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Market Update

Commercial Insurance

A LOOK AT THE STATE
OF THE INDUSTRY.

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2024 Third Quarter

Welcome to the latest edition of *Market Update*. Please read this report to learn about the issues and considerations that impact your commercial insurance programs by line of coverage.

Questions?

Contact your Hylant service team member or connect with us at *hylant.com/contact-us.*

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Automobile

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ABOUT THE DASHBOARD

According to an S&P report, the combined ratio for commercial automobile liability worsened in 2023, increasing to 113%. This is the highest since 2019. Insureds—especially large, heavy fleets and high-hazard fleets—should expect continued pressure around premiums, underwriting standards and reduced coverage options. Insurers cannot seem to get their auto books to consistent profitability due to factors such as high repair costs, an extremely active plaintiff's bar, driver shortages, distracted/impaired driving and ever-increasing medical costs.

DASHBOARD

MARKET HARDNESS
Hard

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
3% to 20% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

AUTONOMOUS VEHICLES

In the U.S., the legal and insurance sectors are grappling with the complex question of liability in incidents involving autonomous vehicles. Policy forms will need to change from coverage based primarily on human error causing accidents to a product liability model where manufacturers might bear greater responsibility for incidents.

EXPOSURES FOR HIRED AUTO

Underwriters are very focused on risk controls in place for hired auto exposure, especially related to third-party trucking. Carriers are experiencing losses from these exposures where inadequate limits carried by small trucking firms lead to insureds being pulled into large claims. Plaintiffs' attorneys are having success with this newer form of auto litigation.

MARIJUANA LEGALIZATION

As state and federal marijuana legislation evolves, the substance's widespread legalization could increase the likelihood of commercial drivers operating vehicles under the influence.

SURGING CLAIM COSTS

The Insurance Information Institute reported that the culmination of social inflation and nuclear verdicts has led to a $30 billion surge in commercial auto claim costs since 2012.

DECLINING FATALITIES

Fatalities spiked during the pandemic. However, they began trending downward in the second half of 2022 and continued into 2023. This is one positive note in an otherwise negative auto marketplace.

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ABOUT THE DASHBOARD

Moving from guaranteed cost programs to loss-sensitive programs continues to be common in general liability. Retaining some losses is worth the risk to reduce the overall cost of risk in general liability. Insureds with an existing loss-sensitive program structure are strongly considering higher retentions with supporting loss layer analysis. Overall, carrier results are trending toward better profitability in general liability, but conservative underwriting is expected to continue.

DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
2% to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

SURGING MEDICAL EXPENSES

Coverage for medical costs stemming from third-party injuries is a critical component of general liability insurance. Surging medical expenses have compounded claim costs, with no end in sight.

PFAS

Insureds with PFAS exposures face elevated liability risks and are susceptible to mandatory coverage exclusions and substantial out-of-pocket losses.

MODERATING INFLATION

With inflation moderating, insureds without access to non-inflationary exposure measures will see lower premiums. Many of these risks were hit hard by the combination of rate increases and inflation-based exposure growth during the past two renewal cycles.

CLAIM RESOLUTION TIMING

More than 50% of new general liability claims are already represented by an attorney, and that number grows to 66% within two weeks. This highlights the need to resolve minor claims quickly to avoid increased claim costs.

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ABOUT THE DASHBOARD

The market remains competitive despite a turbulent multinational landscape. Renewals through the year's first half were mostly flat, except for accounts with material exposure changes or claim frequency. Carriers are aggressively competing for large multinational organizations with good loss records. Insureds with difficult product classes or with adverse loss experience should explore coverage written locally, outside the global program, as pricing and coverage may be more advantageous and reduce the impact on the larger program. Opportunities exist to optimize purchasing by using multi-year agreements and collaborating with carriers across various lines of business.

DASHBOARD

MARKET HARDNESS
Sufficient

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 5% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

PFAS

Per- and polyfluoroalkyl substances continue to concern insurers and insureds, especially those in the manufacturing and retail sectors. Relevant buyers are required to complete coverage questionnaires to prevent exclusionary language. Enhanced outcomes can be achieved by providing carriers with detailed information about the product mix and describing any risk management measures they are implementing to mitigate product risks.

KYC/AML

Many countries require Know Your Customer (KYC) and Anti-Money Laundering (AML) documents before policies will be issued. Identifying the appropriate stakeholders and completing these documents can take weeks. Gather the required information well before renewal.

