether the payment is correct.”

Finally, the Supreme Court also resolved the issue of the rate of prejudgment interest that applies to amounts due for failure to provide meal and rest breaks, holding that the 7% default rate set by the state constitution, as opposed to the 10% awarded by the trial court, applies.

Case No. S258866 (Cal. May 23, 2022)
The first proposal broadens the names rule requirement that requires investment companies to invest at least 80% of assets in the type of investments in the fund name. The name rule, first adopted in 2001, is covered by Rule 35d-1 under the Investment Company Act. Under the proposed rules, those funds with names suggesting an ESG focus, would be subject to the name rule. This could include terms such as ESG, green or sustainable. Previously, fund names that suggested an investment strategy – as opposed to a particular type of security – were not subject to the name rule. However, under the names rule proposal, if adopted, the universe of funds that would be required to have an 80% investment policy would be expanded. Funds whose names currently denote an investment strategy or other term outside the scope of the names rule would have to either change their names or adopt new investment policies pursuant to the revised rule.

The second proposal focuses on disclosures in prospectuses, annual reports and adviser brochures. Funds focused on the development of environmental, social and governance (ESG) factors. The proposed changes would apply to certain registered investment advisers, advisers exempt from registration, registered investment companies and business development companies.

In a statement published alongside the rules, SEC Chair Gary Gensler stated “ESG encompasses a wide variety of investments and strategies. I think investors should be able to drill down to see what’s under the hood of these strategies. This gets to the heart of the SEC’s mission to protect investors, allowing them to allocate their capital efficiently and meet their needs.”

SEC Proposes New Rules Regarding ESG Investment Practices

The Securities and Exchange Commission approved two new proposals on May 25, concerning funds and advisers’ incorporation of environmental, social and governance (ESG) factors. The proposed changes would apply to certain registered investment advisers, advisers exempt from registration, registered investment companies and business development companies.

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Multiple Financial Institutions Hit With Class Action Suits Regarding Alleged Zelle Scams

Hartsook v. Wells Fargo & Co.; Mensah v. Capital One NA

Bank of America, Capital One, Wells Fargo and Navy Federal Credit Union have all recently been named as defendants in separate purported class actions by consumers who allege they have been victims of fraud on the Zelle payment service. Plaintiffs allege that they have been the victim of fraud on the Zelle service; have incurred losses due to that fraud that have not been reimbursed by the financial institution; and were entitled by the marketing representations of the banks regarding the Zelle service and by their contract promises to a full reimbursement of losses caused by fraud on the Zelle service.

The complaints allege substantially similar allegations: the financial institutions prominently touted Zelle to its accountholders as a secure, free and convenient way to make money transfers. However, the complaints state that the financial institutions misrepresented and omit that there is no recourse for consumers to recoup losses due to fraud. The complaints compare Zelle to “virtually every other payment method commonly used by American consumers – debit cards, credit cards, and checks” in that there is no protection for accountholders who are victims of fraud.

In the Wells Fargo action, plaintiffs accuse Wells Fargo and Early Warning Services LLC, which operates Zelle, of failing to take appropriate action to protect banking customers because it would be too costly.

According to the various plaintiffs, there are approximately 1,500 member banks and credit unions who participate in the Zelle service.


Mensah v. Capital One NA, Case No. 1:22-cv-21681 (S.D. Fla. May 2, 2022)

Jacqueline Wilkins v. Navy Federal Credit Union, Case No. 22-cv-2916 (D.N.J. May 14, 2022)

Court Allows Securities Fraud Class Action to Go Forward Regarding AML and KYC Misrepresentations

Karimi v. Deutsche Bank AG

Judge Rakoff of the Southern District of New York recently allowed a putative securities fraud class action alleging that Deutsche Bank and its recent chief executive officers and chief financial officers materially misrepresented the bank’s anti-money laundering and know-your-customer processes. In addition to those allegations, plaintiffs further allege that the processes were materially ineffective and the bank’s executives and management board routinely overruled compliance staff so that the bank’s wealth management business could commence or continue relationships with high-risk, ultra-rich clients, such as Russian oligarchs, Jeffrey Epstein, founders of terrorist organizations, people associated with Mexican drug cartels and people suspected of financing terrorist organizations. When these relationships were revealed, the bank’s stock allegedly lost value, harming investors.

The court upheld the securities fraud claim alleging a violation of Rule 10b-5 against the CEOs as control persons. In so finding, the court found that bank statements quoted in the complaint are not “fanciful puffery.” These included descriptions of the processes by which the bank claimed to vet its clients and thereby comply with its legal AML and KYC obligations and protect its reputation, such as that the bank’s “KYC procedures start with intensive checks,” its KYC program “includes strict identification requirements,” and assertions that the bank takes specific actions before onboarding clients. The court also found that statements asserting that the bank was “exiting client relationships where [it] considered risks to be too high,” could be proven false if, as alleged, the bank’s executives routinely overruled decisions by risk management staff to close high risk accounts. The court found that these statements all describe specific processes that the complaint alleges were routinely ignored or, in practice, did not even exist when it came to ultra-rich and PEP wealth management clients.

The court also rejected defendants’ suggestion that general disclosures can substantively mitigate the effect of specific, alleged misrepresentations. The court found that the bank’s repeated insistence that it had implemented specific AML & KYC process improvements cannot be ameliorated by the bank’s general acknowledgement of weaknesses in unspecified internal controls and statements generally admitting a need to improve performance.

Finally, the court held that while the complaint alleges with particularity why the CEOs were “culpable participants” in the alleged securities fraud, there were no such allegations connecting the CFOs to the alleged securities fraud and thus the section 20(a) claim was dismissed only as against the CFOs.

Case No. 22-cv-2854 (S.D.N.Y. June 13, 2022)
In its order, the SEC stated that “Upon deployment of the new version of its AML transaction monitoring system, Wells Fargo Advisors failed to perform sufficient testing to ensure that the system cross-referenced or otherwise reconciled both the ISO and Geospatial Codes in order to trigger alerts for wire transfers involving high risk or moderate risk countries. Wells Fargo Advisors also failed to conduct sufficient monitoring post-implementation to assess whether the system was operating as intended.”

The SEC found that Wells Fargo Advisors willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, record keeping and record retention requirements of the BSA, including filing SARs as required by the SAR Rule. Wells Fargo Advisors consequently failed to timely surveil or investigate certain suspicious activity related to foreign wire transfers in its customers’ accounts. As a result, not generate timely alerts for approximately 1,708 brokerage accounts involving wire transfers to or from certain foreign countries determined to be at a high risk or moderate risk for money laundering, terrorist financing or other illegal monetary movements.

Due to the deficient implementation and failure to test and conduct sufficient monitoring of the new AML system between January and September 2019, the new system did not generate timely alerts for approximately 1,708 brokerage transactions. Wells Fargo Advisors consequently failed to timely surveil or investigate certain suspicious activity related to foreign wire transfers in its customers’ brokerage accounts involving wire transfers to or from certain foreign countries determined to be at a high risk or moderate risk for money laundering, terrorist financing or other illegal monetary movements.

In addition, between approximately April 2017 and October 2021, Wells Fargo Advisors failed to timely file at least nine additional SARs due to the failure to appropriately process wire transfer data into Wells Fargo Advisors’ AML transaction monitoring system in certain additional situations, including on dates on which there was a bank holiday without a corresponding brokerage holiday.
Match further argues that Beazley is estopped from denying coverage because it took the insurance company seven months to issue their letter denying coverage. Match had the right under the policy to purchase an extended reporting tail up to thirty days after the policy, or September 19, 2016. As Beazley did not advise Match of the potential late notice defense they would assert, the insured was not afforded the opportunity to purchase that tail to secure coverage for the claim.

We will continue to monitor this case as the arguments raised by Match, if successful, would afford policyholders protections from rigid reporting deadlines. While some policies afford the insured an automatic reporting tail, ranging from 30 to 90 days, not all of them do. It is best to review the policy with your broker to determine what the reporting conditions are under the policy.

Claims often come in near or at the expiration of policy periods. Typically policies have multiple methods to tender claims for coverage, including by phone and email. When under the gun of an expiring policy period, emailing a claim notice tends to be the most efficient way to secure the rights under the policy. NFP is here to assist you in that regard.

Case No. 22-cv-04629 (S.D.N.Y. June 3, 2022)

Court Upholds Relatedness of Securities Actions

First Solar, Inc. v. Nat’l Union First Ins. Co. of Pittsburgh, PA

In March 2022, the Delaware Supreme Court affirmed a Superior Court decision regarding the relatedness of two securities actions. While doing so they disagreed with the standard the Superior Court utilized arguing that the cases need not be “fundamentally identical,” citing that Delaware Courts should interpret the plain ordinary meanings of the policy language and not rely upon any alternate standard.

In 2012, First Solar was served with a securities action making allegations of various misrepresentations, concealing defects in its product, artificially inflating its stock and manipulating its cost metrics. National Union, their primary insurer provided coverage under the 2011 – 2012 policy for this action.

In 2015, a similar securities action was filed against First Solar making many of the same allegations, but with some slight variations. Initially, that lawsuit was submitted and received coverage under the 2011 – 2012 National Union policy. The insurer had deemed the claims to related and as such both actions would be deemed one claim.

However, in January 2020 First Solar negotiated a $350M settlement of the initial action. Combined with legal costs exceeding $80M, the settlement completely exhausted the 2011 – 2012 primary and excess layers of insurance. First Solar still had the second action pending and was in the process of negotiating a $19M settlement for that action.

Faced with no available coverage under the 2011 – 2012 policy after exhaustion, First Solar then applied for coverage under the 2014 – 2015 policy (also with National Union) arguing that the two lawsuits were not related enough to be considered a single claim. National Union disagreed and declined coverage under the 2014 – 2015 policy stating they are related, which would preclude coverage under the later policy.

