Construction

Insurance Marketplace Realities 2022 Spring update

Rate predictions

General liability: +5% to +15%

Auto liability and physical damage: +5% to +12.5%

Workers compensation: Flat to +5%

Umbrella (lead): +5% to +15%

Excess: +10% to +25% (or more – depending on operations, geography, risk profile)

Project-specific builders risk: Flat to +10%

Master builders risk/contractors block programs (renewable business): +10% to +20%

Professional liability: Flat to +10%

Contractors pollution liability: Flat to +10%

Project-specific/controlled insurance programs: +5% to +15%; +10% to +40% for excess

Subcontractor default insurance: Flat to +10%

Last fall we reported that the worst of the hard market was behind us, and that continues to hold true. With insurance rates and interest rates highly (and inversely) correlated, we expect to find further relief in 2022 as interest rates are expected to rise.

Rate increases are moderating.

- We are seeing renewal rate increases continue to decline across all casualty lines.
- Ushered in by a wave of new market capital, the greatest improvement has been in the high excess marketplace.
- Some risk classes still face restricted capacity challenges but are certainly stabilizing.

Construction activity is expected to rise in 2022.

- With the passage of the Infrastructure Investment and Jobs Act, significant increases in construction spending for infrastructure projects are anticipated.
- While infrastructure work is typically focused on heavy construction (roads/bridges, airports, rail, etc.), significant funds are allocated in the bill for “green energy” projects, pointing to a likely increase in alternative energy, solar/wind construction activity as well.

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Court activity is expected to rise in 2022.

- Many facilities were forced to close throughout the pandemic and, in most states, courts were no exception, leaving a significant case backlog. Some states have opened faster than others, so the backlogs vary.
- A recent survey published by the Thomson Reuters Institute revealed that the average backlog in state and local courts increased by approximately one-third between 2020 and 2021.
- There is concern in the insurance industry that large (nuclear) verdicts ahead will continue to negatively impact underwriting results and add upward pressure on rates.

Improvement in results for reinsurers could ultimately yield better conditions for some insurance buyers and worse conditions for others.

- Reinsurance is a major factor in many casualty renewals, often impacting rate beyond the ceding underwriters' discretion. According to Fitch Ratings, January 2022 results were a mixed bag, with lines of business subject to poor loss experience (property and cyber) experiencing steep increases. Conversely, the casualty reinsurance marketplace appears to be softer.
- Fitch upgraded the reinsurance market from "stable" to "improving."
- AM Best's outlook remains constant at "stable."
- Moody's changed its outlook from "negative" to "stable."

General liability (GL)

General liability rates have continued to stabilize while underlying exposures have risen. The mounting backlog of construction work presents opportunities for contractors, but delays in obtaining materials and rising labor costs will be a factor in upcoming renewals.

- Material costs rose an average of 22% over the last year (Bureau of Labor Statistics), exacerbated by countless supply chain delays. As a result, builders and contractors are looking at alternative building materials and new material suppliers (Wall Street Journal). Contractors should fully research new materials to avoid circumstances that could give rise to GL claims.
- The backlog of residential construction projects is at an unprecedented high, which means residential contractors will have a large pipeline in the coming years. The number of authorized housing units that have yet to be started is up 44% from a year ago (Market Watch). Due to the significant potential for a rise in construction defect claims down the road, the insurance marketplace for residential construction remains challenging. While the overall market may be turning in favor of the contractor, we are not expecting significant pricing relief in the residential construction segment.
- Construction labor wages increased by 4.46% from August 2020 to August 2021. As wages are a primary exposure base for GL premium rating, insureds can expect increased premiums, even when the number of workers on the payroll remains the same (GlobeSt).
- Although the rate of price increases is moderating, certain high hazard construction operations (street and road, residential) will continue to see higher costs. Contractors with more challenging risk profiles, poor loss experience or ineffective risk management protocols will continue to experience a challenging marketplace. Contractors should continue to bolster loss control and quality assurance programs to improve the underwriting perception of the risk.
- There is increased competition among carriers for best-in-class risks, resulting in positive marketing outcomes. In some circumstances, renewal decreases are being obtained.
- A comprehensive underwriting submission delivered to the marketplace with substantial (90 days minimum) underwriting lead time will usually produce more favorable renewal results, particularly with submissions to new carriers.
- While increased carrier competition may yield better renewal results, incumbent partners continue to be an attractive option for most annual renewals. Often the familiarity with the contractor's operations provides incumbent carriers a level of confidence that allows for increased underwriting flexibility regarding terms, conditions and pricing. Furthermore, as the overall marketplace improves, incumbent carriers are less willing to lose a quality piece of business to competition.

