# Quarterly Claims Journal

*Financial Services and Management Liability*

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Corporations

Delaware Extends Exculpatory Protections to Corporate Officers

In an important development for Delaware corporations, Delaware recently amended its laws to now allow for the exculpation of corporate officers in addition to corporate directors in certain instances. Previously, the Delaware General Corporation Law only allowed exculpation for directors.

Delaware has now extended this exculpatory protection to senior officers as well in certain scenarios. Corporations may now include in their certificates of incorporation “a provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer.” Generally corporations may now extend these protections to their CEO, COO, CFO, CAO, chief legal officer, president, controller, treasurer and other executive officers.

Exculpation provisions are not an absolute shield, and this new change still allows for oversight of corporate officers to ensure that they are upholding their fiduciary duties to the corporation and its shareholders.

Most notably, the extended exculpatory protection does not protect officers from derivative claims brought against them by or on behalf of the corporation for breach of fiduciary duty.

There are other important restrictions to the exculpatory protection. Both directors and ofcers can still be held liable for:

- Any breach of loyalty to the corporation or its stockholders.
- Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.
- Any transaction which the director or ofcer derived an improper personal benefit.

Given that cyberattacks, in their many different forms, have become commonplace these past several years, most companies have acted in good faith to protect themselves as best as they can. Companies that are entrusted with client and customer information have greater responsibility to protect this information. While the measures in place failed to prevent the attack, the court determined the plaintiff presented no evidence that the board willfully disregarded these risks and did not attempt to address them in a good faith manner.

This decision by the court should give some comfort to directors and ofcers who are diligent in assessing cyber threats, and make good faith efforts to implement and oversee measures to prevent or minimize the impact of such attacks in order to protect the company.

Case No. 2021-0940-SG (Del. Ch. Sept. 6, 2022)

Poultry Companies Settle Multimillion-Dollar Class Action Suit

USA v. Cargill Meat Solutions Corporation et al.

The Department of Justice filed an antitrust lawsuit against poultry processors Cargill, Sanderson Farms and Wayne Farms for engaging in a years-long conspiracy to exchange information about wages and benefits for thousands of workers at poultry processing plants, ultimately allowing them to suppress their pay. The companies run roughly two hundred poultry plants in the United States.

By exchanging worker pay information, the DOJ said the companies violated the Sherman Act, which Congress passed in 1890 in order to preserve free and unfettered competition as the rule of trade. Sanderson and Wayne Farms were also accused by the DOJ of violating the Packers and Stockyards Act by using a tournament system to determine a base pay for their chicken growers based on how they perform compared to other growers. A number of companies in the litigation, including Sanderson, had argued that because the named plaintiffs were hourly chicken processing workers, they lacked standing to sue over the alleged conspiracy’s impact on salaries and turkey processing jobs. This argument was rejected in March 2021.

Cargill Meat Solutions, Sanderson Farms and Wayne Farms will pay a combined total of $84.8 million to settle these allegations. Through the agreement, Sanderson Farms will pay $38.3 million in restitution, Wayne Farms will pay $31.5 million and Cargill will pay $15 million. The poultry workers have already settled with several other companies. To date, they have recovered a total of $134.6 million.

The DOJ led proposed consent decrees with the companies, which would bar them from sharing competitively sensitive information about their employees’ pay. As part of the proposed consent decrees, Sanderson and Wayne would be required to disclose transparency rules to growers. The poultry processors would also be prohibited from reducing growers’ base payments based on relative performance and retaliating against growers who report antitrust concerns to the government.

The announcement of antitrust action against the three poultry giants lets the DOJ make a statement about targeting anticompetitive behavior in the poultry space.

Case No. 22-cv-01821 (D. Md. July 25, 2022)

Securities Exchange Commission Files Another Suit Involving Cryptocurrency

SEC v. Dragonchain, Inc.

A cryptocurrency company is facing assertions and allegations by the Securities and Exchange Commission that certain crypto assets fit the legal definition of securities, requiring greater levels of federal regulation and scrutiny than commodities do. The SEC’s push to treat crypto assets as securities led to a separate lawsuit filed against a former Coinbase employee who was charged with insider trading of cryptocurrency.

The SEC has filed suit against Washington-based cryptocurrency company Dragonchain, Inc., founder John Joseph Roets, and two other affiliated companies and organizations he controls. The SEC alleges that it engaged in the illegal sale of unregistered crypto asset securities of eirings through its 2017 initial coin of eirings and subsequent sales of its DRGN tokens totaling $16.5 million.

After four years of communications between the SEC and Dragonchain, the investigators recommended pursuing the crypto company. The SEC believes that Roets, Dragonchain and the foundation conducted the unregistered of eiring in two phases. A discounted “presale” to members of a crypto investment club, and an initial coin of eirings marketed to crypto investors.

The SEC charges the defendants with violating Sections 5(a) and (c) of the Securities Act of 1933. The SEC seeks permanent injunctions, disgorgement with prejudgment interest, and civil penalties against and conduct-based injunctions against each defendant.

Case No. 22-cv-01145 (W.D. Wash. Aug. 16, 2022)

Sources

1. Legislation Document (delaware.gov)
In late August 2022, Travelers and the insured reached an agreement stipulating that the policy shall be voided with no defense or indemnity obligations placed upon the insurer. Both sides will pay their own expenses and International Controls will have to respond to the attack without the benefit of insurance.

Travelers, along with most cyber insurers in the market are now requiring their insureds have an effective MFA system in place before even considering placing coverage. This case is believed to be the 1st instance where an insurer has moved to rescind coverage based upon an insured’s failure to employ MFA as a part of their controls.

Case No. 22-cv-2143 (C.D. Ill. July 6, 2022)

T-Mobile Agrees to Settle Cyberattack Class Action for $500 Million
Richard Halpern, et al., v. T-Mobile USA, Inc.

T-Mobile has agreed to settle a data security incident stemming from a cyberattack in which the hackers stole information relating to past, current and prospective users. T-Mobile confirmed that the hackers obtained personal privacy information such as Social Security and driver’s license numbers of at least 76.6 million people as a result of the cyberattack.

To settle the class-action lawsuit T-Mobile has agreed to pay $500 million. This includes $350 million payment to class members and related legal costs. This amounts to a one-time payment of about $6.50 for each compromised individual. T-Mobile also agreed to invest an additional $150 million in data security and cybersecurity technology in 2022 and 2023.

In the aftermath of the breach, the company agreed to use two years of free identity protection services with McAfee3’s ID Theft Protection Service.

This massive data breach is widely regarded as the largest ever recorded on record and the company’s fifth security incident in three years. T-Mobile has assumed no admission of liability as part of the settlement. The company expects final court approval in December 2022.

Case No. 21-cv-01226 (W.D. Va. July 22, 2022)

Court Rules against Cyber Insurer in Attempt to Subrogate After Ransomware Attack
Aspen American Insurance v. Blackbaud, Inc

Blackbaud is a cloud computing company that provides fundraising database software for nonprofit organizations, healthcare organizations, educational institutions and religious organizations. Their leading software assists clients with marketing, fundraising and accounting.

In February of 2020, Blackbaud sustained a ransomware attack which exposed data belonging to several clients located in the US, Canada and Europe. Blackbaud ultimately paid the ransom in exchange for confirmation that the sensitive data including Social Security numbers, passwords and banking information had been deleted.

Upon learning of the breach, Blackbaud client Trinity Health Corporation submitted a claim through their cyber insurer, Aspen Insurance. Trinity had contracted with Blackbaud to maintain both patient and doctor information on their servers. Aspen paid out a Privacy Breach claim to Trinity for services such as credit monitoring, call centers, legal counsel fees, computer systems and data recovery services, and data migration services.

In December 2021 Aspen filed a subrogation action against Blackbaud arguing that the breach was due to inadequate security measures implemented by the defendant. They cited that the Blackbaud system was obsolete and that multiple Blackbaud employees had warned their employer the system had insufficient safeguards. Blackbaud filed a Motion to Dismiss the action arguing the plaintiff failed to state a claim upon which relief could be granted.

Judge Jon Deguilio agreed with the defendants in his dismissal of the case stating that plaintiff failed to articulate how the expenses they incurred were causally related to the breach. In his opinion, the judge makes several statements which underscore this decision.

Plaintiff’s include allegations explaining how they believe Plaintiff’s conduct caused the breach, but they fail to include any allegations explaining why the breach led to them making these expenditures. For each Count, Plaintiff’s have a conclusory allegation that “as a direct and proximate result of Blackbaud’s breaches . . . [defendants] suf ered damages” and that the “Remediation Damages [were] necessitated by the Incident” (DE 6 ¶¶ 105–150.) However, without any allegations explaining why they had to spend these amounts, the Court is left to speculate how Blackbaud’s breaches caused Trinity Health’s Remediation Damages: was Trinity Health’s own data compromised in the attack, exposing them to a risk of valuable lost information it hoped to reduce in advance by making these expenditures? Or did the loss of Trinity Health’s donor and patient data pose a threat to Trinity Health’s reputation, which it hoped to restore with the expenditures by demonstrating to its donors and patients that it was taking the data breach seriously? Perhaps Plaintiff’s, knowing that these expenses were largely covered by their insurance plan, paid for them in an abundance of caution? In the absence of further allegations explaining this, Plaintiff’s cannot “plausibly suggest” that the alleged contractual or fiduciary breach was a “substantial factor” contributing to their damages or that the alleged negligent or fraudulent acts proximately caused them to pay for call centers, credit monitoring, legal counsel, computer systems recovery, data recovery, and data migration services.

The court also noted that the Seventh Circuit had previously ruled that harm caused by identity information exposure, coupled with costs to guard against identity theft did not constitute a compensable injury under negligence or contract claims in Indiana.

While the court did grant Blackbaud’s motion to dismiss with prejudice, they also granted Aspen’s motion to amend their complaint. So, while Aspen will get another opportunity to state their case, the court has seemingly signaled that efforts to remediate or mitigate future damages do not constitute direct and proximate recoverable damages. It appears Aspen will have to do some work cut out for them.

Case No. 3:22-cv-044 (N.D. Ind. Aug. 30, 2022)

Although the insured was utilizing MFA for their firewall protections, Travelers argued that this was woefully insufficient, and its other digital assets remained unprotected.

This, they argued, was a material misrepresentation on the application. The insurer stated that had they been aware of the actual security conditions they would not have written the policy. Travelers requested the court rule that due to this misrepresentation, the policy contract be rescinded, voided, and that Travelers not have duty to defend or indemnify the insured.

In May 2022, policyholder International Controls sued over a ransomware attack. Hackers were able to gain access to and infect their servers with a virus. Upon discovery of this, Travelers returned the insured’s premium and filed a declaratory judgment action in federal court.

As Travelers began investigating the claim, they determined that the ransomware attack was due in part because the insured had no MFA setup to protect their servers.

Upon applying for coverage, International Controls had filed MFA. However, International was only utilizing MFA to manage resources, including their servers. Upon discovery of this, Travelers argued that effective security measure to prevent unauthorized access.

In his opinion, the judge makes several statements upon which relief could be granted.

Although the insured was utilizing MFA for their firewall protections, Travelers argued that this was woefully insufficient, and its other digital assets remained unprotected.

This, they argued, was a material misrepresentation on the application. The insurer stated that had they been aware of the actual security conditions they would not have written the policy. Travelers requested the court rule that due to this misrepresentation, the policy contract be rescinded, voided, and that Travelers not have duty to defend or indemnify the insured.
The National Labor Relations Act employs a “right to control” test in determining joint employment, and this standard has been upheld by federal courts on numerous occasions. While the “right to control” test itself has remained constant, how such control is defined has taken on new forms over the past decade, unsurprisingly, along party lines. How an employer will “share or codetermine those matters governing employees’ essential terms and conditions of employment” is the provision that is at issue.