First Solar sued National Union alleging that the second action involved different plaintiffs, conduct, causes of action and time periods and therefore was not sufficiently related. First Solar asserted that coverage for the second action should be afforded under the 2014 – 2015 policy, which had a fresh $10M primary layer and excess layers above it. National Union disagreed indicating that since the second and the first actions were related, the date of the first action becomes the date of claim for both matters. Under a claims made policy, both actions are combined to one claim and handled under the earlier policy.

The Superior Court ruled that the two actions were “fundamentally identical,” siding with the insurer’s claim that both actions were related. The Supreme Court upheld the ruling but disagreed with the Superior Court’s application of the “fundamentally identical” standard. The Supreme Court stated that the scope of an insurance policy is prescribed by the language in that policy. The court reviewed the related claim definition of the primary policy: “alleging, arising out of, based upon or attributable to any facts or Wrongful Acts that are the same or related to [another claim],” and found the language to be quite broad. They also found that the Superior Court’s reliance upon requiring the claims to be “fundamentally identical” creates a disregard for the plain language of the policy.

Case No. 217 (Del. Mar. 16, 2022)
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 widen with price increases ranging from 30% to over 200%. 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 10% to 30%. 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 sharing of the risk. Social engineering and business email compromise are also generating claims activity in these segments. Pricing increases continue to range from 10% to 30%.

**Pricing**

Overall rates continue to stabilize, but this varies greatly depending on the size, location and specialty of the firm. Small firms may see flat to slight increases, whereas 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.

**Limits**

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.

**Retentions**

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.

**Coverage**

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.

**Carrier**

No significant carrier exits from the line with new capacity continuing to enter the space. The market is still heavily dominated by a handful dozen carriers.

**Claims**

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.

**Forecast**

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.

**Terms and Conditions**

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

**Conclusion**

Some carriers are beginning to exclude social engineering and silent cyber, making the coordination of E&O and cyber coverages more important than ever.
As law firms were increasingly targeted by hackers and those seeking ransoms, rates increased substantially to account for the increased exposure ranging from 30% to over 200%.

Pricing is likely to continue to increase due to increases in claims activity and historically inadequate pricing as compared to exposures.

Many insurers decreased limits available on primary or refused to increase limits to meet law firm demands. This resulted in the need for more participants to meet client demand for limits.

We expect insurers to continue to manage limit capacity, particularly on primary.

Upward pressure on retentions continues, particularly when firms lack requisite controls or have experienced claims activity.

Retentions will continue to rise, as well as requirements for coinsurance or other risk sharing techniques.

Ransomware coverage is closely scrutinized and often sublimited or eliminated. MFA is a standard requirement for coverage and firms unwilling or unable to implement will see reduced coverage.

Continued mandatory requirements for MFA and back-up systems expected for all size firms. Decreased availability of ransomware coverage expected.

Underwriting guidelines tightening and reduced carrier appetite for the class of business was common as activity targeting law firms became more common.

Expect continued emphasis on minimum requirements for data security and cyber controls. Law firms are expected to become a less desirable class of business as cyber carriers continue to tighten underwriting guidelines and requirements.

Increased ransomware and social engineering claims against law firms continue to become public. Several hacking incidents involving large firms heightened concern about increased claims.

Claims activity is expected to continue to increase and cost of investigation and remediation is expected to continue to rise.

COVID-19 concerns, including issues respecting vaccination requirements and return to work, have specifically impacted law firm pricing.

Depending on actual claims development, rate increases may stabilize or even decrease as 2022 matures. The market is likely to remain uncertain.

Many carriers are reducing limits available due to ongoing severity concerns.

Retentions are increasing, particularly in difficult geographies (CA, NY and NJ).

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.

Shifts in capacity are expected as carriers become more conservative about providing specific coverages for law firms. Loss of American Bar Association endorsement may narrow Chubb’s leadership in line of business.

Move of American Bar Association endorsement may mitigate some decrease in capacity/availability of coverage. However, we expect carriers to continue to monitor profitability of line of business closely.

Claims frequency and severity are on the rise as firm’s struggle with return to work issues and historical gender/racial disparity.

Return to work and accompanying policies and procedures are expected to result in increase of EEOC matters and related claims.
Management Lines for Law Firms – D&O, Fiduciary and Crime

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q2 2022 YOY CHANGE</th>
<th>Q2 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ PRICING</td>
<td>10% to 30%</td>
<td>Pricing increases in these lines of business have begun to stabilize, but concerns still remain due to COVID-19 issues, work-from-home and cyber-related events.</td>
<td>10% to 30%</td>
<td>Primary rates should continue to stabilize as adjustments were previously made. Economic conditions could push rates further upward.</td>
</tr>
<tr>
<td>✔ LIMITS</td>
<td></td>
<td>Insurers have focused on managing limits 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></td>
</tr>
<tr>
<td>⚙ RETENTIONS</td>
<td></td>
<td>Retentions will continue to be monitored particularly where there are past claims or claims procedures not fully implemented.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>🔴 COVERAGE</td>
<td></td>
<td>Coverage expansion not anticipated.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>✡ CARRIER</td>
<td></td>
<td>Market has remained relatively stable in the first half of 2022 with no real shifts in participants or appetites.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>🔴 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></td>
</tr>
</tbody>
</table>

Construction

Primary Casualty, Excess Casualty, Builders Risk, Wrap-Ups (OCIP and CCIP), Professional Liability

Construction – Q2 2022 Summary

Q2 2022 witnessed market normalization in many industry classes, due in large part to markets continuing to monitor loss rates at current premium levels and book profitability. Countrywide, markets are seeking rate increases on renewals. However, the rate increases have become more correlated to loss history, risk control and exposures. This is a shift towards account underwriting, which will benefit accounts that have made the investment necessary to improve their risk profile.

Auto liability, which has been a rate driver with 10% to 15%+ rate increases, experienced some rate increase moderation with renewal rate increases on low loss activity accounts in the high single to low double-digit range. General liability rate increases of low to mid single digits continue to be the norm on accounts with low loss activity (frequency and/or severity). Workers’ compensation renewal rates remain static on most accounts. Excess casualty renewal rate changes are linear to underlying policy rate changes in most instances.

Loss activity continues to heavily impact rates, amplifying the need for risk control and loss cost containment strategies such as enterprise-wide emphasis on safety and aggressive claim settlement practices.

Professional liability trends for contractors and construction projects remained consistent with Q1, with limits and pricing being impacted primarily for certain types of exposures, such as heavy civil and residential. Poor loss experience will exacerbate these impacts. Retentions are experiencing increased scrutiny for certain coverages and underwriters are deploying limits more conservatively.

The exit of Vela/Gemini this spring from the New York construction insurance market will be offset by the entrance of QBE. They are expected to enter the market with excess products around late July followed by primary shortly thereafter. Capacity is available in the NY space, but it continues to be a difficult procurement with most placements driven through the E&S market.

Concerns continue to grow regarding inflation, with leading indicators signaling the potential for an economic recession in the United States. These concerns are buoyed by the strength of the job market, low unemployment rates, and consumer spending levels.

Wrap-Ups – Q2 2022 Summary

Wrap-Ups continue to be the preferred Risk Management tool for large projects across the country. With rates stabilizing, Contractors and Developers are in a better position to establish proforma’s and confirm indications regarding insurance. What hasn’t changed, however, is the increasing focus of underwriters on identifying those projects that are utilizing best practices. We are also still seeing the underwriting process take much longer than what we were used to prior to the pandemic.

The new information that we are seeing is increasing settlement figures from Nuclear claims (claims with larger settlement than expected) and it is anticipated that larger claim settlements will continue to be seen in the future. While Wrap-Up limits of $50M and $100M have been the norm for many years. Owners should be looking to increase those limits to protect their assets.

The other big issue we continue to see is project delays leading to increased insurance costs with insurance carriers. Unfortunately, the Construction Market is still faced with the challenge of rising costs of commodities and refining schedules to estimate project completion. So, it is imperative that Developers and Builders take the extra step to establish real project end dates and include contingency where needed. That additional effort to build in proper contingency to your schedule should pay dividends and help protect insurance cost escalation if your project is delayed.
Key points to think about for your next Capital Expenditure project:

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

2. Ask your Broker for multiple options! Full Wrap, GL Only Wrap, OCIP vs. CCIP, should all be on the table. If you start early enough, and your project is of substantial size, you can obtain options for every consideration.

3. Consider increasing limit protection. Claims are still happening, and medical inflation continues to increase along with inflation as a whole. We highly recommend considering larger layers of Umbrella Coverage. Thinking long term can help ensure your project remains successful.

4. Be open to meeting your underwriter face to face. With Covid mandates receding, more business is being done face to face. So while “Zoom” and “Microsoft Teams” technology has been a business savior the last two years, we all recognize that it can’t replace every face to face discussion. With new Wrap-Ups, face to face meetings will only have a positive benefit.

5. Continued to plan for a longer marketing placement. Being earlier to the game is a good play and will only help your overall underwriting review and pricing.