Auto liability (AL)

The auto market remains challenging; however, rates are beginning to taper off after years of drastic increases.

- A significant drought in qualified truck drivers has put substantial pressure on contractors to find suitable drivers. The number of truck drivers in the country fell by 7% from 2019 to 2020 (New York Times).
  - Many firms have been forced to consider using younger or less experienced drivers to meet labor and schedule demands.
  - This is especially challenging for contractors with heavy fleets.
  - The national driver shortage has prompted the creation of a pilot program that will soon allow people as young as 18 to drive commercial vehicles across state lines.
  - It is still unclear how the market will react; we anticipate that carriers may seek to limit exposure to less experienced drivers by coverage restrictions on commercial auto policies or include an additional charge.
  - The risks associated with using less experienced drivers are likely to bring additional underwriting scrutiny.
- Recent auto liability renewals have experienced an average rate lift of +8.5%. The fourth quarter of 2021 was the fourth consecutive quarter that yielded an average rate increase under 10% (WTW's State of Casualty Marketplace).
  - Regular increases in claim severity have been a key factor behind the chronic underperformance of commercial auto over the past decade (WTW's State of Casualty Marketplace).
- Underwriting scrutiny is increasing on hired/non-owned auto exposures, as carriers begin to treat this exposure similarly to the owned fleet.
- Fleet makeup is a significant factor in carrier appetite and program structure. Heavier fleets (extra heavy power units, dump trucks, ready-mix trucks, etc.) still represent significant risk, yielding continued upward pressure on rates and deductibles.
- The percentage of contractors' auto liability programs with a minimum $5 million combined single limit (CSL) has remained stable over the past year, which indicates that the umbrella market may be more comfortable with the industry's overall increase in attachment points.

Workers compensation (WC)

Workers compensation still exerts a stabilizing influence on most contractors' programs. However, an increase in claim frequency due to contractors racing to keep projects on schedule may to some degree reverse this trend.

- Contractors are under pressure to hire additional labor to keep up with their mounting backlogs. Labor shortages may require contractors to hire from a less experienced labor pool, making risk control and safety even more critical. The use of job monitoring technology is becoming commonplace and proving effective.
- The ongoing stability of workers compensation underwriting experience has enabled contractors to offset rate increases in general liability and automobile liability rates.
- After several years of modest rate increases, contractors with good loss experience are now able to obtain modest rate decreases. We expect this trend to continue.
- Despite an overall improving workers compensation market, rising labor costs have acted as a counterbalance, preventing rates and overall premiums from dropping significantly.
- Markets continue to demonstrate a broad appetite for construction workers compensation opportunities. However, the marketplace for monoline guaranteed cost coverage is extremely limited. Best renewal results are obtained when workers compensation is coupled with the other primary casualty lines of business – general liability and automobile liability.

Umbrella/excess liability

Despite years of substantial rate increases, umbrella and excess carriers are still conservative with their capacity in lower layers of an excess tower. However, recent new capacity has entered the excess market and the resulting increase in competition has encouraged rate stabilization and occasional rate *decreases* in excess towers.

- After more than two years of an exceptionally hard umbrella and excess market, where the availability of lead umbrellas, unsupported by the primary casualty lines, virtually dried up, most contractors have now paired their primary and lead umbrella programs with the same carrier to achieve the most efficient results. Capacity in the unsupported lead umbrella market remains almost non-existent.