CARRIER CONSOLIDATION

Carrier and broker consolidation worldwide is affecting pricing and service levels. This consolidation sometimes requires an insured's local entities to establish new local relationships to remain part of the global program. These impacts should be carefully considered when designing and implementing a global program.

LOCAL COVERAGE

As regulatory bodies worldwide become more sophisticated and enhance enforcement levels, organizations that have traditionally written coverages on a single global policy must account for obligatory local coverages. Controlled master programs can provide the local coverage necessary to ensure regulatory compliance.

PACKAGE POLICIES

Insureds with foreign coverage in package policies that include property coverage should consider separating the program into standalone property and casualty programs. Many carrier package programs are not designed to provide the coverage required for sizable property risks or charge substantially higher rates when property and casualty are combined.

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DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
3% to 15% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

UMBRELLA WITH PRIMARY

Increasingly, carriers are packaging lead umbrella with primary lines. These markets can offer more competitive lead umbrellas for accounts that fit this mold.

LIMITS

Lead umbrella limits in upper-middle-market to risk-management size accounts remain from $10M to $15M. Low-hazard middle-market risks can see lead umbrella limits of $25M.

LOWER PRICE INCREASES

Strict underwriting on umbrella/excess lines is still prevalent. However, increased competition and market capacity in excess layers are keeping pricing increases lower than lead umbrellas.

SOCIAL INFLATION

Data suggests that social inflation is worsening, and nuclear verdicts of $10M or more are increasing in both size and number. According to Marathon Strategies, 89 nuclear verdicts were awarded against U.S. businesses in 2023, the most since they began tracking nuclear verdicts in 2009. Chubb Chairman and CEO Evan Greenburg described rising litigation costs as a major tax on society and innovation. He noted that the insurance industry cannot lead the charge alone against social inflation.

ABOUT THE DASHBOARD

In the absence of tort reform, umbrella carriers continue to experience a frequency of loss severity. Third-party litigation funding continues to increase, helping push settlements and verdicts even higher. Investment in litigation financing is a multibillion-dollar industry. It is expected to double in the next three years. Umbrella pricing will continue to increase into the foreseeable future.

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Workers' Compensation

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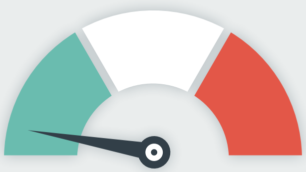
ABOUT THE DASHBOARD

The combined ratio for 2023 was below 100% for the 10th consecutive year. Workers' compensation is profitable for most insurers that write on a guaranteed cost and loss-sensitive basis. The average rate in most states has decreased year over year, and capacity remains high with many markets, including new market entrants. Claim frequency has dropped because of the shift to a work-from-home environment since the COVID-19 pandemic. Reserves are redundant for most carriers.

DASHBOARD

MARKET HARDNESS
Soft



MARKET CAPACITY
Abundant

EXPECTED RENEWAL RATES
-10% decrease to 2% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

CLAIM ADJUSTER TURNOVER

Claim adjuster turnover at third-party adjusters (TPAs) and insurance carriers is averaging from 9% to 11% annually due to retirements and adjusters leaving for higher compensation. This high turnover can adversely affect claim outcomes and experiences for insureds. TPAs/carriers struggling with adjuster retention are offering a spectrum of hybrid/remote workstyles, with very few TPAs/carriers requiring adjusters to be in the office regularly.

FRAUDULENT CLAIMS REDUCTION

Industry reports have shown a steady decline in fraudulent workers' compensation claims over the past five years because of better job site monitoring and claims-handling coordination.

RATE PRESSURE DIDN'T MATERIALIZE

The industry expected upward rate pressure to materialize in some states because of medical inflation, less remote work, a shortage of skilled workers and the impact of presumptive liability for COVID-19 claims. However, these concerns have not had a material impact on losses.

MENTAL HEALTH & INJURIES

Statistical links to workplace injuries associated with mental health problems are increasing. It remains important for insureds to implement mental health initiatives.

SOFT MARKET TO CONTINUE

Buyers should expect continued soft market conditions for workers' compensation into the foreseeable future.