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**Primary Casualty (WC, GL, Auto)**

<table>
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<tr>
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<tr>
<td>PRICING</td>
<td>$</td>
<td>Rate increase moderation remained consistent in GL, with expected rate increases in the 3% to 8% range. WC saw mostly flat increases while AL saw rate moderation for the first time in many years with renewal targets at 8% to 12%. Loss experience will result in higher rate increases and reduced market participation.</td>
<td>0% to 12%</td>
<td>The effects of inflation will continue to escalate claim valuations. Rate increases will continue at current percentages as markets assess the profitability of their books.</td>
</tr>
<tr>
<td>LIMITS</td>
<td>✔</td>
<td>Markets have been consistent with their capacity and attachment point strategies. Most excess markets maintain a max layer exposure of $20M with a target layer exposure of $10M. Lead excess can be expected to be supported or E&amp;S. Most markets are seeking a $10M attachment point in NY. Quota share remained common.</td>
<td>✔</td>
<td>No major changes expected.</td>
</tr>
<tr>
<td>RETENTION</td>
<td>▲</td>
<td>Retention levels remained static for Q2 with accounts/markets seeking program structure continuity in most instances.</td>
<td>▲</td>
<td>The Federal Reserve raised interest rates on its federal funds rate 75-basis points at their June meeting, which is the largest single increase since 1994, in an effort to slow inflation. Interest rates on collateralized obligations directly impact balance sheet risk and should be factored when evaluating total cost of risk.</td>
</tr>
<tr>
<td>COVERAGE</td>
<td>▼</td>
<td>No major changes in Q2.</td>
<td>▼</td>
<td>Coverage may be utilized to limit exposure and increase profitability if loss costs continue to escalate.</td>
</tr>
<tr>
<td>CARRIER</td>
<td>▲</td>
<td>Carriers continue to post strong underwriting results. The uncertainty in the world economy is discussed but hasn’t had major influence on markets, yet.</td>
<td>▲</td>
<td>Carriers will assess the effects of current economic conditions on profitability and react accordingly. The high interest rate environment will offer investment income opportunity not seen for decades, but uncertainty in the global economy will lead to conservative capacity deployment until financial markets stabilize.</td>
</tr>
<tr>
<td>CLAIMS</td>
<td>▲</td>
<td>Claim cost containment continues to be top priority for firms and markets. Adjusters are pricing in escalated claim costs to loss reserves and should be monitored for accuracy.</td>
<td>▲</td>
<td>Markets, brokers and clients will continue to work closely together to produce favorable outcomes. Firms should continue to take an aggressive strategy towards claims handling oversight and file closeout.</td>
</tr>
</tbody>
</table>
### Excess Casualty

<table>
<thead>
<tr>
<th>METRICS</th>
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<th>Q2 2022 COMMENTARY</th>
<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PRICING</strong></td>
<td>$ to 50%</td>
<td>Renewal rate increases in the excess space correlate directly with the underlying policy rates, with the exception of accounts that have been priced considerably below market averages or have experienced increased loss activity, or both. Claim activity near or in the excess layers continued to drive large rate increases.</td>
<td>Excess markets will continue to monitor loss reserves and profitability as loss costs continue to escalate.</td>
</tr>
<tr>
<td><strong>LIMITS</strong></td>
<td>Most markets continue to have layer limit capacity targets on or near $20M. Quota share is utilized to achieve larger layer positions.</td>
<td>With the contraction of layer capacity deployment over the last 24 months, markets will most likely look to rate increases and attachment points rather than capacity deployment, to control profitability.</td>
<td></td>
</tr>
<tr>
<td><strong>RETENTIONS</strong></td>
<td>No major changes in Q2.</td>
<td>Retention and attachment points may be utilized to bolster profitability should claims costs raise combined ratios to concerning levels.</td>
<td></td>
</tr>
<tr>
<td><strong>COVERAGE</strong></td>
<td>No major changes in Q2.</td>
<td>Markets will continue to monitor profitability as they weigh following form coverage verses carve outs for particular exposures.</td>
<td></td>
</tr>
<tr>
<td><strong>CARRIER</strong></td>
<td>The excess market remained strong with abundant market participation. Underwriters continue to be critical of specific regions (ex. NY, FL, CA, IL) and classes of business (ex. T&amp;D, residential, mixers).</td>
<td>Higher interest rates and turbulent equity markets may enitize new market entrants looking for lower volatility capital deployments.</td>
<td></td>
</tr>
<tr>
<td><strong>CLAIMS</strong></td>
<td>Claim costs continue to place pressure on excess layers.</td>
<td>Claim cost containment will continue to be emphasized.</td>
<td></td>
</tr>
</tbody>
</table>

### Builders Risk

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>PRICING</strong></td>
<td>3% to 10%</td>
<td>Pricing strategies and rate targets remained constant quarter over quarter. Larger wood frame projects remain difficult to place.</td>
<td>Material cost escalations will continue to influence underwriting appetite and pricing towards Q4 of 2022. Project extensions may drive rate as underwriters look to increase their premium-to-exposure ratios on projects that were priced several years ago, prior to the current material cost environment.</td>
</tr>
<tr>
<td><strong>LIMITS</strong></td>
<td>Markets continued to utilize short limits and quota share to manage exposure.</td>
<td>Markets have settled in on capacity deployment strategies they are comfortable with. Layer capacity will remain constant barring any major event that warrants a reactive movement.</td>
<td></td>
</tr>
<tr>
<td><strong>RETENTIONS</strong></td>
<td>Attachment points remained consistent.</td>
<td>Similar to layer limits, attachment targets will remain constant unless a reactionary measure is necessary.</td>
<td></td>
</tr>
<tr>
<td><strong>COVERAGE</strong></td>
<td>No major changes in Q2.</td>
<td>With pricing stabilizing and market participation abundant, there should be no significant change in coverage without market interruption.</td>
<td></td>
</tr>
<tr>
<td><strong>CARRIER</strong></td>
<td>Builders risk market participants remained static.</td>
<td>No significant changes in markets offering builders risk.</td>
<td></td>
</tr>
<tr>
<td><strong>CLAIMS</strong></td>
<td>Material costs and delay in start-up are loss cost drivers.</td>
<td>Claim cost escalation continues to drive concerns and may affect rates towards Q4 of 2022.</td>
<td></td>
</tr>
</tbody>
</table>
### Wrap-Ups (OCIP and CCIP)

<table>
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</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>0% to 5%</td>
<td>Rates should continue to hold for 2022, barring major catastrophes and continual COVID-19 shutdowns. Inflation shouldn’t cause an increase of rates but people will still need to be conservative and get out in the marketplace early to get the best results.</td>
<td>-5% to 5%</td>
<td>Rely on your proformas and indications.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>Limits for primary layers continue to stay consistent. Excess capacity is still available but additional time and effort is needed to place coverage as more carriers may be needed to place the same limits. Expect longer periods to place your layers.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>Retention levels available have remained consistent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>Coverage is stable, but still challenging for certain risks. Residential coverage remains the most challenging to place as there are limited markets for &quot;for sale&quot; coverage. Be aware that coverage extensions, while available, are coming with a price.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>For the most part, individual carrier capacity has remained consistent. New carriers have entered the market and while individual carrier capacity hasn’t increased, we are enjoying more competition.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td></td>
<td>Overall claims for construction continue to escalate particularly with severity. Risk managers should think about increasing their umbrella limits.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Professional Liability

<table>
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<tr>
<td><strong>Pricing</strong></td>
<td>0% to 10%</td>
<td>Most contractor renewals present minimal to no rate increases. Certain classes, esp. heavy civil or residential, may realize larger increases. Project policies for certain project types (heavy civil, stadiums) impacted by substantial rate increases. A&amp;E are experiencing moderate rate increases, especially in the London market. Real estate professionals realizing minimal to moderate increases, especially for certain venues (CA and NY).</td>
<td>0% to 10%</td>
<td>Markets will continue to offer competitive premiums for renewals in most classes, with notable exceptions for heavy civil exposures. Restricted limit deployment will continue to impact pricing for larger towers as they progress through the renewal cycle. Real estate professionals pricing should remain stable with minimal increases in most venues if clean loss history.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td>Limits offered are consistent with the insureds’ assets/revenues. Outsized limit offerings are given special review. Markets continue to restrict limit deployment for certain contractor exposures. Continued imposition of sublimits by some markets for certain contractor coverages, such as rectification and protective.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td></td>
<td>Retentions for most contractors, A&amp;E and real estate remained unchanged. Some carriers continue to imposing SIR for contractor’s protective.</td>
<td></td>
<td>Expect increased scrutiny on retention levels.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td>Rectification coverage being incorporated into forms for A&amp;E. Some insurers continue to restrict this coverage for contractors due to poor loss development. Limited appetite continues for residential projects, as well as stadiums. Other policy wording remained consistent, with flexibility to negotiate certain enhancements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td></td>
<td>Brit/Ambridge Group has shut down contractor line of business. Minimal impact anticipated beyond replacing existing policies, as ample capacity remains. Continue to monitor appetites for project policies and primary layer participation for certain contractors. No substantial changes to carrier participation in A&amp;E and real estate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td></td>
<td>Adverse claims trends impacting contractor professional liability policies on heavy civil projects and rectification coverage. Real estate impacted by nuisance claims, especially tenant discrimination.</td>
<td></td>
<td>Continue to monitor impact of losses on heavy civil projects on limit deployment, total available capacity, pricing and coverage for project policies as well as practice policies for heavy civil contractors and projects, as well as impacts to the design professional market.</td>
</tr>
</tbody>
</table>
Energy & Marine

Downstream Energy – Casualty, Downstream Energy – Property, Power Generation, Marine

Casualty – Q2 2022 Summary

Overall, the 2022 US energy casualty market is stabilizing, with improved capacity and more competition amongst insurers. Rate increases are being seen in each of the energy casualty sectors (up-, mid- and downstream) with the rate of increase contingent upon the sector, size, location (state, onshore or offshore), auto fleet and overall loss history.

Pricing in the upstream casualty sector has improved because of the increase in surplus capacity, which has helped slow rate increases to 5% to 10%. The upstream service contractor market is experiencing nominal rate increases compared to the past 24 months due to increased competition amongst admitted insurers that has made placing excess liability easier for oilfield service classes.

The downstream casualty sector is experiencing rate increases averaging 15% to 20%. 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 insurers.

The midstream casualty sector pertains to pipelines, gathering stations, processing plants and terminals which can fall into upstream, downstream and even marine liability insurance markets. Historically, the midstream sector follows the upstream and downstream sectors, which have recently experienced rate increases ranging from 10% to 20%.

Following several high-profile fires, explosions and pollution incidents, rates in the international upstream exploration and production area are increasing between 15% and 20%. These events, in conjunction with rising oil and gas prices, are leading to clients purchasing increased limits.

The Biden administration’s stance on oil and gas is another problematic technology is still renewing with double-digit rate increases.

Drilling and infrastructure projects face scrutiny by the administration while most pipeline projects have slowed or been canceled as oil and gas companies do not plan to invest capital into projects that can be shut down at any time.