The Department of Justice stated that the agreement between the defendant and unnamed competitor to not recruit and suppress wages is clearly illegal and a violation of the Sherman Anti-Trust Act. A Sherman Act violation can result in 10 years in prison and a $1 million fine for Mr. Ryan Hee and a fine of $100 million or more for the corporation.

The proposed change states: for an employer to possess the authority to control (whether directly, indirectly, or both), one or more of the employees’ essential terms and conditions of employment, and would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees.

The new rule, if adopted, would represent a significant change in the employment relationship as it would not require direct control over the employee. Expanding joint employment based on indirect authority or power to control an employee’s terms and conditions of employment would increase an entity’s risk of being named as a joint employer in litigation brought by employees.

The ability for plaintiffs to name an entity as a joint employer may not only impact those entities, but the insurance market as well, as more claims under employment practices liability insurance policies are likely to result. More claims tend to result in more defense costs and paid loss under policies, and we expect insurers would have to revise their underwriting for these risks.

We will be tracking what changes the NLRA may make, and report on how such may impact our clients.
This case represents the first major victory for employees of private employers who enforced absolute vaccine mandates. Horatia Milhet, VP of legal affairs at Liberty Counsel asserts that the settlement should serve as a strong warning to employers across the nation that they cannot refuse to accommodate those with sincere religious objections to forced vaccination mandates. It remains to be seen how if other states will side with the employees.

A similar action was filed in Maine against several large healthcare networks there. That matter was recently dismissed, although Liberty Counsel has indicated it will appeal.

Florida Employers Advised to Proceed with Caution after Court Temporarily Blocked Enforcement of Florida’s Individual Freedom Act

Honeyfund.com Inc. v. Ron Desantis, et al.

In April 2022, Florida Governor Ron DeSantis signed into law the Individual Freedom Act (IFA), more commonly known as the Stop the Wrongs to Our Kids and Employees (WOKE) Act, with an effective date of July 1, 2022. The law expanded Florida Statutes Section 760.10 of the Florida Civil Rights Act to provide that it is discriminatory to subject a person, as a condition of employment, to training that endorses various race- and sex-based concepts. IFA provides a private cause of action to employees after exhausting their administrative remedies if such employees are required by an employer to participate in any workplace training that promotes various viewpoints concerning sex, race, sex, or national origin.

Employers with Florida employees have been advised to proceed with caution in assigning employee training programs. If companies with multistate operations continue to require the same employee training programs to employees across the nation they face running afoul of labor laws. A review of state guidelines and consultation with labor counsel can help employers stay on the right side of the law.

Individual Officer Held Liable For Loss in California Unpaid Wage Litigation

Seviour-Iloff v. LaPaille, et al

California Labor Code section 558.1, of the California Labor Code provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated” certain provisions of the Labor Code “may be held liable as the employer for such violation.” In a decision handed down by an appellate court in California, the court ruled that a company CEO/CFO could be held personally and individually liable for unpaid wages to two individuals.

The plaintiff entered into an arrangement with the Bridgeville Properties, Inc. and its CEO/CFO Cynthia LaPaille where they would provide certain services to BPI in exchange for free rent. After a falling out with Ms. LaPaille, the plaintiff sued for unpaid wages, pursuant to Labor Code Section 558.1.

Having petitioned the CA Division of Labor Standards Enforcement, the Labor Commissioner ruled that Bridgeville had entered into an arrangement with the plaintiff’s favor, holding LaPaille personally liable, assessing damages, liquidated damages, and penalties. LaPaille and Bridgeville appealed that ruling to the state superior court, who agreed that the plaintiff’s were owed wages, but excused BPI and LaPaille from penalties and liquidated damages. The plaintiff appealed the superior court’s decision.

A three-judge panel ruled that the superior court erred in declining to impose personal liability on Ms. LaPaille. The appellate judges found that Section 558.1 defines a “person acting on behalf of an employer” as “a natural person who is an owner, director, or managing agent of an employer.” The term “managing agent” includes corporate employees who exercise substantial independent authority and judgment in their corporate decision making and whose decisions ultimately determine corporate policies. As such, Ms. LaPaille was liable. The court did note that the free rent given to the plaintiff is a form of remuneration, and could be factored into the wage calculations.

Ms. LaPaille did not dispute that she did not pay the plaintiff’s wages. The appellate court said section 558.1 allows individuals to file a private right of action, and as per it’s plain language seeks to hold Ms. LaPaille as the person acting on behalf of an employer, and as such may be held liable as the employer for such violation. The matter has been remanded back to the superior court for calculation of the unpaid wages and waiting time penalties due the plaintiff.

Department of Labor Pushes Against Arbitration of ERISA Claims

Harrison v. Envision Management Holding Inc. Board et al.

The US Department of Labor filed an amicus brief in support of an individual’s successful challenge to his employer’s arbitration provision before the Tenth Circuit, arguing the trial court was correct in allowing workers to file suit under ERISA.

Robert Harrison sued his employer, Envision Management Holding Inc., for violations of ERISA alleging the company inflated its worth when selling stock to the employee stock ownership plan in a $183.7 million transaction. The company sought to have the matter go to arbitration pursuant to an arbitration agreement. The trial court ruled that ERISA permits Harrison to sue on behalf of the entire plan, and the employer appealed.

The Dept. of Labor argued generally that arbitration agreements that waive employees’ rights under statute to obtain a recovery for alleged violations of the law are unenforceable, and that ERISA allows plan participants to sue for breach of fiduciary duties under the act. The Dept. of Labor said this premise has been upheld by the US Supreme Court, most recently in the Viking River Cruises Inc. v. Moriana case (which was a topic in our Q2 claim journal). The amicus briefs urged the Supreme Court to rule that the Federal Arbitration Act does not prevent all forms of representative actions from moving forward when an arbitration agreement is present.

We will continue to monitor developments in this matter. Companies should be prepared to review and assess arbitration agreements within employee contracts and determine whether or not they would be enforceable.

Individual of Employer Held Liable For Loss in California Unpaid Wage Litigation Seviour-Iloff v. LaPaille, et al

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Case No. 21-cv-5683 (N.D. Ill. July 29, 2022)

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Honeyfund.com Inc. v. Ron Desantis, et al.

In April 2022, Florida Governor Ron DeSantis signed into law the Individual Freedom Act (IFA), more commonly known as the Stop the Wrongs to Our Kids and Employees (WOKE) Act, with an effective date of July 1, 2022. The law expanded Florida Statutes Section 760.10 of the Florida Civil Rights Act to provide that it is discriminatory to subject a person, as a condition of employment, to training that endorses various race- and sex-based concepts. IFA provides a private cause of action to employees after exhausting their administrative remedies if such employees are required by an employer to participate in any workplace training that promotes various viewpoints concerning sex, race, sex, or national origin.

Employers with Florida employees have been advised to proceed with caution in assigning employee training programs. If companies with multistate operations continue to require the same employee training programs to employees without regard to location, they risk complaints and lawsuits from employees in Florida. Employers should note that this new law only prohibits activity that is considered required.

Honeyfund.com, Inc. filed a civil rights lawsuit against Governor Ron DeSantis, et al. in June 2022 alleging that the IFA violates the 1st amendment. On August 18, 2022, the US District Court for the Northern District of Florida temporarily blocked enforcement of the Individual Freedom Act, against employers by the Florida Commission on Human Relations and the Florida attorney general. The court also denied a stay of the injunction pending a likely appeal by the state, so the injunction remains in place for the foreseeable future.

Case No. 4:22-cv-00277 (N.D. Fla. Aug. 18, 2022)

Individual Officer Held Liable For Loss in California Unpaid Wage Litigation Seviour-Iloff v. LaPaille, et al

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Financial Institutions

SEC hits Financial Institutions for Identity Theft Prevention Violations

Financial institutions are common targets for cybercriminals and have been advised by the Securities Exchange Commission (SEC) to take proactive measures to protect customer accounts. This includes implementing policies and procedures to adequately respond to detected identity theft red flags. The SEC has set forth programs that companies must follow, including the Identity Theft Red Flags Rule, or Regulation S-ID. Regulation S-ID is designed to help protect investors from the risks of identity theft.

The SEC separately charged lenders J.P. Morgan Securities LLC, UBS Financial Services Inc., and online broker TradeStation Securities, Inc. for deficiencies in their programs. It is alleged that between 2017 to 2019, the firms’ programs did not include reasonable preventive measures to surface red flags in connection with customer accounts. The SEC’s orders find that each firm violated Rule 201 of Regulation S-ID.

Without admitting or denying the SEC’s findings, each firm agreed to cease and desist from future violations of the charged provision, to be censured, and to pay the following penalties: JPMorgan: $1.2 million, UBS: $925,000, and TradeStation: $425,000. These three firms are all alleged to have failed the proper oversight in the implementation of the program.

As we have previously reported, there are separate regulatory actions being taken against JPMorgan, Bank of America, Morgan Stanley and several other large banks over their failure to monitor employees using unauthorized messaging apps. Overall, fines related to these deficiencies total $1 billion.

Case No. 3-20937 (SEC July 27, 2022)

Jury First to Find in Favor of Policyholder in COVID-19 Coverage Case Awards $48M
Baylor College of Medicine v. XL Insurance America Inc. et al

Baylor College of Medicine was recently awarded $48 million by a Texas jury in its COVID-19 coverage lawsuit against several Lloyd’s of London syndicates. This is the first jury verdict to award a policyholder in a COVID-19 business interruption lawsuit.

After a three-day trial, the jury awarded Baylor $42.8 million in lost profits, about $3.3 million in extra expenses for items such as personal protective equipment and Plexiglas barriers, and about $2.3 million in damage to Baylor’s research projects. Baylor remained open as a clinical hospital and thus argued that it continually had infected people on its property during the insurance policy period.

The trial judge previously denied Lloyd’s summary judgment motion, finding that it was a question of fact whether COVID-19 caused direct physical loss of or damage to the insured property. In contrast, the judge granted summary judgment to Baylor’s other insurers, XL Insurance America and ACE American Insurance, finding that their policies explicitly included the term “viruses” in their pollution and contamination exclusion.

The verdict will be appealed.

The case and jury verdict highlights that not all COVID-19 coverage cases are the same and although many insurers continue to win these cases and have them dismissed, there can be arguments for coverage under certain types of policies. It also highlights the differences in a judge versus jury trial.


Class Action Filed Alleging Bank Failed to Learn from Past Cyber Attack and had “Nonchalant Approach” to Cybersecurity
McLaughlin v. Flagstar Bancorp Inc. et al

A Michigan-based bank is facing a purported class action lawsuit regarding a December 2021 data breach, which alleges that it failed to learn from a previous December 2020 data breach and demonstrated a “nonchalant approach” to cybersecurity.

According to the complaint, in December 2021, cybercriminals bypassed Flagstar Bancorp’s security systems and gained access to consumers’ personally identifiable information (PII). Flagstar became aware that cybercriminals had accessed the PII in June 2022. The stolen PII included 1.5 million consumers’ names, Social Security numbers, addresses, Tax ID numbers, dates of birth, and non-factual account information and numbers.

The complaint alleges that Flagstar’s use of outdated and insecure computer systems and software was easy to hack and that it failed to maintain adequate security measures and an up-to-date technology security strategy. The complaint alleges that this demonstrated a willful and conscious disregard for privacy by Flagstar.

Plaintiff further states that Flagstar’s “failure to learn” from a previous December 2020 data breach demonstrated its “nonchalant approach to cybersecurity and its institutional disregard for consumer data protection.” Flagstar previously agreed to pay $19.5 million to settle a different case relating to the earlier breach in which customers’ data was at risk due to the hacked Accelion f le-transfer product.