Cyber

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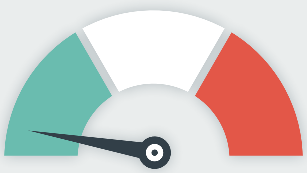
ABOUT THE DASHBOARD

The cyber market continues to fluctuate. Following six to eight months of massive rate reductions and increased coverages, the first half of 2024 saw large claims that have taken a toll on the marketplace. A potential rate decrease could be in the cards, but a flat to 10% increase should be expected in the back half of 2024. To beat the market, place a heavy emphasis on controls, specifically email protection, backups, incident response planning and employee education.

DASHBOARD

MARKET HARDNESS
Stable



MARKET CAPACITY
Abundant

EXPECTED RENEWAL RATES
Flat to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

ASKING THE RIGHT QUESTIONS

Companies should ask themselves whether they are in compliance with contracts and protected from third-party lawsuits. They need to ask the right questions to understand their true exposures. Fortunately, more companies than ever before are creating, selling and using effective software to assist organizations in effectively understanding their exposures.

DIGITAL SUPPLY CHAIN CONCERNS

Insureds need to ask themselves who they depend on (their digital supply chain) and what happens if they go down due to a cyberattack. Contingent business interruption is one of the most overlooked sections of a cyber policy. Learning more about this coverage is important because it protects organizations from events their security team can't control.

BIPA, PIXELS, UNLAWFUL TRACKING

Due to recent lawsuits, many carriers are adding blanket exclusions for the wrongful collection, tracking or unauthorized use of personal data. Companies must have proper policies and technologies in place to secure coverage and avoid difficult situations.

SOPHISTICATED SOCIAL ENGINEERING

Social engineering and invoice manipulation claims are becoming more sophisticated. Tools like artificial intelligence and Chat GPT are making it easier for hackers to manipulate employees into transferring money to the wrong places. A set of best practices, such as call-back procedures, dual signatures and maximum transfer amounts, can all minimize the frequency and severity of these events.

Environmental

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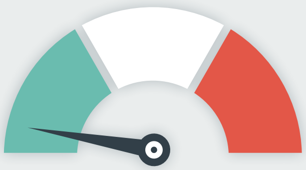
ABOUT THE DASHBOARD

The environmental insurance marketplace continues to remain soft despite increased remediation costs. Ample capacity is creating stiff competition, resulting in rate reductions and, in certain situations, improved terms. Transactional deals continue to be underwritten fairly stringently, with carriers exhibiting control in their offered terms.

DASHBOARD



MARKET HARDNESS
Soft

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 5% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

TRANSACTIONAL SLOW-DOWN

Transactional deals slowed slightly in the most recent quarter, likely due to increased interest rates. However, things appear to be loosening up a bit, and we're beginning to see an uptick in transactional activity.

AN ACTIVE EPA

Due to the upcoming election, we've seen an increase in environmental legislation, followed by several court challenges to these regulations. This uncertain environmental legislative landscape troubles carriers. Unpredictability often leads to exclusionary language. So far, the markets appear to be in a holding pattern.

LAWSUITS

There has been an increase in suits filed against pharmaceutical and personal care product manufacturers, and there are likely to be more to come. Obtaining pollution coverage for consumable-type products has become extremely challenging, if not impossible.

EMERGING CHEMICALS OF CONCERN

Endocrine-disrupting chemicals, quinones or 6PPD, and ethylene oxide are increasingly in the news. Organizations operating in this space or with processes associated with using any of these chemicals should consider potential pollution liabilities and how they might protect their businesses.

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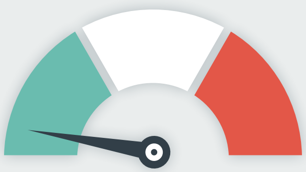
DASHBOARD

MARKET HARDNESS
Soft



MARKET CAPACITY
Abundant

EXPECTED RENEWAL RATES
Flat

TOP TRENDS, ISSUES AND CONSIDERATIONS

SOCIAL ENGINEERING

Social engineering continues to be a concern for underwriters and is heavily underwritten. Companies that maintain effective social engineering controls tend to receive favorable terms.

EMPLOYEE THEFT

Employee theft claims continue to be the most severe crime losses.

ABOUT THE DASHBOARD

While the market capacity remains abundant, insurers are working to maintain their renewal book while gaining market share. Risks continue to be underwritten and priced based on individual standards.