Property – Q2 2022 Summary

Hurricane season extends from June 1 to November 30 and for 2022 the NOAA is predicting an above-average hurricane season, with three to six major hurricanes anticipated. 2022 is not forecasted to be as severe as 2021 or 2020. However, clients with assets in exposed areas can expect intense scrutiny at renewal. This is unlikely to be the best time to increase limits or make significant changes to a nat cat structure that increases underwriters’ exposure.

Q2 showed a slowing of rate increases as carriers settled for single-digit rate renewals. Accounts with adverse loss history or problematic technology are still renewing with double-digit rate increases.

Many programs retention levels were adjusted in previous renewal cycles, so the focus is rate. Larger programs are experiencing overall rate reductions by removing expensive, opportunistic structures. The larger steady carriers are pushing for double-digit but settling for single-digit rate increases.

Business interruption values remain an important topic as the price of crude oil continues to increase. Clients should be fully engaged and transparent on their BI calculations to ensure accurate premium calculations and to avoid issues in the event of a loss.

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**Downstream Energy – Casualty**

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<td><strong>Pricing</strong></td>
<td>$15% to 20%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Ratements</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Coverage</strong></td>
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<tr>
<td><strong>Carrier</strong></td>
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</tr>
<tr>
<td><strong>Claims</strong></td>
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</tbody>
</table>

The downstream casualty sector is experiencing rate increases averaging 15% to 20%. This is a big shift compared to last year where the sector was experiencing rate increases up to 25% to 30%.

Insurers should anticipate slight rate increases as the downstream casualty markets are prone to nuclear judgements, inflation and global refining capacity shortage.

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 insurers.

Inflation is becoming a concern which is highlighting that ratements may not be sufficient. This could potentially be an issue later in 2022 but not quite yet.

The downstream contractor market has been moving to a combination (GL/CPL/E&O) form. This approach provides broader coverages on a non-auditable basis, driving rate increases at renewal. The downstream excess casualty markets are following form but offering reduced capacity and are usually capping limits at $5M.

Terms should remain stable but anticipate an end to the non-auditable form and transition back to auditable policies in the downstream servicing sector.

There are a few new entrants in the market who are very selective about the types of business they write.

The lack of refining capacity results in longer run times without proper maintenance combined with inflation and nuclear judgements from sympathetic jurors could exacerbate claims.

Large loss activity for the quarter has been minimal, which has set a positive foundation for the year.

**Downstream Energy – Property**

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<thead>
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<td>$0% to 5%</td>
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</table>

Rate increases continue to slow with rates ranging from flat to 5%. Restructuring layered programs has helped achieve rate reductions on larger portfolios.

Those clients with losses or nat cat exposures can expect to receive rate increases.

Current carriers are willing to deploy more capacity as rates and ratements have improved but this is limited to non-cat exposed clients.

We will continue to see an increase in line sizes as markets try to regain market share on their current portfolio.

Nat cat losses continue to plague the industry. Hail and wildfires are a concern. Carriers are looking to limit their exposure in terms of line size and limits.

With continued increases in commodity prices carriers will be looking to limit their BI exposure through caps on declared values.

No notable entrants or exits in the space — it’s fairly stable. Non-prototypical occupancies continue to obtain support. As the price of crude continues to increase this space could become volatile as clients with little knowledge enter the sector.

Carriers will look to continue to forge long-term client relationships and avoid opportunistic clients.

Aethon was the first major loss but not expected to be policy limit. It’s still a major blow to the midstream but many of the carriers sit in the upstream space.

2022 claims are occurring and large losses are eroding carriers’ profits early in 2022. Can carriers finish 2022 with an acceptable loss ratio?
### Power Generation

**METRICS**

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

Carriers are pushing for double-digit increases but have been settling for single-digit renewals. Those clients with losses or nat cat exposed can expect to receive double digit rate increases.

Clients will continue to see a push for rate, but this can be mitigated by expanding quota share layers and removing layered towers with higher rates. ESG compliance may impact rates, as carriers nonrenew or refuse to insure noncompliant clients.

ESG continues to impact the insurance industry. Carriers are looking to insure ESG friendly occupancies, but they are starting to incur large losses. Clients with diverse portfolios will be able to obtain higher limits as markets look to expand their line size.

Inflation is becoming a concern which is highlighting that retentions may not be sufficient. Could potentially be an issue if losses settle higher than anticipated.

Carriers corrected retentions in the previous renewal cycles, so now the focus remains on rates versus retentions.

Net cat continues to dominate renewal discussions. As we enter hurricane season expect underwriters to hold firm to terms.

Unsurprisingly, continuation of cyber and coal restrictions are expected. Expect increased use of restrictive cyber exclusions on renewals. Coal assets can expect coverage terms to remain narrow and expensive given lack of carrier options.

Terms and conditions are remaining stable for hull and machinery as well as protection and indemnity.

Cargo is seeing restrictions and tighter coverage on SRCC due to the ongoing Russia-Ukraine war.

Capacity is beginning to increase with the entrance of new insurance carriers entering the market place. This added capacity has not had its intended effect on reducing premiums.

Claims continue to increase in frequency on cargo, hull and machinery, and protection and indemnity coverages.

### Marine

**METRICS**

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<tbody>
<tr>
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<td>0% to 13%</td>
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</table>

Pricing on hull and machinery is trending upwards alongside inflationary pressures (about 5% to 8%). Protection and indemnity, cargo and excess limit pricing are seeing rate increases in the 10% to 13% range.

Will see continued pressure on rates due to claims activity and inflation. Looking to see some modification in late fourth quarter.

Overall excess limits had been climbing over the last five years due to large jury awards and costs of excess limit. Those trends are slowing if not stopped.

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.

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.

See projections for continued increased pressure on retentions going forward with minimal change in premiums.

Terms and conditions are remaining stable for hull and machinery as well as protection and indemnity.

Cargo is seeing restrictions and tighter coverage on SRCC due to the ongoing Russia-Ukraine war.

Terms and conditions should remain stable on marine coverages, with ongoing cargo sanctions restrictions as the overseas conflict continues.

Capacity is beginning to increase with the entrance of new insurance carriers entering the market place. This added capacity has not had its intended effect on reducing premiums.

Will continue to see capacity increase throughout market place. Cargo carriers will also review year end losses and claims activity and adjust their preferred risk appetites accordingly.

Claims continue to increase in frequency on cargo, hull and machinery, and protection and indemnity coverages.

Claims are likely to continue to increase in frequency and severity. Underwriters will make rate adjustments accordingly.
Environmental – Q2 2022 Summary

The EPA recently set new standards for safe levels for PFOA/PFAS to near zero. This is the most stringent standard that we have seen to date for these chemicals. We expect that the updated standards will cause carriers to be even more stringent when underwriting environmental exposures and we expect more exclusions to be placed on environmental policies going forward. These “forever chemicals” are found in everything from fire suppressant foam to food wrappers and have been known to have a negative impact on human health. They have been deemed “forever chemicals” because they do not break down in the environment.

Premiums are trending up anywhere from 3% to 10% depending on the line of environmental coverage.

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

Carriers are beginning to express greater concern over environmental and social governance (ESG) claims. As more and more states are changing laws to address the concerns, we expect this trend to continue for the foreseeable future.

Contractors Pollution Liability (CPL)

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<tr>
<td>PRICING</td>
<td>3% to 5%</td>
<td>Abundant capacity continues to pressure rates downward. Practice policies are experiencing slight increases ranging from 3% to 5% on average.</td>
<td>3% to 5%</td>
<td>We expect the rate on CPL to maintain a 3% to 5% increase over the next 12 months.</td>
</tr>
<tr>
<td>LIMITS</td>
<td></td>
<td>Limits remain abundant with most carriers offering up to $25M in the aggregate. Additional limits at competitive pricing are rampant.</td>
<td></td>
<td>We expect limit and capacity to remain strong as this product is desirable for carriers.</td>
</tr>
<tr>
<td>RETENTIONS</td>
<td></td>
<td>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>
<td></td>
</tr>
<tr>
<td>COVERAGE</td>
<td></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>
<td>We do not expect significant pull back in coverages over the course of the next 12 months.</td>
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</tr>
<tr>
<td>CARRIER</td>
<td></td>
<td>No new entrants into the marketplace, however, CPL coverage remains a desirable product for carriers given the favorable loss ratios.</td>
<td>We do not foresee any markets exiting the CPL space as it remains very profitable.</td>
<td></td>
</tr>
<tr>
<td>CLAIMS</td>
<td></td>
<td>Claim frequency continues to increase as projects come online.</td>
<td>We anticipate that claim frequency will continue to increase over the next 12 months with project restarts and more contractor activity.</td>
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</table>
Site Pollution Liability (PLL)

**METRICS**

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<thead>
<tr>
<th>Q2 2022</th>
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<tbody>
<tr>
<td>YOY CHANGE</td>
<td>COMMENTARY</td>
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<tr>
<td>5% to 10%</td>
<td>5% to 10%</td>
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**PRICING**

Renewal policies continue to see modest decreases in pricing. Transactional placements are experiencing an uptick in pricing when meaningful coverage is provided. Markets will continue to approach business selectively and actively pursue low risk/low premium placements, which will have a downward pressure on renewals. Market interest for long term transaction placement is decreasing, causing upward pricing pressure.

**LIMITS**

Ample limits available for most risks. Abundant capacity in the marketplace with new entrants entering into marketplace. Heavily contaminated sites posed for redevelopment have ample but smaller market interest. Quota share arrangements provide most limits for complex placements. 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.

**RETTENTIONS**

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. Less environmentally exposed risks are not seeing changes in retentions. Other more complex risks, such as redevelopments, are being challenged by insurers to accept higher retentions. We expect increases in mold retentions across the board.

**COVERAGE**

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. Environmental and social governance is becoming a bigger concern for carriers as states impose new laws to address the concerns. 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.

**CARRIER**

No new entrants into the marketplace in Q2 and no carriers have exited. No significant changes forecasted in the next 12 months.