The complaint also alleges that Flagstar’s failure to timely detect and report the data breach made its consumers vulnerable to identity theft without any warnings to monitor their PII accounts or credit reports to prevent unauthorized use of their PII. Flagstar’s breach notice obfuscated the nature of the breach and the threat it posed, including underplaying the breach’s severity.


The suit raises questions regarding financial institutions’ duty to learn from past cyber incidents and reiterates the importance of taking cybersecurity seriously.

Case No. 22-cv-11470 (E.D. Mich June 29, 2022)

Wells Fargo Agrees to Pay DOL $145M Over ESOP Probe and Subsequently Hit With Employee Class Action Lawsuit Alleging $400M in Damages
Beville et al. v. GreatBanc Trust Co. et al

The Department of Labor announced a settlement with Wells Fargo and GreatBanc Trust Company – a plan trustee – that recovers more than $131.8 million for the retirement plan's participants after a department investigation found that the fund overpaid for company stock purchased for the plan from 2013 through 2018. Wells Fargo also agreed to pay a penalty of nearly $13.2 million as part of the settlement. Following the announcement of the settlement, former Wells Fargo employees filed suit against Wells Fargo alleging “corporate self-dealing at the expense of the retirement savings of company employees.”

The DOL settlement stems from an investigation by the department's Employee Benefit Security Administration that determined Wells Fargo and GreatBanc caused the 401(k) plan to pay between $1,033 and $1,090 per share for Wells Fargo preferred stock. However, the stock, specifically designed for the plan, converted to a set value of $1,000 in Wells Fargo common stock when allocated to participants.

EBSA investigators also learned over the course of its investigation that Wells Fargo used the dividends paid on the preferred shares to defray its own obligation to make contributions to the 401(k) plan, by using the dividends to repay the stock purchase loans. The investigation revealed the transaction was designed to cause the 401(k) plan to pay more for each share of stock than plan participants would ever receive.

As part of the settlement, GreatBanc agreed to not act as a fiduciary to a public company in connection with any future leveraged transaction involving an employee stock ownership plan, unless the plan acquires only publicly traded stock and pays no more than the fair market value.

In announcing the settlement, Secretary of Labor Marty Walsh stated: “Today’s settlement shows the Department of Labor will act when we find retirement assets are misused and benefit plans suffer. ‘Solicitor of Labor Seema Nanda added “This settlement reflects the Department of Labor’s resolve to protect America’s workers’ hard-earned retirement savings and to ensure that plan fiduciaries comply with their legal requirements.”
Insurance Coverage

Notice Prejudice Provision Must Be Explicitly Stated in Policy
*Georgian American Alloys, Inc. v. AXIS Ins. Co*

The Third Circuit ruled that under Delaware law, the prejudice rule must be explicitly stated in the policy. It cannot be read into the policy.

The policyholder failed to timely report a claim within the policy period, although it did report it before the ninety-day post-policy window closed and during the policy’s next renewal period. The insurer denied the claim for reporting after the close the policy period. The policyholder argued that the insurer had to show prejudice to support a denial of coverage based upon an untimely claim under a claims-made policy. The insurer countered that the prejudice requirement did not apply.

The court ruled that the policy at issue lacked language extending coverage to claims reported during any subsequent renewal and instead required notice during the specified policy period. The court was not willing to read a prejudice requirement into the policy whenever an insurer issues a renewal policy. As such, the insurer did not need to show prejudice to enforce its notice requirement.

*Case No. 21-1947 (3rd Cir. Aug 31, 2022)*

Seventh Circuit Affirms that Where Insurer has Breached Duty to Defend, Policyholder’s Defense Fees Presumed to Be Reasonable and Necessary
*USA Gymnastics v. Liberty Ins. Underwriters, Inc*

The Seventh Circuit recently held that where an insurer wrongfully denies a duty to defend, any defense fees incurred by the policyholder are deemed to be reasonable and necessary. As part of the ongoing litigation involving USA Gymnastics (USAG) in lawsuits and investigations involving Larry Nassar, USAG sued several insurers in Indiana state court, arguing the companies were required to defend it and pay legal expenses related to the lawsuits and investigations. One of those insurers was Liberty, from which USAG had purchased a claims-made directors and officers liability insurance policy.

The district court previously held that Liberty had a duty to defend USAG against nearly all the athlete lawsuits and investigations, which was affirmed by the Seventh Circuit. Shortly after the district court ordered Liberty to provide coverage and reimburse USAG for its defense costs, USAG sent Liberty a calculation of damages.

These damages included approximately $3.18 million in past defense costs, including $1.77 million for government investigations and $205,000 in prejudgment interest on past defense costs.

Liberty did not agree to USAG’s demand, resulting in further coverage litigation.

The district court ruled, and the Seventh Circuit upheld, that when an insurer has breached the duty to defend and the policyholder “has secured, supervised and paid for a defense without any expectation of payment, those costs are market tested and are presumed to be reasonable and necessary.”

Liberty argued that USAG did not meaningfully supervise outside counsel because it never requested write-offs from outside counsel and rarely followed up with them to ask questions about invoices they submitted. USAG argued that it was not required to request write-offs or ask particular questions about bills as requirements for supervision. The Seventh Circuit affirmed that a litigant may supervise its outside counsel without refusing to pay portions of legal bills or “engaging in hairsplitting” about those bills.

*Case No. 21-2914 (7th Cir. Aug. 16, 2022)*

Two weeks after the announcement of the settlement, former employees of Wells Fargo filed suit against Wells Fargo alleging that it violated federal benefit law by overcharging their 401(k) plan for stock options. The complaint also brings suit against the then Wells Fargo CEO, the employee benefit review committee and its members, and GreatBanc.

The complaint *alleges that defendants*, including Wells Fargo as plan sponsor, *favored the economic interest* of Wells Fargo over those of the plan and its participants, to whom they owe the highest duties known to the law.

The complaint also alleges that Wells Fargo, with the knowledge and consent of the other defendants, converted plan assets for its own use, violating ERISA’s prohibited transaction provisions. The complaint states “This was theft of participants’ retirement savings.”

The complaint alleges that had Wells Fargo not taken dividends for its own use, participants would have received an additional $400 million worth of common stock or cash from 2017 to 2019.

*Case No. 22-cv-02354 (D. Minn Sept. 26, 2022)*
Court Holds Informing Underwriter of Claim Does Not Constitute Notice of Claim


As part of a renewal application, an insured informed the excess carrier underwriter it had received a legal hold letter but did not of cially notice it as a claim. In subsequent coverage litigation, the court held that informing the underwriter alone did not satisfy the notice requirement under the excess policy.

Beginning in August 2018, the policyholder Heritage Bank purchased multiple excess insurance policies from Zurich. Heritage argued that these policies covered various actions filed by victims of the DC Solar Ponzi scheme, who alleged that Heritage had aided and abetted the wrongdoing by allowing those running the company to transfer funds from investors’ accounts without authorization. They sued Heritage after DC Solar went bankrupt. Heritage rst reported the potential losses to its primary insurer the same month it received notice of them. As part of its renewal application in July 2019, Heritage informed the underwriting department at Zurich that there was a legal hold letter relating to DC Solar, but that they expected it to be a “nuisance incident.” Heritage did not send any notice to Zurich’s claims department during the applicable period.

Zurich stated it did not receive notice of the claims until February 2021. When Zurich did receive notice, it denied coverage for late notice. Heritage argued it was entitled to coverage as it notified an employee in Zurich’s underwriting department about the potential claim during the policy period. Heritage subsequently rst seeking defense and indemnification for some of its $9 million settlement of a case brought by the bankruptcy trustee.

In a somewhat colorful analogy, the court outlined the differences between claims-made and occurrence policies, writing: “With occurrence or claims-made policies, insurers must allow for some uncertain amount of risk haunting the customer’s past. With claims-made-and-reported policies any skeletons in the closet are irrelevant.” The court further stated that, this being the case, insurers can of er lower premiums on claims-made-and-reported policies because they do not have to account for any reservoir of risk but that “this system only works if the window slams shut at the end of each period.”

As such, the court found that Zurich was not required to show it was prejudiced by the late notice. The court also stated that the email to the underwriter during the renewal process does not su ce as notice.

Case No. 21-cv-10086 (N.D. Cal. Aug. 17, 2022)
Construction

Construction – Q3 2022 Summary

Q3 2022, in many ways, witnessed the same characteristics of the first half of 2022. Breakneck rate increases and nonrenewals are no longer the norm as the market has settled. Underwriters are still looking for rate wherever they can get it, but the conversation is more a negotiation than demand. Markets have continued to post solid underwriting results which are driving profits. The rising interest rate environment and volatility in capital markets continue to warrant attention but have yet to influence insurance pricing in the construction space.

Loss experience remains the differentiator as accounts with poor experience can expect 10% to 17%+ rate increases on their general liability renewals. Accounts that have some loss activity, but no large losses, should expect 8% to 10% rate increases.

Accounts with stellar loss experience should look for flat to 8% rate increases, depending on their current program rates.

Auto liability rate increase moderation has continued with renewal rate increases on low loss activity accounts in the high single digit range. Underwriters continue to thoroughly review and scrutinize risk control and safety processes and procedures. This should be an area of focus for firms to improve their overall risk profile. Most markets are willing to work with firms to develop best in class risk and loss control programs and these resources should be utilized in concert with your broker’s risk management and claims teams. Excess casualty renewal rate changes continue to mirror rate changes in the primary lines.

Inflation and monetary policy, utilized to control inflation, are things we will continue to monitor as we head into Q4 of 2022. Recent reports have shown a deceleration of price escalation, but the need for additional monetary measures may be needed towards the middle of Q4. One additional thing we are monitoring closely is the distribution of Federal Funds from the Infrastructure Investment and Jobs Act (IIJA), which has taken longer than expected to impact construction starts, but seemed to be picking up speed towards the end of Q2 2022.

Wrap-Ups – Q3 2022 Summary

The biggest questions and discussion points coming out of this past quarter are around the state of construction and what it is going to look like heading into the fourth quarter and 2023.

In one respect we see architect drawings and requests up at pre-pandemic levels. This is always a good sign that owners and developers are looking to begin work. But this positive news is offset with the state of the economy, inflation, war in Ukraine, and still some remaining COVID-19 issues and shutdowns in China. This has led some developers to put their projects on hold. Inflation and supply chain scares are still very present and still influencing construction and development decisions.

We can look at this optimistically, however. We do know the infrastructure funds are about to start flowing and we know state DOTS are putting plans in place to start having shovels in the ground — in many cases for projects that have been on hold for two or more years. We also know we still have a large residential housing issue. “For-Rent” opportunities are needed, and developers are actively looking to answer that demand. The one difficult area we still see is coverage and capacity for residential “For-Sale” risk. There are fewer markets willing to price this coverage and those that are, are only of eroding limited capacity. Any developer considering “For-Sale” coverage, please make sure you reach out to your broker representative early and be ready to meet stringent underwriting subjectivities.

Lastly, we know that insurance carriers are bullish on Wraps. Over the past year we have seen more carriers enter the market on the surplus lines side as well as admitted markets of ering more options for GL only programs. This has created additional options for owners to consider, particularly on larger projects.

One negative trend we continue to see is increasing settlement figures from nuclear claims (claims with larger settlements than expected) and it’s anticipated that larger claim settlements will continue to be seen in the future. This is not something that we see stopping. The other negative trend we see is owners and developers, and even contractors, looking to lower their excess liability limits. We are very concerned about this issue. If anything, we are advising risk managers to look further at their limit spend and consider buying more protection.