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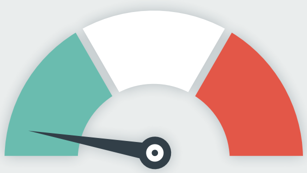
DASHBOARD

MARKET HARDNESS
Soft



MARKET CAPACITY
Abundant

EXPECTED RENEWAL RATES
-10% decrease to flat

TOP TRENDS, ISSUES AND CONSIDERATIONS

SECURITIES CLASS ACTIONS

Two hundred and fifteen securities class actions (SCA) were filed in 2023. A similar amount is expected in 2024. While the pace of SCA filings related to COVID-19, cryptocurrency and SPACs has slowed, we continue to see filings in these areas. There have been no new filings in 2024 related to cannabis, data breaches or the turbulent banking issues.

FAVORABLE COVERAGE GRANTS

Private companies have received favorable coverage grants that may have previously been limited, such as coverage for antitrust matters.

INDUSTRY UNDERWRITING SCRUTINY

Companies in financial distress or those in certain industry classes—such as healthcare or biotech—are still routinely subject to underwriting scrutiny.

PE ROLL-UP SCRUTINY

Private equity roll-up platforms are subject to underwriting scrutiny related to debt covenants, debt refinancings and potential antitrust exposure.

ABOUT THE DASHBOARD

While public company D&O capacity remains abundant, decreases are still available but are more moderate than in previous quarters. We expect this to continue through 2024. Incumbent insurers are trying to hold the line on rates but are willing to increase deployed capacity on most risks. Private company D&O capacity remains abundant, with most carriers aggressively competing on pricing, retentions and coverage.

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DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

JOINT EMPLOYER RULING

A new rule issued by the National Labor Relations Board in December expands the previous standard by reviewing whether an entity has the authority to control one of seven essential conditions of employment. It is expected that more companies will be considered "joint employers," increasing their liability exposure.

STRATEGIC ENFORCEMENT PLAN

Late last year, the Equal Employment Opportunity Commission issued its Strategic Enforcement Plan for fiscal years 2024-2028. It outlines key enforcement issues, including harassment, equal pay, the protection of vulnerable workers and the use of artificial intelligence.

DIVERSITY, EQUITY AND INCLUSION

Backlash aimed at diversity, equity and inclusion initiatives continues. More reverse discrimination cases can be expected.

ABOUT THE DASHBOARD

Abundant market capacity is keeping rates in check. However, for companies with substantial loss histories, with employees located in challenging jurisdictions (e.g., California) or in certain industries (e.g., healthcare, technology, retail, etc.), higher premiums may apply.

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ABOUT THE DASHBOARD

The fiduciary liability market began stabilizing in 2023, with many new carriers entering the marketplace and even more deciding to add capacity and compete with other carriers on primary layers. Nonprofits and for-profit middle market accounts now regularly can expect a flat renewal and potentially a decrease with a competitive marketing process, as long as exposure and risk profiles are similar year over year. Large private companies, public companies and financial institutions are now looking at renewal rates of flat to 10% due to prior increases over the last three years and the introduction of larger class action and excess fee deductibles during this same time.

DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

EXCESSIVE FEE LITIGATION

Excessive fee litigation continues to concern underwriters and insurance companies. More than 270 cases have been filed since 2020. Most were filed by specialized plaintiff firms that are now stretched to capacity litigating the filings. An estimated 160+ of these cases are still active in the court systems. Any significant settlements or rulings on these current cases could have a negative effect on the marketplace.

MORTALITY TABLE LITIGATION

Outdated mortality table litigation has captured the interest of plaintiffs' firms, with over 30 cases being filed in recent years. These cases involve the use of allegedly outdated assumptions on life expectancy and interest rates used for defined benefit plans. Recent large settlements have increased firms' interest and may cause a rash of additional filings.

UNDERWRITING SCRUTINY

Expect increased underwriting scrutiny and additional plan qualifications to continue. Frequent new underwriting questions involve fund plan fees, record-keeping costs, plan governance, total costs of third-party vendors, plan performance, and request-for-proposal qualifications and their regularity if plan governance advisors are used and if third-party consultants are retained for yearly audits.

IMPACT INVESTING

Impact investing is increasing but can put plan fiduciaries in a difficult position. The Department of Labor has consistently said that these socially and/or environmentally focused investments can be considered but should not negatively impact plan participants' financial security. The final rule became effective in January of 2023, and the first class action suit was filed in June against American Airlines.

HEALTHCARE PLAN LITIGATION

Watch for potential healthcare plan litigation based on the amended ERISA Section 408(A), which mandates that plan sponsors and fiduciaries not only monitor fees charged by plan sponsors and brokers but also by any third parties they use for plan administration, recordkeeping, the pharmacy claim process or other services. Plaintiffs' firms may try to exploit the amendment.