**CLAIMS**

Mold, lead-based paint and asbestos claims are on the rise. There is continued pressure on emerging contaminants as states are setting their own regulations. Damages to the environment and environmental justice initiatives are trending upward. We expect environmental claims activity to continue to rise through the year as more people re-emerge from COVID-19.

Life Sciences

**Product Liability**

The market has remained consistent considering the wide range of products that fit into the life sciences space. High risk products like implants and surgical mesh, to lower risk like cannabis and beauty products. Insurers continue to enter the life science space whether it be established carriers or new MGAs, offering different options for the insured in both limits and product offerings. The pricing in this area has increased slightly due to an increase in frequency and severity of claims.

As the courts start to catch up due to delays generated by COVID-19, we will see more pandemic related claims as 2022 rolls on.

Renewal rates have been stable, though increases for the tougher risks have been noticed. Capacity and competition for all lines have been increasing as new domestic carriers and MGAs have been slowly entering the life sciences space. Some fairly aggressive Lloyd markets have also been playing in this space. However, clients have been careful to reconcile their overall limits to their portfolio premium and in some cases lowering their capacity to save money.

The legalization of medical and recreational marijuana had been gaining headway, but has stalled as increasingly important global and domestic events have taken place and take priority. However, the business of cannabis continues to grow at a heavy pace.

Large multistate operations are growing through acquisitions as the smaller operations are expanding their businesses by branching out to growing, extraction and delivery along with selling through websites and dispensaries. Coverage for dispensaries and other cannabis related business remains difficult with fewer options and higher premiums than your typical business, making this a very specialized industry to find coverage for.

Life Sciences – Q2 2022 Summary

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Product Liability

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<tr>
<td>$ PRICING</td>
<td>0% to 5%</td>
<td>Pricing has stabilized in Q2 largely driven by an increase in competition and capacity.</td>
<td>0% to 5%</td>
<td>Most markets will continue to offer competitive premiums for renewal business, but for tougher classes of business, the rate increases could reach double digits. New business will be competitive.</td>
</tr>
<tr>
<td>✔ LIMITS</td>
<td></td>
<td>Client demand for higher limits continues to develop in this pandemic and post pandemic environment. There is ample limit available for most risks in this marketplace for these types of risks.</td>
<td></td>
<td>We expect limit and capacity to remain strong as product liability coverage remains desirable for carriers.</td>
</tr>
<tr>
<td>☐ RETENTIONS</td>
<td>Retentions have remained static for the most part. Slight increase in retention size and use of risk retention groups for larger clients.</td>
<td></td>
<td>We anticipate retentions to remain stable, and we expect current trends to continue for the next 12 months.</td>
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<tr>
<td>☻ COVERAGE</td>
<td>Coverage remains broad and flexible, reacting to the various ways insureds have had to respond to the pandemic.</td>
<td>Availability of relatively broad coverage will continue to be accessible over the course of the next 12 months.</td>
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<tr>
<td>✚ CARRIER</td>
<td>New carriers and MGAs have entered the space with a focus on certain subsegments of the industry. This is keeping premium competitive and offering insureds more solutions for their insurance needs.</td>
<td>No significant changes for the next 12 months.</td>
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</tr>
<tr>
<td>☐ CLAIMS</td>
<td>Claims activity has remained flat. However, life science business continues to be challenging with the possibility 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>
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Management & Professional Liability


Management and Professional Liability – Q2 2022 Summary

Consistent with the first quarter of 2022 and the balance of 2021, client differentiation remains key to mitigating the effects of the hard cyber market and taking advantage of the softening D&O market. Like in any market cycle, carrier focus continues to be on the quality of the client’s risk profile. The key underwriting factors that are considered in this risk assessment are industry, financials, loss history, risk mitigation and corporate governance. Pricing and retention adjustments are being made in direct response to the underwriting of these factors.

Three key trends we saw in Q2 2022 in the management and professional liability line of business are as follows:

1. **D&O rate increases continue to stabilize and we saw more decreases in overall programs in Q2. Excess capacity continues to be plentiful, is driving downward pressure and is contributing to the accelerated softening we saw this quarter.**

2. **Fiduciary liability rates continue to be up 0% to 25% or more, driven by excessive fee litigation. Insurance carriers are focused on plans with assets greater than $100M where previously the threshold was much higher. ESOPs will see greater rate increases along with those that have challenged risk profiles. This line of business continues to be challenging for insureds.**

3. **The cyber market continued to face the same challenges as Q1: Carrier capacity and retention management, pricing corrections, and strict enforcement of insured cyber security controls. Clients that did not have base level security controls in place found coverage availability challenging. However, Q2 did see more carriers considering new business and new market entrants, making Q3 and Q4 outlook promising for insureds.**

While increases still permeated the majority of GPL primary placements, rate increases did trend downward for the 4th consecutive quarter. Excess layers continue to show diminished rate pressure due in part to an increase in excess only market capacity. The breadth of coverage is stable in comparison to Q2 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.

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 Q2 2022 as a result of this litigation.

In employment practices liability, COVID-19-related claims increased and we expect this trend to continue. Industry, employee count and corporate governance are the key underwriting criteria in this line of business.
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. The human element continues to drive breaches. Whether it is the use of stolen credentials, phishing or simply an error, people continue to play a large part in incidents and breaches alike.* That said, the average ransom payment for Q1 of 2022 was $211,529, a 31% decrease from the previous quarter.* While we cannot pinpoint exactly the reason for the decrease, there are many influences that could account for the reduction, such as improvement in client controls, threat actor focus on smaller companies (lacking controls), and sophisticated threat actors being diffused due to international relations (among others). Whether this trend will continue or if threat actors will shift their focus remains to be seen.*

With the one year anniversary of the cyber hard market approaching, carriers are forecasting lower rate increases for clients that experienced rate corrections in Q3 of 2021 and put in necessary investments to their cyber hygiene. The one year 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 that 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, as well as having detailed action plans for employee training and threat response. Clients should also prepare for underwriters to review not just internal security controls but conduct vulnerability scans of public-facing domains.

Sources:
* Ransomware Threat Actors Pivot from Big Game to Big Shame Hunting (coveware.com)
* Verizon 2022 Data Breach Investigation Report

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<tr>
<td>PRICING</td>
<td>-5% to 15%</td>
<td>The market saw more pronounced signs of stabilization this quarter. After a lengthy hard market in the D&amp;O space, we expect rates for the remainder of 2022 to flatten and/or decrease over prior year. This is due to the pressure for those companies that have strong risk profiles. New capacity has helped limit the increases insurers are facing, and has contributed to, in some cases, overall program decreases.</td>
<td>-10% to 15%</td>
<td>We expect continued pressure on pricing given the new capacity effect and the reduction in SCA filings. Environmental, social and governance (ESG) will continue to play a large part in the underwriting of policyholders. The Russia-Ukraine war has created additional uncertainty including stock volatility, inflation, supply chain issues, the emergence of litigation funding and interest rate increases. Given current and foreseeable market conditions, we do think the number of bankruptcies/restructurings may start to rise as well.</td>
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<tr>
<td>LIMITS</td>
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<td>Carriers have been maintaining their average limits deployed for over two years and we anticipate a stabilization over the next 12 months. In Q2 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. Some industries and transactions still saw carriers keep their limits low in the following, especially on difficult risk profiles such as digital assets, cannabis, IPOs and SPACs.</td>
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<td>RETENTIONS</td>
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<td>We saw carriers generally maintain their retention levels but in some cases there were some decreases throughout the quarter.</td>
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<tr>
<td>COVERAGE</td>
<td>Breadth of coverage is stable in comparison to prior year and quarters.</td>
<td>We expect continued pressure on pricing given the new capacity effect and the reduction in SCA filings. Environmental, social and governance (ESG) will continue to play a large part in the underwriting of policyholders. The Russia-Ukraine war has created additional uncertainty including stock volatility, inflation, supply chain issues, the emergence of litigation funding and interest rate increases. Given current and foreseeable market conditions, we do think the number of bankruptcies/restructurings may start to rise as well.</td>
<td>Barring any unexpected event-driven occurrences we expect the breadth and scope of coverage to remain unchanged.</td>
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<tr>
<td>CARRIER</td>
<td></td>
<td>The entry of new capacity into the excess market will result in the introduction or reshuffling of carriers onto multi-layered programs.</td>
<td>Capacity continues to enter the public D&amp;O market which has started to increase the pricing and retention pressure. New entrants continue to put pressure on incumbent excess layers.</td>
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<tr>
<td>CLAIMS</td>
<td></td>
<td>We expect claims volume to increase as there are a variety of issues boards must concern themselves with, including increased SEC scrutiny, new regulations in the Insider Trading Prohibition Act, increased focus on ESG and board diversity. The plaintiff’s bar has been very opportunistic in these areas.</td>
<td>We have seen a decrease in the past two years in federal securities class actions (SCA). However, derivative actions such as books records (202) 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.</td>
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### Private and Not for Profit Company Directors & Officers Liability

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<tr>
<th>METRICS</th>
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<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td></td>
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<td>-5% to 15%</td>
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<td><strong>Limits</strong></td>
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<td><strong>Retentions</strong></td>
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<td><strong>Coverage</strong></td>
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<td><strong>Carrier</strong></td>
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<tr>
<td><strong>Claims</strong></td>
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The private and not-for-profit company sectors continue to show signs of stabilization similar to Q1. Pricing adjustments continue to be made directly in response to events related to COVID-19, industry sector, capitalization, cash burn and regulatory factors. Rate increases are ranging between -5% to 15%. The length of the hard market and increased competition is having an impact on the overall market which is great for buyers. However, for financially distressed risks and risks in certain industries such as cannabis, digital assets, etc., above average rate increases still exist.

Pricing will be consistent with what we have seen over the last quarter. There will continue to be a larger variability in the renewal outcomes in our private and not-for-profit book based on individual account risk profile, the overall market and increased competition. Given current and predicted economic conditions, we think we might see an active in bankruptcies and restructurings in this segment.

Insurers continue to maintain limit capacity. We are seeing some stabilization due to corrective action taken over the last 24 months during the hard market. We have also seen new entrants into the market — notably, insurtech companies that will continue to increase the pressure on overall rates.