Finally, this quarter did show that markets are still looking for price increases for any project extension. We highly recommend you work with your development team and continue to pick appropriate schedules for your project. We also suggest continually staying on top of your carrier during construction and alerting your carrier to potential delays and communicating early with your carriers.
## Primary Casualty (WC, GL, Auto)

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<thead>
<tr>
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<tr>
<td><strong>Pricing</strong></td>
<td>0% to 17%</td>
<td>Rate targets remained consistent in GL with expected rate increases in the 0% to 7% range. WC experienced mostly flat renewals while AL rate moderation continued with renewal targets at 5% to 8%. Loss experience will drive these rate increases up an additional 8% to 12%, depending on frequency and severity.</td>
<td>0% to 15%</td>
<td>Markets continue to monitor book performance with an eye on price escalation and macro economic factors, which remain volatile. Underwriting results will dictate shifts in the construction insurance market.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>No major changes in Q3.</td>
<td></td>
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<tr>
<td><strong>Retentions</strong></td>
<td>Retention volatility was near zero with firms maintaining their current program structures in most cases.</td>
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</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>Coverage remained consistent through Q3.</td>
<td></td>
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<tr>
<td><strong>Carrier</strong></td>
<td>New capacity has entered the New York Construction Market but is being deployed conservatively.</td>
<td></td>
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<tr>
<td><strong>Claims</strong></td>
<td>Claim activity continues to be the single most influential piece of the underwriting analysis.</td>
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## Excess Casualty

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<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>5% to 50%</td>
<td>Excess underwriters continue to look for rate whenever possible. Most renewal rate changes mirrored underlying positions. Exceptions to this are driven by increased loss activity.</td>
<td>5% to 50%</td>
<td>Similar to the primary markets, the excess markets will settle in on pricing positions and monitor developments in underwriting profitability and claim cost escalation.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>No major changes in Q3.</td>
<td></td>
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</tr>
<tr>
<td><strong>Retentions</strong></td>
<td>We continue to monitor the interest rate environment, which impacts collateralization expenses. If rates continue to increase, the cost associated with collateralizing loss sensitive programs will further burden balance sheets. An emphasis on collateral management (loss picks, collateral releases and hold amounts) is increasingly more important as the cost to collateralize obligations increase.</td>
<td></td>
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</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>Coverage remained consistent through Q3.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td>New capacity has entered the market but has yet to shift rates. Underwriters are still controlling capacity deployment and maintaining layer rates.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Claims</strong></td>
<td>Claim activity is forefront in the underwriting conversation. Programs with loss activity continue to be heavily scrutinized.</td>
<td></td>
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</tbody>
</table>
### Builders Risk

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<tr>
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<tr>
<td>$ Pricing</td>
<td>0% to 15%</td>
<td>Pricing remains consistent quarter over quarter. Wood frame and cat exposure continue to drive rate. A quiet start to the Atlantic hurricane season was a welcomed scenario. Flooding and drought affected several parts of the West but in general it has been a more favorable year than 2021.</td>
<td>Pricing will remain consistent without a major cat event or shift in market participants. Underwriters will continue to use cat peril limits and deductibles to address exposure concerns.</td>
</tr>
<tr>
<td>✔ Limits</td>
<td>0% to 15%</td>
<td>Markets continued to utilize short limits and quota share to manage exposure. Cat peril limits continue to be utilized to control project specific exposures.</td>
<td>Markets will continue to utilize layer limits and cat peril limits to control risk profiles.</td>
</tr>
<tr>
<td>✔ Retentions</td>
<td>0% to 15%</td>
<td>Retentions levels available have remained consistent.</td>
<td>Retentions will continue to stay at current levels. However, there will be a continual push to consider higher retentions to push fixed rates lower.</td>
</tr>
<tr>
<td>✔ Coverage</td>
<td>0% to 15%</td>
<td>Standard coverage remains consistent. Mass timber and other alternative building methods/products continue to be heavily scrutinized.</td>
<td>Alternative building methods continue to be utilized as the expansion of ESG (environmental, social and corporate governance) pursuits and green building legislation drives changes in construction to meet</td>
</tr>
<tr>
<td>✔ Carrier</td>
<td>0% to 15%</td>
<td>Builders risk market participants remained static.</td>
<td>No significant changes in markets of primary builders risk.</td>
</tr>
<tr>
<td>✔ Claims</td>
<td>0% to 15%</td>
<td>Claim activity remained consistent with delay in start-up, water damage and material cost escalation leading the cost drivers.</td>
<td>A favorable cat season should set material cost escalations leading to pricing equilibrium, depending on the later half of cat season.</td>
</tr>
</tbody>
</table>

### Wrap-Ups (OCIP and CCIP)

<table>
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<tr>
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<tr>
<td>$ Pricing</td>
<td>-2% to 2%</td>
<td>Primary rates continue to remain stable. There has been some additional competition in the excess markets indicating future competition.</td>
<td>While rates should continue to hold, it is still important to be conservative with estimates as you are planning your projects. Depending on your project, the increased carrier participation is opening up opportunities for rate decreases.</td>
</tr>
<tr>
<td>✔ Limits</td>
<td>-2% to 2%</td>
<td>Limits for primary and excess layers continue to stay constant. Expect longer periods to place your layers.</td>
<td>Expect excess capacity to stay consistent. Increasing lead time will still be needed to place coverage however.</td>
</tr>
<tr>
<td>✔ Retentions</td>
<td>-2% to 2%</td>
<td>Retentions levels available have remained consistent.</td>
<td>Retentions will continue to stay at current levels. However, there will be a continual push to consider higher retentions to push fixed rates lower.</td>
</tr>
<tr>
<td>✔ Coverage</td>
<td>-2% to 2%</td>
<td>While coverage is stable, there are still difficult classes for placement. “For-Sale” residential coverage is still a challenge and only open to a few markets. Best advice is to continue to reach out to your broker early to set up proper expectation.</td>
<td>No anticipated changes. Carriers continue to be very price conscious on extensions. In some situations not agreeing to an extension or doing so at enhanced pricing terms.</td>
</tr>
<tr>
<td>✔ Carrier</td>
<td>-2% to 2%</td>
<td>Except with “For-Sale” residential coverage, more wrap carriers have entered the market. We have also seen admitted markets consider GL only options. This opens up carriers options particularly on larger projects.</td>
<td>Except for residential, carrier participation is expected to remain consistent.</td>
</tr>
<tr>
<td>✔ Claims</td>
<td>-2% to 2%</td>
<td>Overall claims for construction continue to escalate. Both medical inflation and with completed operations.</td>
<td>Now that we have come out of COVID-19, and more claims are being looked at by the courts, we can expect claims to continue to increase. We highly recommend buying additional limits to safeguard your assets.</td>
</tr>
</tbody>
</table>
**Casualty – Q3 2022 Summary**

Overall, the 2022 US energy casualty market continues to stabilize, with improved capacity and more competition amongst insurers. Rate increases are slowing to single digits and/or flat in some cases. ESG profiles are carrying more weight in underwriting criteria as it continues to grow in focus for energy casualty underwriters.

Pricing in the upstream casualty sector continues to improve. However, casualty underwriters remain conservative on new business pricing due to the personnel race among energy companies and their competitors. In a booming energy environment workers’ comp and auto loss trends tend to increase due to inexperienced employees and/or poor company onboarding. Companies will need to convey solid safety cultures and hiring procedures to get the best marketing results.

The midstream casualty space has increasingly become more competitive due to good performance by the upstream sector that has begun acquiring assets in the midstream space. There has been a timely increase in capacity, of setting some large industry losses in Q2. Quality control and maintenance operations will be in the underwriter’s spotlight for the foreseeable future.

The downstream casualty sector also continues to stabilize. The clients most likely to benefit from this will be those with good loss records that can also show evidence of effective management of natural catastrophe exposures. Rates appear to have reached a leveling-off phase, where flat to single-digit rises are more the norm, and small reductions are becoming achievable with underwriters. Granted, insureds that still have poor loss records or have assets in locations at a greater risk of natural catastrophes may still see meaningful rises in rates.

**Property – Q3 2022 Summary**

It’s been a benign hurricane season and with less than two months left, many clients and carriers are crossing their fingers that it remains this way through November 1. NOAA predicted an above-average hurricane season.

This is the first time since 1997 that there wasn’t a hurricane or named storm in the Atlantic in August, but we are not out of the woods as September averages 2.6 hurricanes per year.

The outcome of this windstorm season could provide justifiable increase to rates but at the same time may provide relief for reinsurers markets, which could impact direct carriers.

Large losses in the energy sector have given many carriers cause for concern. After an LNG facility suffered a loss, the markets had to deal with another explosion at a gas plant in Oklahoma. The ref nery loss could potentially be a billion-dollar event and the gas plant is expected to add insult to injury.

The losses are hitting a market that had previously been able to achieve rate and retention improvement. Carriers are now questioning if actual rate adequacy was achieved. Increased capacity and aggressive carrier underwriting has started to drive down rates. Clients should start seeing the benefit as carriers begin to compete for business. Policy terms that were bound on a differential basis should be able to be realigned.

Given that both large losses are being driven by business interruption (+100M per month), it further elevates the importance of accurate values. Clients should be fully engaged and transparent on their business interruption calculations to ensure accurate premium calculations and to avoid issues in the event of a loss. Contingent business interruption could become another extension of coverage that is more heavily scrutinized as clients in the midstream/downstream are very interconnected. A client who didn’t have a physical loss could now be impacted by these explosions. The LNG facility loss caused gas prices to spike in Europe.

As inflation continues to plague the economy many projects are requiring increased limits to cover the project costs halfway through the projects. Capacity is not the major driver but there might be issues on larger projects or those with heavy natural exposures. Projects that are centered around ESG have an abundance of capacity as more carriers seek to support and diversify their portfolios.

**Power Generation – Q3 2022 Summary**

Attribution losses are starting to deteriorate profits and underwriters are questioning if the rate adequacy has been truly achieved. As aging infrastructure continues to plague the PG sector, questions about replacement cost and actual cash are starting to be raised. If the client chooses to not rebudget then language in the policy should be added to address this issue.

As the hurricane season is halfway through and no major events have occurred many underwriters may feel the pressure to soften rates. Clean accounts with adequate loss control ratings can expect flat to single digit rate rises. Accounts with adverse loss history can expect extra scrutiny, additional subjectivities along with flat rate rises. Underwriters still combatting inflation are expecting clients to declare adequate values. If clients submit values that are not increased from the previous years, they can expect carriers to add an arbitrary 10% surcharge.

Clients should get ahead of value concerns by hiring a third-party firm that can adequately report their values. This extra effort will show underwriters that the client is committed to reporting accurate values. Once values are established then indexing can be utilized for about three years before they need to reset. Accurate values allow better negotiations for clients on relocations and extensions of coverages.

**Marine – Q3 2022 Summary**

The hull and machinery market has continued to stabilize, with rate increases of 5% - 10% on profit table marine accounts. However, we are seeing new business being competitive versus renewal business. The US coastal marine property market is still facing challenges with capacity. The protection and indemnity market within the P&I Club system still being impacted negatively with mounting losses. This has put pressure across the entire protection and indemnity sphere. Rates for both the P&I Club Group as well as the open market are resulting in rises beyond those caused by inflation.

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

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

Ukraine grain shipments via the Black Sea ports have seen excess of 45 ship movements since the Ukraine Russia Turkey pact has commenced. There are a limited number of insurance carriers of eering for these moments along with the War Risk associated with the movements. Coverage for coal shipments to Europe has also been impacted with restrictions place on Lloyd’s underwriters to follow ESG governances. LNG cargo market is still robust in terms of capacity and rating structure.