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ABOUT THE DASHBOARD

Representations and warranties insurance (RWI) rates are largely back to pre-pandemic levels. In the U.S., average premiums have dropped from their high of 6% of the policy limit to below 3%, aligning with pre-pandemic levels. In most cases, these rates are coupled with lower retention rates, an increase in the availability of quotes, more expansive coverage and an increase in underwriting commerciality. In summary, the RWI market is currently soft with more favorable terms for buyers. However, it's important to note the RWI market is constantly evolving and can change quickly.

DASHBOARD

MARKET HARDNESS
Soft

MARKET CAPACITY
Sufficient

TOP TRENDS, ISSUES AND CONSIDERATIONS

NEW, INCREASED COMPETITION

In recent years, new insurers have entered the RWI market. These carriers can often have specific industry niches and, in some cases, somewhat less restrictive appetites, making it easier to place RWI for more deals than in the past.

PREMIUM RATES AND DEDUCTIBLES

Increased competition has resulted in downward pressure on RWI premium rates and deductibles as many insurers are adjusting their terms and conditions to stay competitive.

APPETITE FOR SMALLER DEALS

The days of underwriting "human capital constraints" and carriers being limited by underwriting team size have largely abated. So, too, has instituted minimum enterprise values for deals. The result is that smaller deals are much more attractive for a much larger number of RWI carriers.

ADAPTATION

The RWI market continues to evolve and adapt to transactional activity. Partly due to the slow pace of deals and new managing general agents driving down costs, RWI is now used in a diverse array of transactions.

INNOVATION

The secondaries market provides an example of innovation. With it being estimated that general partner-led secondary transactions reached about $50B in volume and accounted for around 45% of total transactions in 2023, RWI is becoming a standard solution used in such deals. As structured secondaries transactions become more prevalent in private equity, the use of RWI in connection with secondaries deals continues to increase.

Marine Cargo

ABOUT THE DASHBOARD

Market pricing and capacity remain stable, with renewal rates increasing by an average of 7.7% for 26 consecutive quarters. Accurate marketing and comprehensive risk assessment are crucial to achieving the best outcomes. The Baltimore bridge tragedy has resulted in historic losses managed through liability insurance provided by Britannia, part of the International Group of P&I Clubs, which has over $3 billion in reinsurance coverage. While the total cost of the bridge collapse and associated claims remains uncertain, insured losses are expected to run into the billions of dollars. The impact of this incident will reverberate through the maritime and insurance sectors for years to come, with reinsurers likely bearing the bulk of the insured costs. We will continue to monitor how this claim affects all lines of marine coverage.

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DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

LIABILITY TOWER INCREASES OR RESTRICTIONS

Due to substantial commercial auto market claims, marine carriers are either removing commercial auto as an underlying layer or significantly increasing bumbershoot pricing. This restructuring results in additional premiums, with bumbershoot premiums increasing from 30% to 60% to account for commercial auto exposure. Employers should engage in early renewal discussions to monitor appetite changes. Preparing for potential premium increases during restructuring is essential.

GLOBAL CATASTROPHE

The M/V Dali striking the bridge in Baltimore impacted multiple lines of business, including property, cargo, liability, trade credit and contingent business interruption. Marine insurers and reinsurers are undoubtedly involved in the loss. National catastrophes, such as weather-related incidents, also impact supply chains and operating costs.

GLOBAL CONFLICT

Red Sea/Gulf of Aden tensions are escalating. Vessels are traveling around Africa instead, increasing costs and straining capacity. Marine cargo and war risk policies may exclude coverage for vessels traveling in these regions. Carefully monitor warranties and restrictions.

EMERGING OPPORTUNITIES FOR COMPETITIVE PRICING

Domestic carriers are expanding shared participation across multiple marine lines of coverage. This trend is particularly evident in property lines such as builders risk and boat dealers. Increased collaboration in liability lines is also contributing to competitive pricing. When contemplating a shift from a single-carrier program to a shared program, it is advisable to allocate sufficient time for strategic market assessment and transition planning.

LABOR ISSUES

The maritime industry faces persistent labor workforce challenges. Retention and attraction of maritime employees is crucial. Strategize with your risk management team on recruiting, career development, comprehensive benefits programs, competitive pay, fostering a robust safety culture and leveraging state-of-the-art technology.