Similar to the publicly traded segment, we do expect carriers to increase limits. We expect carriers to increase limits (e.g., $5M to $10M) for those companies with strong risk profiles.

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

We expect to see retentions remain the same and in some cases decrease given new capacity interested in writing more business.

The retraction of coverage terms is trending towards levelling. Portfolio corrections appear to be plateauing for preferred risks. Higher risk industries and emerging industries are still seeing more restrictions/exclusions being put on their programs.

Trend continues toward maintaining the status quo. We do expect appetite for coverage expansion given the new capacity trying to get market share.

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.

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.

Claims volume remains flat while defense costs and other claims elements are in an upward trajectory, which is increasing overall claims activity and expense trends.

Claims 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 macroenvironment, we do expect more claims as a result of bankruptcies.

### General Partnership Liability

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<td>5% to 10%</td>
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While increases still permeated the majority of primary placements rate increases did trend downward for the fourth consecutive quarter. Excess layers continue to show diminished rate pressure due in part to an increase in excess only market capacity.

Capacity still remains strong within the GPL marketplace. The market of insurers willing to write primary is still limited but broad enough to generate steady competition. Insurers continue to push to maintain strict capacity management and are generally unwilling to offer more than $5M on new programs. Existing towers are able to maintain $10M tranches.

Retentions have generally remained stable year over year with some GPs seeing material increases in response to significant fundraising or claims activity.

We expect rate increases to continue to come down over the balance of the year as the market continues to levels off.

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

Breadth of coverage is stable in comparison to Q2 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.

The market of primary insurers in the US remains stable. New excess capacity has entered the market but has not materially impacted pricing.

We expect rate increases to continue to come down over the balance of the year as the market continues to levels off.

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

The SEC continued its focus on the disclosures of investment risks and conflicts of interest, fees and expenses, liquidity, valuation of assets, and controls around material non-public information. Portfolio company bankruptcy and employment practices litigation remain the core drivers of GPL paid claims.

We expect these claims trends to continue into the balance of 2022.
### Fiduciary Liability

**METRICS**
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<tr>
<td>0% to 25%</td>
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**Fiduciary liability rates** were flat to 25% driven by excessive fee litigation. Insurance carriers are focused on plans with assets greater than $100M where previously the threshold was much higher. ESOPs will see even greater rate increases along with those that have challenged risk profiles.

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

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

We have not seen reason to believe that limits profiles are increasing for carriers given the current claims environment.

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

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

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

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

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

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

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

Claims volume is expected to continue.

### Employment Practices Liability

**METRICS**
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**Employment practices liability** has remained relatively stable at this time despite the pandemic and ensuing shutdowns. Concerns over RFIs (as a result of the pandemic and global lockdowns) have not yet materialized like we initially thought might happen. Carriers are watching closely return to office and vaccination issues that could potentially lead to future claims.

For Q2, limit levels were mostly stable throughout the portfolio.

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

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.

We expect a consistent monitoring of regulatory trends resulting in retention adjustment to persist throughout the year especially if claims activity pops up in the next 12 months due to return to work, vaccination issues and potential RFIs.

Trend may continue toward more restrictive policy wordings and coverages based on state and industry segment.

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.

Some developing appetites are likely to emerge as insurers see opportunity to gain market share and utilize efficient technology in the SME space.

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.

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

Pricing

While there was a small drop in ransomware events in the first two months of the year (which many commentators have also attributed to the refusal of major threat actors to occur incidents in Ukraine and Russia), ransomware incidents and cyber claims have not slowed down. Business email compromise continues to be a forefront of claims and actuary concerns. July 1, 2022, marks the one-year anniversary of two ransomware attacks. Rates are expected to scale back for these exposures that experienced rate corrections in Q3 of 2021 and have invested in appropriate cyber controls. Carriers will continue to seek rates however at lower percentages than Q1 of the previous year.

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

We expect this trend to continue throughout 2022. Carriers will continue to strategically deploy capacity for accounts that maintain favorable cyber hygiene. Cyber extortion/ransomware limits will continue to be sublimed with a potential for a cybersecurity response to high risk industries or if controls are not optimal, and towers will need to mitigate decreases to dependent business interruption to properly demonstrate strategic initiatives to mitigate vendor dependency and risk.

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

We expect this trend of increased retentions, higher waiting period and cessations to continue.

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 MFA, EDI, email filtering, secure virtual environment, and PAM solutions), as well as non-invasive scans (Bitsight, Security Scorecard and Cyence) during the underwriting process will continue. We anticipate additional carriers updating their underwriting guidelines including the mandatory need for favorable ransomware responses. Coverage will be pared down when controls are lacking. MFA and EDI has become a critical component in the underwriting process. Emergence of new Media and BIPA concerns seem to have temporarily taken a backseat to bigger concerns around potential causes for widespread loss.

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

Significant increase in frequency and severity of cyber claims, especially ransomware continued. Social engineering/financial fraud claims continue to target companies in all industries. Large ransomware events such as the Colonial Pipeline and JBS demonstrate the likelihood these attacks will continue in all industry classes.

Cyber claims activity is expected to continue to increase. The impact of large headline cyber events will impact carriers 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.

Higher than $5M limits continue to be hard to obtain, and ransomware and e-crime sublimits have become standard, but markets will look to sit much higher on towers than their current positions.

Markets continue to seek higher retentions, and we have seen retentions on renewals as high as 5 to 10 times existing.

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

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

Many traditional carriers have exited tech E&O business have done so by now. We expect to gain new carriers with greater technology platforms for tech, including MGAs/MGUs.

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### Licensed Professionals – Accountants / Allied Medical

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<thead>
<tr>
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<tbody>
<tr>
<td>PRICING</td>
<td>5% to 20%+</td>
<td>We are continuing to see smaller (one to five partner) firms get increases at renewal as carriers look to pick up some rate. 10% increase is the average. Firms with up to 20 partners will see more modest increases at about 5%. Med-mal for ancillary medical practices (med-spa, therapists) continues with a 20% increase on average. Carriers are seeking rate for licensed prof. E&amp;O, but we often have been able to achieve flat renewals when thoroughly marketed.</td>
<td></td>
</tr>
<tr>
<td>LIMITS</td>
<td>$</td>
<td>Limits offered consistent with the insureds assets/revenues. Med-mal will continue their mandatory limits. Other classes have seen less access to larger primary limit offerings.</td>
<td></td>
</tr>
<tr>
<td>RETENTIONS</td>
<td>$</td>
<td>Carriers continue to increase retention levels for certain risks. Allied medical is seeing $15K average retentions as business consultants raised from $5K to $10K &amp; $15K+.</td>
<td></td>
</tr>
<tr>
<td>COVERAGE</td>
<td>$</td>
<td>Coverage terms have remained steady with a soft push back on defense outside the limits options.</td>
<td></td>
</tr>
<tr>
<td>CARRIER</td>
<td>$</td>
<td>There have been changes in appetite on the accountants professional marketplace but the carriers remain in play. Other areas have not seen much activity.</td>
<td></td>
</tr>
<tr>
<td>CLAIMS</td>
<td>$</td>
<td>Claims activity is on a slight rise as professionals continue to work remotely and navigate the back to office scheduling. Telemedicine claims are on the rise as well as misinterpretation of diagnosis and progress are given taken.</td>
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</tr>
</tbody>
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<tr>
<td>PRICING</td>
<td>1% to 25%+</td>
<td>Markets will continue to offer competitive premiums for renewals in most classes with slight rate increases continuing. Excess options will still be readily available and priced well. Fewer CPAs entered the marketplace in 2021 - 2022 resulting in a wider array of services being offered by professional accountants. This will make carriers ease premiums to cover less traditional work being performed.</td>
<td></td>
</tr>
<tr>
<td>LIMITS</td>
<td>$</td>
<td>Primary limits have been capped at $5M for most lines, and will continue to be restricted with excess options reasonably attainable. Available limits unchanged for Med-mal and allied med.</td>
<td></td>
</tr>
<tr>
<td>RETENTIONS</td>
<td>$</td>
<td>We will see this trend continue as markets continue to seek higher retentions from new business as well as in their renewal options. Once the adjustments have been made, retentions should remain static in the second half.</td>
<td></td>
</tr>
<tr>
<td>COVERAGE</td>
<td>$</td>
<td>We expect to see defense costs options decrease in availability and policies for larger firms will get tougher on subsidiary and acquisition activity. We saw lots of M&amp;A activity and carriers are not wanting to wait until the renewal to pick up premium for additional operations.</td>
<td></td>
</tr>
<tr>
<td>CARRIER</td>
<td>$</td>
<td>Competition is making up for the recent scarcity of markets in certain areas. We expect to continue to see new excess appetites entering this year.</td>
<td></td>
</tr>
<tr>
<td>CLAIMS</td>
<td>$</td>
<td>Claims are expected to rise in severity for mismanagement of clients cases and for CPAs dealing with PPP loan repayment penalties and filings for their clients.</td>
<td></td>
</tr>
</tbody>
</table>

### 12 MONTH FORECAST

- **COMMENTARY**: Market appetite has continued to be robust for all classes of liability with excess appetites entering certain areas. We expect more opportunity in this space with easier to win on the MPL forms.

- **LIMITS**: Limits offered consistent with the insureds assets/revenues. Outsized limit offerings typically needed a third-party contract request to be considered.

- **COVERAGE**: Coverage remained strong as there is a lot of competition in this space at the moment. Coverage will continue to be solid and competitive. More favorable language will be easier to win on the MPL forms.

- **CARRIER**: We have seen more availability in the market as carriers seek to write more MPL for its profitability. We expect more opportunity in this space with more entries into the market.