Depending on the class of business the cargo market capacity is slightly up with rates stabilizing. Cargo markets are reviewing aggregate limits and limiting capacity across specific types of cargo products and locations.

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

**METRICS**

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**Pricing**

The energy casualty sector is experiencing rate stabilization and rates are remaining flat to single digit rate increases contingent upon individual loss experience.

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

Casualty capacity should remain at current levels throughout the rest of the year.

Infation is becoming a concern which is highlighting that retentions may not be sufficient. This could potentially be an issue in the Q4 2022.

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.

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

The Energy contractor markets have been moving to a combination (GL/CTU/ E&O) form. This approach provides broader coverage on a non-auditable basis, driving rate increases at renewal. The excess Energy casualty markets are following form but of enacting 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 contracting servicing sector.

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

Clients could eventually benefit from the entrance of new carriers but not yet.

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

The increased commodity pricing for hydrocarbon products and inexperienced O&G personnel looks to be a recipe for heightened claim activity.

**Limits**

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.

Infation is becoming a concern which is highlighting that retentions may not be sufficient. This could potentially be an issue in the Q4 2022.

Casualty capacity should remain at current levels throughout the rest of the year.

Infation is continuing to be a note of discussion. Expect retentions to remain as is unless carriers have further concerns over values.

**Retentions**

Carriers were able to utilize the hard market to revise retention levels and clients elected to increase retentions to offset rate rises. After going through prior cycles of retention increases, carriers are comfortable with the current levels.

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Additional capacity will create competition between carriers, which will inevitably lead to higher limits.

**Coverage**

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Additional capacity is allowing clients the ability to remove differential terms that occurred during the hard market.

**Carrier**

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**Claims**

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**Property**

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**Pricing**

Rate increases are steadying with rates ranging from flat to 10%. Restructuring layered programs has helped achieve rate reductions on larger portfolios.

Those clients with no losses or no nat cat exposures can push markets and achieve a rate reduction.

Assuming no major hurricanes reinsurers will have pressure to reduce rate rises and we can expect direct carriers to follow suit.

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

Additional capacity will create competition between carriers, which will inevitably lead to higher limits.

Infation is highlighting issues with valuations. Carrier may increase retentions if they are not comfortable with value adequacy.

Inflation will continue to be a note of discussion. Expect retentions to remain as is unless carriers have further concerns over values.

**Limits**

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**Retentions**

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Additional capacity is allowing clients the ability to remove differential terms that occurred during the hard market.

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**Coverage**

No notable entrants or exits in the space — carriers becoming more comfortable and willing to take larger line sizes for adequately priced risks.

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No notable entrants or exits in the space — carriers becoming more comfortable and willing to take larger line sizes for adequately priced risks.

Current carriers will look to end the year with an underwriting profit. No visible issues with current carriers and loss records.

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**Carrier**

Large losses have impacted this sector and the BI quantum is still unknown, many suspect one loss could exceed $1BN.

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Large losses have impacted this sector and the BI quantum is still unknown, many suspect one loss could exceed $1BN.

Carriers will keep an eye on the large losses and will see how business interruption loss plays out to see if any adjustments to their underwriting philosophy is needed.
**Power Generation**

<table>
<thead>
<tr>
<th>METRICS</th>
<th>Q3 2022 YOY CHANGE</th>
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<th>12 MONTH FORECAST</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Rates have stabilized and clean accounts can expect flat to single-digit renewals. Those clients with losses or natural exposures can expect to receive double digit rate increases.</td>
<td>$ 0% to 5%</td>
<td>$ -5% to 0%</td>
<td>Quiet hurricane season could lead to a more rapid softening of rates next year.</td>
<td></td>
</tr>
<tr>
<td>Carriers comfortable with their efforts to correct accounts during the hard market are now allowing clients to correct their fragmented programs. Clients with diverse portfolios will be able to obtain higher limits as markets look to expand their line size.</td>
<td>✔️</td>
<td>✔️</td>
<td>As underwriting profitability continues, expect more capacity to be deployed.</td>
<td></td>
</tr>
<tr>
<td>Underreported values could push retentions up, as carriers try to protect themselves from inflation. Those with adequately reported values can expect no change to retentions.</td>
<td>✔️</td>
<td>✔️</td>
<td>Inflation is highlighting that retentions are not sufficient as losses settle higher than expected.</td>
<td></td>
</tr>
<tr>
<td>Typical extensions of coverages may be increased as carriers compete to obtain larger line sizes on pristine accounts.</td>
<td>✔️</td>
<td>✔️</td>
<td>Coverages can expect pressure as additional capacity is deployed creating competition among carriers.</td>
<td></td>
</tr>
<tr>
<td>Carriers are still looking to increase their market share, which will help of set higher priced quotes. No noticeable entrants into this space.</td>
<td>✔️</td>
<td>✔️</td>
<td>No new entrants into the market being reported.</td>
<td></td>
</tr>
<tr>
<td>Attritional losses have continued to plague this sector. Clients with attritional losses may experience higher retentions in addition to rate rises.</td>
<td>✔️</td>
<td>✔️</td>
<td>Attritional losses are giving carriers pause but it will take a catastrophic loss to impact the entire sector.</td>
<td></td>
</tr>
</tbody>
</table>

**Marine**

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>$ 0% to 13%</td>
<td>$ 0% to 13%</td>
<td>Will see continued pressure on rates due to claims activity and inflation. Looking to see some modification in late fourth quarter.</td>
<td></td>
</tr>
<tr>
<td>Overall excess limits had been climbing over the last few years due to large jury awards and costs of excess limit. These trends are slowing if not stopped.</td>
<td>✔️</td>
<td>✔️</td>
<td>Increasing retentions as a mechanism to offset premiums has been the model in the marine market for the past few years. This trend is beginning to slow, as the market continues to offer higher retentions having minimal changes in premium.</td>
<td></td>
</tr>
<tr>
<td>Terms and conditions are remaining stable for hull and machinery as well as protection and indemnity. Cargo is seeing restrictions and tighter coverage on SRCC due to the ongoing Russia-Ukraine war.</td>
<td>✔️</td>
<td>✔️</td>
<td>Terms and conditions should remain stable on marine coverages, with ongoing cargo sanctions restrictions as the overseas conflict continues.</td>
<td></td>
</tr>
<tr>
<td>Capacity is beginning to increase with the entrance of new insurance carriers entering the marketplace. This added capacity has not had its intended effect on reducing premiums.</td>
<td>✔️</td>
<td>✔️</td>
<td>We will continue to see capacity increase throughout the marketplace. Cargo carriers will also review year end losses and claims activity and adjust their preferred risk appetites accordingly.</td>
<td></td>
</tr>
<tr>
<td>Claims continue to increase in frequency on cargo, hull and machinery, and protection and indemnity coverages.</td>
<td>✔️</td>
<td>✔️</td>
<td>Claims are likely to continue to increase in frequency and severity. Underwriters will make rate adjustments accordingly.</td>
<td></td>
</tr>
</tbody>
</table>
Environmental

Contractors Pollution Liability, Site Pollution Liability

Environmental – Q3 2022 Summary

Emerging contaminants continue to be a concern for clients and carriers alike with an increased number of carriers placing restrictions associated with remediation and bodily injury claims. The EPA recently proposed designating certain PFAS Chemicals as Hazardous Substances under the Superfund Act. Designating certain PFOA and PFOS chemicals under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) should provide greater transparency on how to deal with the contaminants going forward. While the initial claims associated with these contaminants were from fire suppressant foam impacting groundwater, they have since been found in many of our day-to-day products.

Carriers are also showing an increasing concern with lead-based paint in New York City apartments after the NYC Health Department adopted the new federal rules on childhood lead exposure earlier this year, which call for increased testing in children for the first six years of life.

Clients should make sure that they have lead based paint operations and maintenance procedures in place for each of their properties.

Premium increases are holding steady at anywhere from 3% to 10% depending on the line of environmental coverage. Markets continue to place greater emphasis on 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.

Premium increases are holding steady at anywhere from 3% to 10% depending on the line of environmental coverage. Markets continue to place greater emphasis on 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.

Contractors Pollution Liability (CPL)

<table>
<thead>
<tr>
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<th>12 MONTH</th>
<th>12 MONTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>3% to 5%</td>
<td></td>
<td>3% to 5%</td>
<td></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>A wide range of retention levels are 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>
<td></td>
</tr>
<tr>
<td>Coverage</td>
<td>Coverage remains broad for CPL and exclusive coverages are available to NFP, including delay expense which results from work stoppage caused by known or unknown pollution events.</td>
<td>We do not expect significant pull back in coverages over the course of the next 12 months.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrier</td>
<td>No new entrants into the marketplace, however, CPL coverage remains a desirable product for carriers given the favorable loss ratios.</td>
<td>We do not foresee any markets exiting the CPL space as it remains very profitable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims</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>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Legal Practice – Q3 2022 Summary

Lines of business particular to the practice and the business of law continued to stabilize during Q3 2022. While the cyber market continues to experience significant rate adjustments and changes, the overall market for lawyers’ professional liability (LPL) and employment practices liability (EPL) continues to be stable to slightly up.

#### Lawyers’ Professional

The LPL market remained relatively stable in Q3 2022 with pricing largely dependent on specific risk factors, including size of firm, geography and areas of specialization. Carrier partners are continuing to look for book-wide rate increases of up to 5%, with our clients averaging 3% increases from a primary layer perspective. Smaller firms continue to enjoy mostly stable rates with middle market and larger firms seeing modest increases.

Many carriers are putting an increased emphasis on firm revenues to determine pricing and retentions, instead of relying solely on headcount to determine rate.

Excess market pricing remains competitive, with capacity in the marketplace continuing to expand.

Risk capacity remained steady, with few carriers willing to offer more than $5M primary limits on any one firm. Market capacity continues to increase within the LPL space with Vault Excess being the latest to enter. Continued underwriting personnel changes have also led to a competitive marketplace. Everest Insurance Company is the most notable departure from the LPL open market space.

Terms and conditions remained relatively steady. Carriers continued to add supplemental “value add” coverages such as subpoena coverage, crisis management, pre-claims assistance and privacy coverage. Some carriers are beginning to exclude social engineering and silent cyber, making the coordination of E&O and cyber coverages more important than ever.

#### Cyber for Law Firms

As with the broader cyber market, the cyber market for law firms continues to harden with price increases ranging from 10% to over 100%. 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 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)

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.

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%.