Property

ABOUT THE DASHBOARD

Market capacity is more abundant than in recent years, with many carriers providing increased offerings at renewal for good risks. However, this moderating market has reached a few normal baseline rates, and it's unlikely that market rates will reduce by 20%+ over the next few years, as was experienced in the past soft market cycles. Those with CAT exposures or poor loss controls could see increases of 20% or more. While recent hurricane seasons have not been as severe as anticipated, tornadoes, convective storms and hail have become the focus of underwriter scrutiny. We are seeing increased deductibles for wind and hail losses.

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DASHBOARD

MARKET HARDNESS
Hard

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Flat to 10% increase

TOP TRENDS, ISSUES AND CONSIDERATIONS

MATURE PROGRAMS REWARDED

Insureds that demonstrate sound practices, commit to capital expenditures and complete recommendations within a defined time are garnering the most capacity and the best rates. Those unable or unwilling to address major risk deficiencies may face reduced capacity offerings or even non-renewal. Markets are requiring full loss control reports for key sites.

DEDUCTIBLES AND RETENTIONS

The geographic map for high-hazard and moderate-hazard zones for a tornado, convective wind and hail is expanding as are insureds' deductibles related to these perils. Brokerage teams must help clients calculate their potential retained loss. Many insureds are exploring the potential benefits of captives and other alternative risk financing solutions.

VALUATION SCRUTINY

When unsure, underwriters limit coverage to reduce risk, sometimes restricting business interruption (BI) coverage to reported amounts. BI calculations are essential, especially showing the inputs and assumptions used. When values are uncertain, markets often impose the Occurrence Limit of Liability Endorsement, limiting recovery to reported values for each location. Conversely, when values are validated, markets are removing these endorsements.

CAPACITY

Generally, capacity is more plentiful this year. Many shared and layered programs are garnering over 150% offered capacity. This allows brokerage teams to choose companies with the best terms and price for clients who have demonstrated sound loss prevention programs and have had profitable loss performance.

STOCK THROUGHPUT POLICIES

Stock throughput policies (STPs) may be a great option for insuring large warehouse and distribution risks. STPs transfer inventory risks from property policies to (potentially) less expensive marine cargo policies. In addition to costs savings, insureds may also obtain better NatCat coverage and/or deductible structures for their inventory risk in an STP. Market conditions may be ripe to explore an STP option in 2024.

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ABOUT THE DASHBOARD

Surety markets remain strong and competitive. While there are exceptions that have triggered some client movement, for the most part, the markets are in good shape and consistent with their respective client base.

DASHBOARD

MARKET HARDNESS
Stable

MARKET CAPACITY
Sufficient

EXPECTED RENEWAL RATES
Negotiable

TOP TRENDS, ISSUES AND CONSIDERATIONS

ECONOMY

Economic uncertainties continue to challenge the construction industry. Despite this, contractors remain confident as they adapt and innovate. Associated Builders and Contractors reported a construction backlog increase to 8.9 months in April, mostly driven by infrastructure projects.

RETAINAGE BONDS

A retainage bond may be the answer for contractors interested in freeing up funds for working capital. The bond protects the project owner while allowing the contractor to receive earned contract billings as work is performed and accepted. They can be used for both public and private projects.

CONTRACTS AND CONSEQUENTIAL DAMAGE

Consequential damages are becoming increasingly visible in the underwriting process, particularly with contract surety. These damages flow indirectly from a breach of contract and cannot be quantified until the nature of the default is known. Navigating this contractual language is essential, using provisions such as a waiver of claims for consequential damages, determining the definition, and/or capping the liability with a dollar value or percentage.

BIM TECHNOLOGY

Building information modeling (BIM) is a highly collaborative process that enables contractors, manufacturers, developers and others to plan, design and construct within a 3D model. BIM is also being used from a surety claims perspective to identify potential conflicts, especially in the design. This technology has reduced significant compensable delays and provided an overall roadmap to a claim settlement.

LETTERS OF CREDIT

As letter-of-credit rates have risen, reducing letters of credit via alternative methods has become increasingly attractive. This shifting dynamic may lead to further growth in the demand for bank-fronted surety in the U.S. In this structure, a bank issues a guarantee on behalf of the client, in the form of a letter of credit, typically for obligations where a bond is not traditionally an accepted form of financial assurance or security. If the client fails to meet its obligations, the beneficiary will draw on the client's letter of credit, and the bank will subsequently turn to the surety company to be made whole.

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