- **CLAIMS**: Claims coming in from COVID-19 consultants as well as return to office safety consultants should start to decrease.
Private Equity – Q2 2022 Summary

Following the busiest year on record in 2021, representations and warranties (R&W) submission flow has continued to normalize in Q2 and is trending similar to the first six months of 2021. While there still remains a high volume of submissions from a historical basis, Q2 2022 saw increased bandwidth on the carrier side, with many insurers hiring additional staff. Both rate on line and retentions have leveled off and are more reflective of the first half of 2021. However, in the last couple of weeks of Q2, there has been a ramping up of activity which could result in rate increases for the remainder of 2022.

Premiums have moderated somewhat in Q2 with an –4% rate on line as an average. Larger deals of over $1B will see primary rates closer to 5%, but with excess, blended rates are closer to the 3% to 3.25% range. Claims frequency and severity have increased over the past few years and seem to support rate increases over time. While appetite across the industry is broad, some smaller transactions (under $50M in enterprise value) have become more difficult to insure as have acquisitions of target companies in highly regulated industries, such as financial services and healthcare.

As noted earlier, R&W insurers have made strides to add capacity and underwriting staff to address increased demand for R&W policies. However, the insurance market remains challenged to keep pace with R&W insurance submission volume. We expect this trend to continue especially if we see increased volume in the second half of 2022 similar to what we saw in the last half of 2021.

We expect current trends to continue over the coming months.

### R&W Insurance

<table>
<thead>
<tr>
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<th>12 MONTH</th>
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</tr>
</thead>
<tbody>
<tr>
<td>$ PRICING</td>
<td>3% to 5%</td>
<td>3% to 5%</td>
<td>10% to 20%</td>
<td>10% to 20%</td>
</tr>
<tr>
<td>% LIMITS</td>
<td>Initial retentions on R&amp;W policies have remained stable at 1% of transaction enterprise value for most transactions.</td>
<td>Initial retentions on R&amp;W policies have remained stable at 1% of transaction enterprise value for most transactions.</td>
<td>We do not have reason to believe that policy retentions will change materially.</td>
<td></td>
</tr>
<tr>
<td>% RETENTIONS</td>
<td>As a general matter, breadth of coverage has been stable in comparison to Q1 2022. For target companies in highly regulated industries (including healthcare), some insurers have been more selective to quote opportunities and have been more rigid in requiring deal-specific exclusions or other limitations in their quotes.</td>
<td>There have been no meaningful change to the limits being offered by insurers. Most primary R&amp;W insurers 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>
<td></td>
</tr>
<tr>
<td>% COVERAGE</td>
<td>There continues to be new insurers (MGAs) beginning to write R&amp;W insurance. However there have not been any new entrants since Q1 2022. There are 21 domestic insurers.</td>
<td>There have been no meaningful change to the limits being offered by insurers. Most primary R&amp;W insurers 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>
<td></td>
</tr>
<tr>
<td>% CARRIER</td>
<td>Over the past several years, R&amp;W insurance claim severity has increased steadily. With respect to claim frequency, however, we have not observed a clear trend. Some market reports suggest a slight increase in claim frequency, while others report that frequency has not changed materially.</td>
<td>We do not have reason to believe that claims volume or severity will change significantly over the next 12 months.</td>
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<td></td>
</tr>
<tr>
<td>% CLAIMS</td>
<td>Balance Partners announced a new facility earlier in 2022 that will be up and running in 2022. We anticipate there will be additional entrants later in 2022.</td>
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Casualty – Q2 2022 Summary

Despite entering 2022 with a guarded sense of optimism for market improvement, Q2 performance remained choppy and far from consistent. Insurers continued to stabilize underwriting appetite and rates for existing books of business while remaining choosy about new business opportunities. Well-performing commercial real estate risks (office, retail, industrial/warehouse) now garner competitive interest from multiple insurers, especially those that largely sat on the sidelines while shedding undesirable business during the past two years, occasionally presenting positive renewal results not seen in years. Unfortunately, habitual-heavy risks (particularly those in problematic jurisdictions such as New York) continue to struggle with double-digit rate increases from incumbent markets, upsifts in reductions and/or reductions in limits, with incumbent markets often presenting the only viable option. Market response to hospitality risks continues to depend heavily on the tier of services offered — upscale hospitality portfolios are more easily finding insurer interest while budget hospitality risks largely continue to remain in the nonadmitted marketplace.

For favorable accounts, some primary casualty incumbents are beginning to seek dialogue earlier in the renewal process with the goal of renewing early and eliminating market competition. At this point, most insurers have pruned poor-performing and/or adverse profile insureds and with pressing aggressive growth goals are willing to both negotiate on performing and/or adverse profile insureds and with pressing aggressive growth goals are willing to both negotiate on.

Hot Buttons and Challenges:

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

The habitational market continues to perform adversely, particularly in venues such as New York, South Florida and Georgia. Realistically there are only a handful of markets willing to write New York habitational risks, and incumbents on well-performing risks are easily holding onto accounts even with rate increases. More markets are also withdrawing from South Florida and Georgia, creating challenges for multistate portfolios. In nonrenewal situations, extremely opportunistic pricing is the norm, generally accompanied by at least one or two adverse exclusions or sublimits for assault/battery and/or sexual abuse/molestation. Significantly increased premiums to retain relatively low self-insured retentions are common, with insurers attempting to push higher rates and/or cutting capacity to either reduce overall exposure in the primary general liability layer or be well-compensated for same.

While many admitted markets continue to renew well-performing habitational risks, almost none will consider new habitational business unless the portfolio is well above-average in terms of age, construction, fire/life safety protection and in favorable geographies. Mid-rise, older frame buildings (especially if nonsprinklered) and those with significant subsidized housing and/or poor loss history continue to struggle to find competitive options. Exacerbating the situation is the increased use of crime scores as critical underwriting criterion, with declinations, restricted coverage or coverage sublimits resulting.

The umbrella/excess liability market continues to be largely inconsistent, despite some signs of moderation. Factors contributing to the volatility in the umbrella/excess liability over the past two years (social inflation; claims severity/ frequency; and trends around wrongful eviction, assault/battery, sexual abuse/molestation and human trafficking) continue to drive contraction in terms of capacity offered, nonrenewals and often significant premium increases. Lead umbrellas continue to be very difficult to replace if nonrenewed, particularly for habitational and hospitality risks, with replacement premiums often three to four times the expiring premium. Moderation has been found for well-performing accounts with favorable occupancies such as offices, retail and mixed-use, with incumbents occasionally offering renewal pricing based only on proportional increases from the primary layer. As well, competition excess of the $15M attachment point has become more common for nonresidential risks, which has helped mitigate some of the pricing increases.

The workers’ compensation market continues to be largely competitive, with ample capacity and generally favorable pricing — single digit increases/decreases for insureds with positive loss experience. Aside of poor loss experience, there are not significant market trends that are adversely impacting pricing for this line of coverage.

Automobile liability rates for real estate are continuing to have 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 driver for the real estate sector.

While the current marketplace continues to move toward stabilization with insurers being tasked to gain market share by writing favorable business, positive results for nearly all renewals are far from assured, with most accounts still being fully marketed at each renewal cycle. Underwriters are beginning to be more open to dialogue and exploration of opportunities for some classes of business, which is refreshing, as well as the excess liability competition at higher attachments.

Despite continuing arduous underwriting, markets have been opportunistic for favorable accounts, a trend which we anticipate will continue (albeit at a slow pace) throughout the next quarter.

Property – Q2 2022 Summary

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

Conversely, accounts such as those with adverse loss activity, less desirable occupancy class (i.e. habitational and hospitality), or significant exposure in natural catastrophe-prone geographical areas are still seeing premium increases and heightened restriction of terms and conditions, with single carrier programs faring worse than shared and layered due to limited single carrier capacity. Convective storms, 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. Following the January 1 treaty reinsuranne renewals, accounts with heavy Florida wind exposure have seen at minimum double digit increases to pricing and accounts placed with AmRico (also known as Waypoint Wholesale) have been instructed by their management to expect increases in the 25% to 75% range and significant reduction in wind capacity offered at renewal. Some carriers traditionally writing heavy Florida accounts are even imposing 10% deductibles for named windstorm, although we have not seen a huge push for this quite yet. A contraction of capacity of markets writing in these states, particularly single-carrier capacity, continues to challenge an already distressed market which is clearly evident with more shared and layered programs and alternative market capacity (particularly E&S) participation. Further, high claims activity from other climate-related losses such as wildfires, flooding and hurricanes has continued to impact capacity, retentions and pricing throughout Q2.

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

Valuation and water-related losses continue to be at the forefront of key concerns highlighted by markets.

Benchmarking data, high labor costs and supply chain issues coupled with significant loss creep have been cited as critical reasons for underwriters to identify underreported values.

To help offset this, margin clauses and coinsurance subjectivities continue to be the norm, particularly in the habitational occupancy class. Every insured will be expected to trend replacement cost values upwards to keep on par with inflation, and if it is not done, carriers will do that on their own. Higher and separate water damage deductible are also widely used on loss sensitive accounts; underwriters are advocating loss control initiatives, both physical and human-element, as a measure to help insureds control this exposure.

### Auto Liability Conditions

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<thead>
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<tbody>
<tr>
<td>PRICING</td>
<td>$5% to 10%</td>
<td>Rate increases are anticipated to continue, although only to a mild to moderate degree in the next 12 months. Hired and nonowned auto exposure continues to be underwritten and rated, although at modest premiums.</td>
<td></td>
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</tr>
<tr>
<td>LIMITS</td>
<td></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. Some insurers have sharply increased physical damage deductibles as the cost of repair/replacing automobiles continues to steadily rise.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RETENTIONS</td>
<td></td>
<td>No widespread change expected in next 12 months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COVERAGE</td>
<td></td>
<td>Automobile liability is generally written without issue by the insurer 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 insurers accessed in the nonadmitted market.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CARRIER</td>
<td></td>
<td>Availability of reasonably broad automobile liability and physical damage coverages are anticipated to continue over the next 12 months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLAIMS</td>
<td></td>
<td>The automobile liability claims front continues to present very significant exposure to insurers as severe claims can result from a single occurrence, both from owned and nonowned auto exposure. Distracted and/or stressed driving continue to contribute considerably to accidents. RE clients overall generally do not have significant vehicle exposure. However, hospitality risks using shuttle vans carry the risk of multiple passenger injuries and are carefully underwritten.</td>
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General Liability

### PRICING

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>PRICING</td>
<td>0% to 15%</td>
<td>( \text{N/A} )</td>
<td>( \text{N/A} )</td>
</tr>
</tbody>
</table>

- S1A/S2A/S3M remains the standard limit offering, but more lead umbrella markets require an attachment point of S2M/S4A/S5M, either eliminating otherwise competitive GL markets or necessitating the placement of a buffer layer. Per location aggregate limits seem to have stabilized, often with policy caps. Sub-liming assault/battery and/or sexual abuse/ molestation (as opposed to remaining silent) or including defense within the limits is becoming more common, particularly for residential/hospitality risks.