### Legal

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

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>$</td>
<td>5%</td>
<td></td>
<td>Pricing is expected to continue to rise in specified segments due to expected increases in claims activity. Some pricing increases could be mitigated, particularly in the excess markets with new carriers entering the line of business.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Most carriers are capping primary limits at $5M, with a few still willing to offer $10M. Quota share options continue to rise in popularity. Excess limits are still widely available up to $10M in capacity, depending on attachment point.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Carriers have increasingly focused on matching the size of the retention with revenues and size of firm, particularly in the middle market to large firm space.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Coverage remained relatively stable throughout the first half of 2022. Some increased add-in coverages with low sub-limits (subpoena, crisis management) are becoming standard.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Everest Insurance Company announced that they are exiting the open market space for law firms. The market is still heavily dominated by a half dozen carriers.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Severity of claims continues to rise driven by higher defense costs and larger deals with more sophisticated clients. Frequency has stabilized or decreased due to the slowdown in litigation and related areas.</td>
</tr>
</tbody>
</table>

### Cyber for Law Firms

<table>
<thead>
<tr>
<th>METRICS</th>
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<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pricing</strong></td>
<td>$</td>
<td>10% to 100%</td>
<td></td>
<td>Pricing is likely to continue to increase due to increases in claims activity and historically inadequate pricing as compared to exposures.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Retentions</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Retentions will continue to rise, as well as requirements for coinsurance or other risk sharing techniques.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Ransomware coverage is closely scrutinized and often sublimited or eliminated. MFA is a standard requirement for coverage and firms unwilling or unable to implement will see reduced coverage.</td>
</tr>
<tr>
<td><strong>Carrier</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Continued mandatory requirements for MFA and back-up systems expected for all size firms. Decreased availability of ransomware coverage expected.</td>
</tr>
<tr>
<td><strong>Claims</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Expect continued emphasis on minimum requirements for data security and cyber controls. Law firms are expected to become a less desirable class of business as cyber carriers continue to tighten underwriting guidelines and requirements.</td>
</tr>
</tbody>
</table>

As law firms were increasingly targeted by hackers and those seeking ransoms, rates increased substantially to account for the increased exposure. The increases range from 10% to over 100%.
### Employment Practices for Law Firms

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>10% to 30%</td>
<td>10% to 30%</td>
<td>Depending on actual claims development, rate increases may stabilize or even decrease as 2022 matures. The market is likely to remain uncertain.</td>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>10% to 30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td>10% to 30%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**COVID-19 concerns, including issues respecting vaccination requirements and return to work, are driving rates higher. High-prof le wage disparity and gender discrimination claims have specifically impacted law firm pricing.**

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

**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 the 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 firms 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 ESOP matters and related claims.**

### Management Lines for Law Firms – D&O, Fiduciary and Crime

<table>
<thead>
<tr>
<th>METRICS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>10% to 30%</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>
</tr>
<tr>
<td>Limits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>10% to 30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td>10% to 30%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**COVID-19, return to work and cyber activity have resulted in increased claims counts and severity in these lines.**

**Primary rates should continue to stabilize as adjustments were previously made. Economic conditions could push rates further upward.**

**Insurers have focused on managing limits capacity and ventilating exposures in the large law firm segment, which is where we see most of the demand for these coverages.**

**No change in limits expected after previous adjustments — though we may see more implementation of sublimits in certain areas.**

**Carriers continue to monitor retention adequacy and take corrective action where needed, particularly where employee count is high and policies/procedures not fully implemented.**

**Retentions will continue to be monitored particularly where there are past claims or policies/processes are inadequate.**

**D&O for law firms remains stable and adjustments that were made post Dewey failure are common. Still some adjustments being made in fiduciary and crime where sublimits and exclusions are being implemented to address increase in claims related to work-from-home/cyber security and excessive fee litigation (fiduciary).**

**Coverage expansion not anticipated.**

**Market has remained relatively stable in the first half of 2022 with no real shifts in participants or appetites.**

**Market is expected to remain relatively stable with no real shifts in participants or appetites.**

**Severity is expected to increase in these lines as projected settlements and related defense costs are expected to rise.**
### Life Sciences – Q3 2022 Summary

The life science market has remained consistent. This market’s diversity ranges from high-risk products like implants and surgical mesh, to lower-risk ones 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. Pricing in this area has increased slightly due to higher jury and settlement awards as well as increased litigation and higher medical costs for bodily injury claims.

Renewal rates have been stable, though increases for the tougher risks have been noticed. Capacity and competition for all lines continues to increase as new domestic carriers and MGAs continue to enter the life sciences space.

With the COVID-19 vaccine only taking 10 months to be developed and out to market, in sharp contrast to the usual 10 years for new drugs to be released, there is a shift in expectations to getting medicine to patients quicker. Safety is still a priority, but there is an expectation for a more streamlined regulatory process going forward. There is an emphasis on collaborations rather than full company acquisitions and subsequent push for speed to market. New and innovative technology consumes the industry.

Medical professionals are taking steps to advance their methods and treatment, including wearables, artificial intelligence and virtual reality.

This has affected how carriers underwrite business and the limits they are willing to offer. We are seeing carriers adding sublimits and exclusions that might not have been frequently used in the past, but are now standard.

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**Product Liability**

<table>
<thead>
<tr>
<th>METRICS</th>
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<th>12 MONTH FORECAST COMMENTARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>0% to 5%</td>
<td>Pricing has stabilized in Q3 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>There is ample limit available for most risks in this marketplace for these types of risks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retentions</td>
<td></td>
<td>Retentions have remained static.</td>
<td></td>
<td>We expect limit and capacity to remain strong as product liability coverage remains desirable for carriers.</td>
</tr>
<tr>
<td>Coverage</td>
<td></td>
<td>Coverage remains broad and flexible.</td>
<td></td>
<td>Availability of relatively broad coverage will continue to be accessible over the course of the next 12 months.</td>
</tr>
<tr>
<td>Carrier</td>
<td></td>
<td>New carriers and MGAs have entered the space with a focus on certain subsegments of the industry.</td>
<td></td>
<td>No significant changes for the next 12 months.</td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td>Claims activity has remained flat. However, life science business continues to be challenging with the proclivity for class action lawsuits.</td>
<td></td>
<td>Large class actions will continue to be a threat to life science accounts with large settlements driving litigation.</td>
</tr>
</tbody>
</table>
Management & Professional Liability

Public Company D&O, Private and Not For Profit Company D&O, General Partnership, Fiduciary, Employment Practices, Cyber, Tech E&O

Management and Professional Liability – Q3 2022 Summary

Consistent with the first half of 2022, 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 Q3 2022 in the management and professional liability line of business are as follows:

- D&O rate increases continue to stabilize, and we saw more decreases in overall programs in Q3. Excess capacity continues to be plentiful, driving downward pressure and contributing to the accelerated softening we saw this quarter.

- 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 even greater rate increases along with those that have challenged risk profiles. This line of business continues to be challenging for insureds.

- Cyber market rates continue to increase. However, there have been significant reductions from the large swings of 2020 and 2021. Typical increases for Q2 ranged from -5% to 75%, and we expect Q3 rates to range from 30% to 50%. Markets are more comfortable offering terms for new business opportunities; however, terms are still rooted in a client’s ability to showcase strong cybersecurity controls. Insureds that fail to showcase an investment in cybersecurity will continue to face higher premiums and severe reductions in coverage.

In the privately held and not-for-profit company space, rates ranged from -5% to +10% compared to -5% to +15% in Q2 2022. Carriers have for the most part achieved their limit management/rightsizing goals, so we anticipate insurance limits remaining relatively consistent on a go-forward basis, and pricing to continue to stabilize. The carriers continue to monitor retention levels and adjust those on an account-by-account basis.

Public company D&O is experiencing a greater level of capacity infow than the private company space, which has brought our rate forecast down to average rate change of -10% to 10% compared to -5% to +15% in Q2 2022.

While increases still permeated the majority of GPL primary placements, rate increases did trend downward for the fifth 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 still in comparison to Q3 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 Q3 2022 as a result of this litigation, although rates are increasing at a slower pace than in the first half of 2022.

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 less likely to use due to international relations (among others). Whether this trend will continue or if threat actors will shift their focus remains to be seen.*

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

Clients 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 also 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

Vulnerability scans of public-facing domains.

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Public Company Directors & Officers Liability

**METRICS**

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<td>Carrier</td>
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<tr>
<td>Claims</td>
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</table>

**12 MONTH COMMENTARY**

We expect continued pressure on pricing given the new capacity of act and the reduction to securities class action filings. Environmental, social and governance (ESG) will continue to play a larger 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.

We continued to see the emergence of new capital in the private company sector. The post-pandemic appetite for established business with less than $100M in revenues is a result of bankruptcies.

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.

**COMMENTARY**

Carriers have been maintaining their average limits deployed for over two years and we anticipate a stabilization over the next 12 months. In Q3 we did see limit increases, with top performing carriers raising limits to $20M from $15M after major restructurings in past years. Insurers are still limiting capacity in certain industries, especially on difficult risk profiles such as digital assets, cannabis, IPOs and SPACs.

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

The entry of new capacity into the excess market — notably, insurtech companies that will begin to see significant efficiencies and increased capacity — is great for buyers. We have also seen new entrants into the space, with insurers offering more competitive terms to either retain business or win new business.

The market continued to stabilize in the third quarter. After a lengthy hard market in the D&O space we expect stability for the remainder of 2022 to either flatten or decrease over prior year (the latter for those companies that have strong risk prof les). New capacity has led to increased competition in the space, with insurers of writing more competitive terms to either retain business or win new business.

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

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

We expect carriers to continue putting pressure on incumbent carriers as the market capacity in the private company sector continues to grow. We continue to see the emergence of new capital trying to get market share.

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

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

**PRIVATE COMPANY DIRECTORS & OFFICERS LIABILITY**

**METRICS**

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<tr>
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<td>-5% to 10%</td>
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<td>Claims</td>
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**12 MONTH COMMENTARY**

The private and not-for-profit company sectors continue to stabilize in the third quarter. Pricing adjustments continue to be made directly in response to events related to COVID-19, Industry sector, capitalization, cash burn and regulatory environmental factors. The length of the hard market and increased competition is having an impact on the overall market which is great for buyers. We have also seen new entrants into the market — notably, insurtech companies that will continue to increase the pressure on overall rates. However, for non-necessarily distressed risks and risks in certain industries such as cannabis, digital assets, etc. above average rate increases still exist.

Insurers continue to maintain limit capacity. We are seeing stabilization due to corrective action taken over the last 24 months during the hard market.

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

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

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

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

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General Partnership Liability

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</thead>
<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>0% to 10%</td>
<td></td>
<td>We expect rate increases to continue to come down over the balance of the year as the market continues to levels of.</td>
</tr>
<tr>
<td>Limits</td>
<td>V</td>
<td></td>
<td></td>
<td>Capacity still remains strong within the GPL marketplace. The market of insurers willing to write primary is still limited but broad enough to generate steady competition. Insurers continue to push to maintain strict capacity management and are generally unwilling to offer more than $5M on new programs. Existing towers are able to maintain $10M tranches.</td>
</tr>
<tr>
<td>Retentions</td>
<td>V</td>
<td></td>
<td></td>
<td>Retentions have generally remained stable year over year with some GPL seeing material increases in response to significant fundraising or claims activity.</td>
</tr>
<tr>
<td>Coverage</td>
<td>V</td>
<td></td>
<td></td>
<td>Breadth of coverage is stable in comparison to Q3 2021 with a focus on broadening regulatory and investigations coverage. Carriers are looking to specifically exclude exposure to SPACs and pull back any cyber related coverage that had been granted previously.</td>
</tr>
<tr>
<td>Carrier</td>
<td>V</td>
<td></td>
<td></td>
<td>The market of primary insurers in the US remains stable. New excess capacity has entered the market but has not materially impacted pricing.</td>
</tr>
<tr>
<td>Claims</td>
<td>V</td>
<td></td>
<td></td>
<td>The SEC continued its focus on the disclosures of investment risks and contricts 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.</td>
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Fiduciary Liability

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<tbody>
<tr>
<td>Pricing</td>
<td>$</td>
<td>0% to 25%</td>
<td></td>
<td>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. ESPs will see even greater rate increases along with those that have challenged risk prof les.</td>
</tr>
<tr>
<td>Limits</td>
<td>V</td>
<td></td>
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<td>Carriers are increasing retentions substantially due to the claims environment mostly driven by excessive fee litigation. Depending on the size of plan assets, retentions – particularly Class Action retentions – are often in the high six figure to seven figure range for this exposure.</td>
</tr>
<tr>
<td>Retentions</td>
<td>V</td>
<td></td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td>Coverage</td>
<td>V</td>
<td></td>
<td></td>
<td>There is no expectation of a shift in market leadership among the carriers.</td>
</tr>
<tr>
<td>Carrier</td>
<td>V</td>
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<td></td>
<td>Given the increase in frequency and severity of these excessive fee cases and total settlements during the period from 2015 to 2020 totaling more than $1B, the expected total cost of projected settlements is likely to increase by hundreds of millions. Legal defense costs associated with these lawsuits will even further increase the burden.</td>
</tr>
<tr>
<td>Claims</td>
<td>V</td>
<td></td>
<td></td>
<td>Claims volume is expected to continue.</td>
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The market continues to evolve with the burden.

Given the reduction in limits over the past 24 months, we’re starting to see a stabilization, particularly on programs that have seen structure changes over the past few years. We are still seeing insurers reduce capacity on programs that still have higher limits ($10M+), even in historically consistent and solid client relationships, given the claims environment especially excessive fee litigation for this line of coverage.

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

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

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

We expect rate increases to continue to come down over the balance of the year as the market continues to levels of. We have not seen reason to believe that limits prof les are increasing for carriers. We have not seen reason to believe that limits prof les are increasing for carriers.

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. ESPs and those companies with challenged risk prof les will continue to see even greater rate increases.

0% to 10% 0% to 15% 0% to 25%
**Employment Practices Liability**

**METRICS**

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

Markets will continue to monitor for news and trends and will adjust accordingly. Social and political pressures coupled with shifting priorities will create a volatile and uncertain market response. The expected and projected market conditions may lead to RIFs in the future and impact the claims environment.

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

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

We have continued to see event-driven restrictions being introduced (BIPA) in response to COVID-19 (in IL). Carriers are beginning to present uniformity in approach as well as restricting the scope of coverage countrywide.

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.

There has been an increased volume in connection with employee claims and third-party malpractice 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.

We expect some developing appetites are likely to emerge as insurers see opportunity to gain market share and utilize e-client technology in the SME space.

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Claims volume is expected to continue its steady increase. As of Q3 receipt, employers may seek accommodations to work remotely, which may conflict with company plans. The new administration is looking to expand civil rights protections which may lead to increased claims volume.

Cyber

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While there has been a drop in ransomware events (which many commentators correlate to the reduction of major threat actors to incidents occurring in Ukraine and the general decrease of ransomware in the summer), cyber claims and concerns have not slowed down. Business overall remains continues to be a severe loss driver and ransomware claims remain frequent. All industries can expect increases due to scale corrections, M&As, manufacturers and other large data aggregations may see the largest upswings in premiums.

Carriers continued to reduce or exclude ransomware coverage when claims are less favorable. Many carriers are seeking to address aggregation concerns by amending policy language. Notable changes include Chubb’s inclusion of “widespread event” coverage and other carriers’ tightening of exclusions, particularly around war and infrastructure loss. Media and BIPA concerns seem to have temporarily taken a backseat to bigger concerns around potential causes for widespread loss.

Continued tightening of underwriting guidelines including the mandatory need for favorable ransomware responses. Coverage will be paired down when controls are lacking. M&A and EDR has become a critical component in the underwriting process. Emergence of several new MGA’s (P&U) in the marketplace which could help replace capacity or markets that are pulling out of speed of industries.

Significant increase in frequency and severity of cyber claims, especially ransomware continued. Social engineering/fraudulent claims continue to target companies in all industries. Large ransomware events such as those affecting CNA, Colonial Pipeline and BS demonstrate the likelihood that 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 carrier capacity and underwriting changes well into 2023. The continued work from home environment and return to work will continue to test cyber infrastructure across various industries leading to increased claims activity.
We expect to continue to see primary limits capped at $2M on major accounts, and less for primary on smaller risks. Capacity has improved, but markets will look to sit much higher on limits than their current positions.

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

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

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 continued through Q3, as the new baseline started to be set during the second half of 2021. We recommend caution but acknowledge the potential for renewals to realize more reasonable increases during Q4 of 2022 as the market stabilizes relative to recent quarters.

As noted earlier, some R&W insurers have made strides to add capacity and underwriting staff to address increased demand for R&W policies. However, other insurers remain challenged to keep pace with R&W insurance submission volume. We expect this trend to continue especially if we see increased volume in Q4 2022 like we saw in Q4 2021. Overall deal activity will be the driver of overall trends and results in Q4 2022.

Claims frequency and severity have increased over the past few years, and continued to do so in Q3 2022.

This seems to potentially support rate increases over time, however we have not seen that materialize in 2022. 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. That being said, there are a couple newer markets that have opened in 2022 that are trying to focus on smaller limit deals (under $50M in enterprise value).
### R&W Insurance

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<tr>
<td>Pricing</td>
<td>3% to 5%</td>
<td>The R&amp;W insurance market continued to normalize in Q3 2022. While pricing varied from market to market, overall pricing for a customary policy decreased slightly since Q1 2022. Those rates would be somewhat similar to the first half of 2021.</td>
<td>10% to 20%</td>
<td>While pricing over the next 12 months will depend on the health and level of activity of the broader economy and MGA market, we would expect premiums to increase over the remainder of the year if activity increases as did in Q4 2021. Similar to Q2 2022 we would expect some rate moderation in early 2023.</td>
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<tr>
<td>Limits</td>
<td></td>
<td>There has been no meaningful change to the limits being offered by insurers. Most primary R&amp;W insurers are able to offer a $10M limit (or larger) policy for any particular transaction.</td>
<td></td>
<td>We do not have reason to believe that carrier limit profiles will change.</td>
</tr>
<tr>
<td>Retentions</td>
<td>Initial retentions on R&amp;W policies have remained stable at 1% of transaction enterprise value (EV) for most transactions (under $100M - $150M in EV’s lower initial retentions continue to be available in larger transactions and in certain circumstances. Some insurers have increased their minimum retention thresholds for smaller transactions.</td>
<td>Initial retentions have remained stable on R&amp;W insurance in recent years.</td>
<td></td>
<td>We do not have reason to believe that policy retentions will change materially. Policy retentions have remained stable on R&amp;W insurance in recent years.</td>
</tr>
<tr>
<td>Coverage</td>
<td>As a general matter, breadth of coverage has been stable in 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>Balance Partners announced a new facility earlier in 2022 that will be up and running in 2022. We anticipate there could be additional facilities later in 2022.</td>
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### Real Estate

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

**Casualty – Q3 2022 Summary**

Q3 2022 continued to present challenges for the real estate market, although after the past 24 months both brokers and insureds are becoming largely inured to the current state of affairs. Although insurers have now almost universally stabilized underwriting appetite and rates for existing books of business, nonrenewals and/or significant rate increases still are far from rare and insurers continue to be cautious on new business opportunities. Commercial real estate risks with limited to no habitational exposures continue to draw the most market interest, particularly those with favorable loss profiles, and insurer competition for these opportunities continues to improve, with incumbent markets feeling more pressure to retain renewals. Habitational-heavy risks continue to struggle, particularly those in problematic jurisdictions (NY, GA, FL) and/or with poor loss history. Incumbents are still able to command significant rate increases and adverse terms/conditions with little fear of significant competition. Hospitality risks continue to perform unevenly, with options for the higher-end hotels/resorts more plentiful particularly if supporting lines such as workers’ compensation is available. Budget hospitality risks largely continue to remain in the nonadmitted marketplace, especially if engaged in alternative use.

Occasionally, primary casualty incumbents are willing to frankly discuss and negotiate favorable renewal terms/pricing early in the broking process, but not often enough to mark a trend, and only for the well-performing and preferred occupancy accounts.

Markets appear to be striking a balance between aggressive new business/retention goals and opportunity to increase profitability with rate increases on existing business.

Underwriters continue to be inundated and short-staffed, which curtails the opportunity to work much ahead of effective rates regardless of desire to eliminate competition early in the process.

Extensive marketing every renewal cycle has become the norm over the past two years, although usually resulting in little to no improvement over expiring pricing and terms/conditions. If the incumbent insurers are willing to renew at market rates of 10% – 15%, many insurers are willing to accept this result as a success.

However, the unpredictability of markets during this difficult cycle has also resulted in at least mild distrust of incumbents, resulting in at least limited marketing for defensive purposes.

 Favorable classes of real estate can expect the potential of increased competition and potentially fatter to single-digit rate increases as a result — the potential of which also is spurring heavy market engagement.

There have been no significant changes regarding how underwriters view opportunities: commercial real estate risks (retail, office, industrial/warehouse) still attract the most potential and concerted competition, particularly if there is significant support of workers’ compensation. Mixed-use occupancies with limited habitational and/or hospitality potential to gain more serious consideration than in the past, as insurers are encouraged to write new profitable business.

However, at this point, despite individual insured successes, significant increased interest in the more difficult habitational exposures is not widespread. While underwriting continues with in-depth and supplemental applications/data still the norm, increased dialogue and waffling of the most restrictive and rigid stances have provided pockets of relief.

Still, the aspects of risk presenting challenges and underwriter concern continue largely unchanged for real estate risks.
Limited competition continues for problematic geographies with adverse litigation and/or crime prof le. More insurers continue to withdraw from states such as NY and GA, if not entirely, then certainly for specific regions such as South Florida or even counties (Miami-Dade).

• Continuing coverage restrictions, depending on occupancy and/or risk prof le:
  - Assault/battery
  - Habitability
  - Firearms
  - Human traf cing
  - Cannabis or controlled substances
  - Animals
  - Sexual molestation/misconduct

• Continued concerted underwriting, with more prevalent focus on crime scores, human traf cing training/protocols and conf ming adequate contractual risk transfer practices.

• New potential trends in habitational real estate, such as corporately-owned single-family homes being acquired and held for long-term rentals, have presented new challenges for insurers as many consider single-family homes to present more difficult in providing consistent risk management, loss control/mitigation than do traditional multifamily residential properties.

There has been no appreciable improvement for the habitational market particularly in venues such as New York, South Florida and Georgia. New York habitational risks continue to suffer from market withdrawal, with nonrenewal situations resulting in opportunistic and sharp rate increases and adverse term/conditions, due to very few insurers willing to take on additional New York exposure. Multi-state portfolios with significant exposure in South Florida and Georgia are also struggling since more markets are curtailing capacity specifically for these states.

Incumbents on well-performing risks are easily holding onto accounts even with significant rate increases, regardless of geography. 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. Insurers are pushing higher retentions and/or ceasing to offer $2M/$4M options to reduce overall exposure in the primary general liability layer — generally in addition to signi cantly increased premiums.

While many admitted markets continue to renew well-performing legacy 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 signi cant substandard housing and/or poor loss history continue to struggle to nd competitive options. Exacerbating the situation is the increased use of crime scores as critical underwriting criterion, with declarations, 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 ination; claims severity/ frequency; and trends around wrongful eviction, assault/ battery, sexual abuse/molestation and human traf cing) continue to drive contraction in terms of capacity of ered, nonrenewals and often signi cant premium increases. Nonrenewals of lead umbrellas remain the most problematic situation, with very few admitted unsupported excess insurer options — particularly for habitational and hospitality risks. Premiums to replace nonrenewed lead layers still can be up to three to four times the expiring premium for less capacity. Virtually no insurers are deploying more than $10M of new lead umbrella capacity. Well-performing accounts with favorable occupancies such as of ces, retail and mixed-use have the best renewal results, with incumbents occasionally of ering renewal pricing based on only proportional increases from the primary layer. Many insurers have found the $15Mx$10M layer to be attractive on non-residential risks, of ering substantial premium opportunity while providing adequate distance from the new claims working layer of between $1M – $5M. Unfortunately, admitted excess markets for habitational tend to consistently attach at $25M or above.