### LIMITS

- Trend of requiring S2M/S4A/S5M attachment points from the umbrella market is expected to increase although far from the norm. Limiting overall capacity deployed via expensive aggregate limits and/or curtailing exposure to sexual abuse/molestation or assault/battery seem to be moving slightly into a more occupancy-specific trend than being employed heavily huddled across the board, but still restrictive.

### RETENTIONS

- Retentions generally continue to follow the risk appetite of a particular account aligning with loss history. However, underwriters are pushing higher retentions regardless of loss experience for some classes of business, such as residential or alternative use in hospitality.

### COVERAGE

- Adverse exclusions (communicable disease, abuse/molestation, assault/battery, New York Labor Law, human trafficking, etc.) continue to be pushed by insurers, particularly for residential/hospitality risks. These exclusions can be successfully negotiated for removal in some cases, but only in competitive situations (which are difficult to achieve for residential risks) and often only for an increase in premium.

### CARRIER

- Insurers continue to seek new business opportunities mainly in favorable RE occupancies such as office/retail/medical use. While COVID-19 concerns have lessened greatly, insurers remain very conservative in the hospitality sector except for the best in class operations. Pressure for residential risks continue to constric, especially for the larger middle-market size portfolios. - renewal situations are nearly universally being written only in the nonadmitted marketplace.

### CLAIMS

- General liability claims and insurer combined ratios are continuing to be driven by adverse litigation trends exacerbated by long-term inadequate pricing. Concern over high payouts for violent crimes or the potential for same is becoming more of an underwriting focus.

- The competitive trend for well-performing nonresidential/hospitality accounts should increase market participation providing options and leverage over the next 12 months. Although incumebent insurers still retain considerable advantage in many cases. Nonrenewed residential and middle-of-the-road hospitality accounts will continue to struggle to find options.

- While there has been some new insurer 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 conflict in Ukraine and domestic violence such as school shootings continue to dampen optimism and opportunity. Incumbent insurers that desire to stay on risk are nearly always the most competitive even with significant rate increases.

- While insurers have begun to shore up their risk appetite and overall, primary market options have not increased. Ongoing economic factors such as inflation, world events such as the conflict in Ukraine and domestic violence such as school shootings continue to dampen optimism and opportunity. Incumbent insurers that desire to stay on risk are nearly always the most competitive even with significant rate increases.

### COMMENTARY

- As insurers continue to struggle with re-establishing healthy profitability margins, pressure against first-dollar coverage for riskier profiles is expected to continue for the next 12 months.

- No changes foreseen.

- Workers’ compensation insurances are standard regardless of risks, with fewer broadening endorsements. e.g., blanket waiver of subrogation and voluntary compensation. Coverage for workplace-related injuries and associated medical costs are subject to state law and range across the marketplace. There have been no significant changes in terms, pricing or trends over the last 12 months.

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

- 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 this increase in business/tenants travel, more workers have returned to the hospitality space, and claims are likely to increase.

- No changes foreseen.

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

- No changes foreseen.

- Guaranteed cost workers’ compensation policies 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 (Compo, Strategy Comp) are also attractive options that provide certainty in ultimate cost while providing potential for return premium during well-performing years.

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- Trend is anticipated to continue through the next 12 months.
Umbrella Liability

**Property Conditions**

**METRICS**

<table>
<thead>
<tr>
<th>Q2 2022 YOY CHANGE</th>
<th>Q2 2022 COMMENTARY</th>
<th>12 MONTH FORECAST</th>
<th>12 MONTH FORECAST COMMENTARY</th>
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<tr>
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<td>LIMITS</td>
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For incumbent markets willing to renew, lead umbrella placements have settled into a relatively stable position, albeit still with significant changes in capacity. Commercial risks (retail, office and light industrial) still experience the lowest increases and most stability. Nonrenewed lead umbrella placements (almost universally habitual and/or hospitality accounts) generally lead to severe price increases as carriers are prioritizing in costs of capacity, and carriers continue to underwrite to limits and attachment, regardless of the underlying pricing. Risk purchasing groups continue to take significant increases in premiums at time of proposal.

As residential and hospitality risks now commonly require a $2M/$3M attachment (and being pressed to provide larger limits in quotes or lead umbrella limits) this has created considerable advantage. Clients continue reevaluating total limits purchased as carriers reduce capacity and overall cost of limits increases, although after two years of reductions insurers are generally purchasing to the most prudent level possible. Carriers continue to restrict per location aggregate limits through the excess tower.

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

While insurers are still pushing adverse exclusions, these are driven most often by occupancy, insured-poor loss history, crime score, etc. Instead, they are using a knee-jerk reaction to limit exposure to catastrophic loss and countervailing premium revenue. While human trafficking exclusion remains a deep concern for hospitality risks, its use is still relatively unvaried. Assault/battery and sexual abuse/molestation exclusions are endorsed for habitual risks and to a lesser degree, hospitality. We are seeing carrier flexibility depending on excess attachment point. Commensurate disease exclusions are now expected on all retentions.

Carriers notice appetite, capacity and attachment point regularly as although lead umbrella limits are deployed cautiously. Lead umbrella limits provided by the primary general liability carrier are nearly universally more competitive than unattached insurer pricing. Risk purchasing groups continue to be exceedingly selective with renewals and new business — however, when interested in a risk, IPG's continue to offer very competitive options. Focussing on crime scores as an underwriting tool and exposure is becoming frequent.

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.

Although lead umbrella pricing will continue to increase, carriers are becoming more ambitious to retain renewals and write new business. Competition for lead umbrella options will remain limited as this layer is perceived as a working layer and underwritten conservatively. However, competition excess of $1M/$1M or $5M/$5M in nonhabitual risks will continue to contribute competition and some pricing relief in upper excess layers.

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.

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Coverage restrictions will persist throughout the next year. Formal safety and risk management claim around annual reviews, asbestos and mold, etc. Coverage restrictions are key in negotiating exclusion removal. Account-specific claims including terrorism, general liability, loss activity and bodily injury will drive introduction of new exclusions.

Carrier appetite is reactive to loss trends. With no signs 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.

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

There were hopes that pricing would flatten in Q1/Q2, CAT reinsurance treaties on January 1, 2022, put a damper on that, with June 1, 2022, renewals further impacting this. Profitable accounts with non-low loss activity along with desirable occupancy classes are experiencing mid-single digit rate increases. Conversely, less desirable occupancy classes, favorable profitability accounts and those located in higher loss prone states (FL, LA, MS, TX) are seeing pricing corrections (pushed more than 25%).

Generally, program limits/sublimits saw little change although accounts in states prone to higher loss face greater scrutiny such as new/ lower sublimits related to convective storm (tornado) and wildfires. Accounts with Florida exposure for example, saw wind limits lowered or in some cases, not completely filled out to the end of Q2. Excess business interruption values for certain account types, e.g. retail are typically seeing a more detailed underwriting review due to supply chain issues. Less interest from clients to “trade” sublimits for premium savings due to market conditions improving.

As insureds have now gone through multiple renewals in a proclaimed stable market, underwriters in general have a better level of comfort with current retention levels, having seen them revised in previous renewals. However, pressure for new/ higher water damage deductibles or accounts with water-related loss activity is still evident, as is adequacy of reinsurance for insurers with heavy convective storm exposure. Even accounts without water related losses are experiencing carriers pushing higher deductibles, which are still unmandated.

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, we are seeing reimbursement and insurance clause subjectivities being pushed by underwriters in places where such apprehensions exist.

Overall capacity continues to be healthy as incumbent carriers are offering expanded capacity and/or new markets are offering new capital, particularly from London and Bermuda. However, we’re still predicting prolonged challenges to continue to exist in higher loss prone states (TX and FL), which may now require a shared layer program solution rather than a traditional single-carrier approach. AmFisc and Velocity, while not exiting the marketplace, are reevaluating their CAT books and either decreasing capacity or increasing premium substantially, or both.

Increased competition fueled, in part, by more capacity options offered from foreign insurers (i.e. London and Bermuda) will continue to help general pricing trend downward. With challenging conditions specific to certain segments we can expect exposure to somewhat continue throughout 2022, potentially worsening if the wind season is as active as predicted.

With an above average wind season expected in 2022, we will likely see named storm limits, especially in Florida and Texas, lowered, especially on programs that previously relied on a single carrier writing 100% of their exposure, like AmFisc or Velocity. Expect scrutiny of business interruption values to continue until local/national/ international resolution of supply chain issues are found. Less interest from clients to “trade” sublimits for premium savings due to market conditions improving.

With improved and less stressed market conditions predicted going forward, underwriters will have less leverage to implement adverse retention changes on insureds then in prior renewal cycles. The knock-on effect of more favorable trading conditions is less interest from clients to “trade” higher retentions for premium savings.

Supply chain issues, labor shortages and improper valuations are making anything but closer attention to certifying reported replacement cost and other coverage terms and conditions, a must. Business interruption exposure, this could result in corrective measures being forced, if not already in place. Accounts with no such issue/risk exposure can expect little to no change.

With rates stabilizing and coverage changes somewhat tempered, we’re predicting increased competition among stable and desirable target classes of business resulting in over-subscription of capacity offerings. This is further emphasized by London and Bermuda continuing to offer competitive capacity for shared layer programs.

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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