The workers’ compensation market continues to be forcibly competitive, providing some competitive leverage with larger accounts. Ampli capacity and favoring pricing continues — single digit increases/decreases for insureds with positive loss experience. There have been some general market rumblings that overall worker’s compensation losses from poorly quali ed or new workers due to labor shortages, especially in the hospitality sector, are anticipated to increase, which could mitigate the overall favorable environment.

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 tend to be very small 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.

The marketplace continues to generally be somewhat sluggish despite insurers being tasked to gain market share by writing favorable business. Positive results for nearly all renewals are far and few between in southern Florida. Insurers have been forced to write new lead umbrella accounts and well-performing portfolios, with most accounts still being fully marketed at each renewal cycle. While underwriters are engaging more in some instances, extensive underwriting continues, and overall, the tone is still more cautious than hoped for at this juncture. While the volatility has settled into more normal patterns, around expected occupancies and exposures, nevertheless more advantageous and robust market competition remains frustratingly uneven other than for pockets of well-performing risks.

Reinsurance

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 proﬁ les, retroceded proﬁ les and alternative market capacity. Benchmarking data, high labor costs and supply chain issues continue to drive the increasing rate increases, typically in the low single digit range. This was driven, in part, from higher market competition due to healthy local and international industry capitalization putting pressure on insurers to retain attractive risks. However, underwriters continue to pull back on the broad coverage terms and conditions normally expected for soft 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 signi cant exposure in natural catastrophe-prone geographical areas have seen premium increases and heightened restriction of terms and conditions. Convective storm, again highlighted by the recent devastation from tornadoes in the Midwest in late 2021, continues to be a peril in the spotlight due to frequent and severe losses. Events with heavy Florida wind exposure have seen at minimum double digit increases to pricing and accounts placed with AmRisc (also known as still seeing premium increases and heightened management to expect increases in the 25% to 75% range and signi cant reduction in wind capacity of ered 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 profiles, retroceded profiles and alternative market capacity. Benchmarking data, high labor costs and supply chain issues continue to drive the increasing rate increases, typically in the low single digit range. This was driven, in part, from higher market competition due to healthy local and international industry capitalization putting pressure on insurers to retain attractive risks. However, underwriters continue to pull back on the broad coverage terms and conditions normally expected for soft occupancies, even for accounts with excellent loss history.

Valuation, as well as water-related losses, continue to be at the forefront of key concerns highlighted by markets. Benchmarking data, high labor costs and supply chain issues continue to drive the increasing rate increases, typically in the low single digit range. This was driven, in part, from higher market competition due to healthy local and international industry capitalization putting pressure on insurers to retain attractive risks. However, underwriters continue to pull back on the broad coverage terms and conditions normally expected for soft occupancies, even for accounts with excellent loss history.

The property market in real estate, particularly within the multifamily sector, continues to harden, despite many thinking 2022 would offer some relief. One of the main driving factors is loss experience, as markets are focused on writing pro f table books. In addition to seeking rate, there has also been a reduction in capacity, speci cally in cat prone areas. At the end of Q3, there are a number of carriers who have sky rocketed in the third quarter of 2022. As a result of these increases, we are seeing carriers of ered at smaller lines than previously. 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.
### Auto Liability

#### Q3 2022 YOY CHANGE
- Risk of multiple passenger injuries.
- The automobile liability claims continue to present very significant costs to insurers as severe claims can result from a single occurrence, both from owned and non-owned auto exposure. Dislocated and/or drowsy driving continue to contribute considerably to accidents, and hospitality risks with guest shuttle vans carry the risk of multiple passenger injuries.

#### 12 MONTH FORECAST
- RE clients’ owned auto exposure generally is limited to studio passenger vans and light trucks used for local maintenance purposes. The exception is hospitality where shuttle vans are often used for guest transportation. Renewal rates are now habitually between 5% to 10% for well-performing accounts, with insurers accepting these rates as the stable norm.

#### 12 MONTH FORECAST COMMENTARY
- Rate increases will continue, although only to a mild to moderate degree in the next 12 months. Insureds have over the past few years become more educated on the risk of potentially very serious losses from hired and non-owned auto exposures, and premium charged for this exposure continues to be reasonable.

#### Carrier
- Standard limit offering of $1M/$2M/$2M remains. Umbrella markets that require an attachment point of $2M/$4M/$4M may be problematic for some insurers and necessitate the placement of a buffer layer for umbrella/excess liability placement.

#### Coverage
- Retentions for automobile liability are not common for the light fleet exposure presented by real estate clients, if an insured asks for significant retentions, a small retention could be considered based on individual risk characteristics. Physical damage deductibles and premiums have steadily increased as cost of repairing automobiles continues to steadily rise.

#### Retentions
- Trend of requiring $2M/$4M/$4M attachment points from the umbrella market is still far from becoming the new norm but expected to increase for risks with either significant risk or groceries of shutdowns.

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

#### Pricing
- Auto Liability coverages are largely statutorily driven, but there are extensive broadening endorsements available and should be taken advantage of whenever possible. Since most serious claims arise from third party bodily injury scenarios, coverage enhancement endorsements are not generally difficult to obtain.

### General Liability

#### Q3 2022 YOY CHANGE
- Given the inherent danger and potential for severe losses that driving presents overall across industries, flat to reduced rates are not anticipated any time in the next 12 months, although heavily dependent on class of business and loss history.

#### 12 MONTH FORECAST
- While there has been some new insurer capacity entering the marketplace, the trend is very difficult to forecast at this time being. The trend toward limiting overall capacity for more problematic occupancies, whether deployed via insurance aggregate limits and curtailing exposure to sexual abuse/restitution or assault/battery will continue. Blanket use of restrictive endorsements regardless of occupancy should be discouraged.

#### 12 MONTH FORECAST COMMENTARY
- As insurers continue to struggle with re-establishing healthy profit margins, pressure against the dollar coverage for real estate is expected to continue for the next 12 months, although heavily dependent on class of business and loss history.

#### Carrier
- Insurers remain very conservative in the habitational and hospitality sector for seeking only the best-performing, favorable classes that continue to suffer such type losses, mainly at a healthy profitability rate.

#### Claims
- Insurers continue to seek new business opportunities mainly in favorable RE occupancies such as certain limited use. Insurers remain very conservative in the hospitality sector for seeking only the best-performing, favorable classes that continue to suffer such type losses, mainly at a healthy profitability rate.

#### Coverage
- Advance exclusions for communicable disease, abuse/molestation, assault/battery, New York Labor Law, human trafficking, etc. continue to be pushed by the insurers, particularly for habitational and hospitality risks. Although possible to successfully negotiate removal in some cases generally this is impossible only in highly competitive situations and often only for an increase in premium. Removal of geographic/driveway exclusions in some classes of business (e.g., New York City), are nearly impossible to achieve.

#### Limits
- Significant casualty retentions for real estate are still mainly the province of the larger accounts with insurer interest and ability to take on risk, or in situations of poor loss performance. However, higher retentions regardless of loss experience are being deployed for some classes of business, such as habitational or alternative use in hospitality.

#### Pricing
- Insurers continue to seek new business opportunities mainly in favorable RE occupancies such as certain limited use. Insurers remain very conservative in the hospitality sector for seeking only the best-performing, favorable classes that continue to suffer such type losses, mainly at a healthy profitability rate.
Workers’ Compensation

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

-1% to 1%

Workers’ compensation limits are statutory, so not defined by the broker or insurer. The standard limit of $125k for the employer’s liability component of coverage has remained available without issue.

No changes foreseen.

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

No changes foreseen.

There is robust insurer participation in this line of coverage. Many insurers look to lead with attractive workers’ compensation exposures/premiums in the real estate sector, to bolster the underwriting business—more challenging in the hospitality sector. New business, particularly in the layers excess of $10M.

For incumbent markets will remain to renew, lead umbrella placements have settled into a relatively stable position, albeit still with marked increases. Commercial property risks (retail – and light industrial) continue to experience the lowest reinsurance demands and rates are stable. Nonrenewal load umbrellas remain universally habitational and/or for hospitality accounts lead to severe pricing correction. Rating emphasis on cost of capacity, and carriers continue to undersubscribe limit and attachment point, regardless of the underlying pricing. Risk purchasing groups continue to take significant increases in premiums at time of market program renewals. For stable reinsurance, rate increases are the norm — for nonrenewed accounts, 50%+ is typical.

As residential and hospitality risks now commonly require a $250k/$500k/$1M attachment, more primary carriers are being presented to provide larger limits in quota share or umbrella options, which can provide considerable advantage. Claims continue to remain at available total limits purchased as carriers reduce capacity and overall cost of limit increases, although after two years of reductions insurers are generally purchasing to the most prudent level if possible. Carriers continue to restrict per location aggregate limits through the excess lower.

No changes foreseen.

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

Programs and retentions are set by state statute and exclusions are common across the marketplace. There have been no significant changes in trends developing over the last 12 months.

No changes foreseen.

Workers’ compensation has remained a largely profitable line of business and we anticipate continued strong insurer support for the foreseeable future despite potential increase in claims activity over the next 12 months.

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### Pricing

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<td>Increased competition fueled, in part, by more capacity options of wind from foreign insurers. As London and Bermuda will continue to help general pricing trends downward. We’re expecting challenging conditions specific to certain occupancy classes and account types, especially those in or near hurricane-prone states.</td>
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<td>Supply chain issues, labor shortages and improper valuations are making underwriters pay closer attention to certifying reported replacement costs and business interruption exposure. This could result in corrective measures being forced, if not already in place. Accounts with no such issues/risks exposure can expect little to no change.</td>
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**Property**

Cat reinsurance treaties on July 1, 2022, resulted in larger than expected increases, which is continuing to trickle down to clients. Potentially accounts with no loss activity along with desirable occupancy classes are still experiencing mid single digit rate increases. Conversely, less desirable occupancy classes, less profitable accounts and those located in higher loss prone states, FL, LA, MS, TX, are seeing pricing increases pushed more (25%+).

In general, program limits/sub-limits saw little change although accounts in states prone to higher loss face greater scrutiny such as new/lower sub-limits related to convective storm (wind/ hail) and wildfire. Accounts with Florida exposure, especially condo, saw wind limits lowered or in some cases not completely filled out in Q2 and Q3. Contingent business interruption values for certain account types (i.e., retail) are typically seeing a more detailed underwriting review due to supply chain issues.

While we are in the middle of the most active time of the wind season, we will likely see named storm limits, specified in Florida and Texas, lowered, especially on programs that previously relied on a single carrier writing 100% of their exposure, like Antrimic or Velocity. Expect scrutiny on contingent business interruption values to continue until local/national international supply chain resolutions are found. Less interest from clients to “trade” sub-limits for premium savings due to market conditions improving.

As insureds have now gone through multiple renewals in a prolonged turbulent market, underwriters in general have a better level of comfort with current retentions, having seen them revised in previous renewals. However, pressure for new higher damage deductibles and/or limits has increased on accounts with water-related loss activity is still evident, as inadequate or reductions for insureds with heavy convective storm exposure. Even accounts without water-related losses are experiencing carriers pushing higher deductibles, which are company mandated.

In general, most renewals saw no/little change to coverage terms and conditions. However, accounts with supply chain exposure are being more closely scrutinized for business interruption and/or contingent business interruption exposures. Residential accounts are still subject to valuation concerns, but not already, many are seeing concession and/or margin clause subjectivities being pushed by underwriters where such apprehensions exist.

With overall capacity seemingly to be robust in previous quarters, we are seeing a significant amount of carriers refreshing their books, due to recent renewal risk renewals. Prolonged challenges continue to exist in higher loss-prone states (TX and FL), which may need a shared-layered program solution rather than a traditional single-layered approach. Antrimic and Velocity, while not exiting the marketplace, are reevaluating their cat books and either decreasing capacity, increasing premium substantially, or both.

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