- Capacity in the first $25 million of an umbrella and excess tower is commonly considered a working layer, so that in recent years many insureds have been forced to piece together lower layers employing multiple carriers on a quota share basis. However, as the overall marketplace for umbrella and excess improves, some insureds have been able to eliminate quota share arrangements, thus obtaining overall premium relief on the excess tower.
- Although general market conditions are improving, many contractors with high-hazard operations or who perform work in challenging geographies are forced to obtain coverage from non-admitted markets when the standard market declines the risk or coverage.
  - Common coverage restrictions in the non-admitted marketplace include exclusions for cross suits, punitive damages, wrap-ups, residential/condominium conversion exclusions and anti-stacking limitations. However, often these non-admitted carriers are willing to consider coverage modifications when contractors and their respective brokers provide ample underwriting information and negotiate coverage effectively.

Controlled insurance programs (CIPs)

Although social inflation, COVID-19 project delays, drastic cost fluctuations of materials and the continuing trend of nuclear verdicts are continuing to impact CIP pricing, we have seen healthy competition within the admitted marketplace for commercial project risks. Whether pursuing an owner-controlled or a contractor-controlled program, a robust submission with comprehensive underwriting data remains the most important factor in pursuing carrier support for CIPs.

- Information crucial to the underwriting process includes sponsor experience, general contractor performance and history, loss control measures and specific details surrounding quality to ensure a successful project delivery.
- Depending on project size, scope and lead time, taking the opportunity to present the risk directly to carriers from the sponsor's perspective has helped produce competitive options.
- Terms and conditions depend on quality information as well as the pursuit and purchase of other project-specific lines of business. Carriers are concerned about the CIP becoming a catch-all when other available coverage has not been secured, especially in the wake of a significant claim.
- Several carriers are providing project risk control technologies designed to increase project safety and improve construction quality, thus reducing the potential for costly long-term defects. The availability and efficacy of these technologies should be considered when selecting an insurance carrier. A modest increase in upfront cost may result in significant long-term reduction in deductible losses.
- While market conditions for excess capacity are gradually improving, moderate rate increases are still the norm.
  - It remains a rarity to see $25 million in capacity deployed by a single excess carrier.
  - Minimum premiums can be determined on a price-per-million basis or per-annum, which requires creativity to appropriately align quota share partners at a suitable attachment point.
  - Obtaining competitive unsupported lead umbrellas remains one of the most difficult challenges. Lead umbrella capacity often leverages the primary placement.
- Reinsurance treaty stipulations continue to drive required rate and non-negotiable terms and conditions based on class of business.
  - Communicable disease exclusions remain requirements with most carriers due to treaty restrictions. At times, however, we have seen successful removal of specific exclusions when proper prevention protocols and onsite mitigation practices are in place and can be verified.
- Project extensions remain difficult to obtain at original program pricing and terms. Depending on the timing and project loss experience, extensions can be astronomically costly.
  - If an extension is going to be required, begin the negotiation process as early as possible.
- Unlimited rolling programs have become more restrictive, with less available capacity in the market.

- Due to the scrutiny surrounding certain classes of business, programs that historically allowed for a small percentage of a more challenging risk, e.g., frame condominiums, are now requiring a completely different rate structure or requiring the risk to be placed outside of the rolling program.
- When annual reinstatement of the general aggregate applies in the primary it can be challenging to secure follow form in the excess.
- We are continuing to see per-project general aggregates and per-project products-completed operations aggregates being applied with a cap so carriers can control their total amount of limit deployed.
- New York continues to be a challenge. General liability may only be offered on a very large or matching deductible basis.

Residential, wood frame and single-family build-to-rent portfolios all face limited marketplace options. Coverage can often only be obtained in the E&S marketplace.

- Although new carriers have entered the E&S space, this is not creating a more competitive marketplace for these challenging classes of businesses.
- Due to the trend toward more single-family build-to-rent projects, carriers that do have an appetite for the profile are typically limited in the total amount of capacity they can deploy for the class. Once a carrier has hit capacity limitations, they are simply unable to entertain additional risks, even if the initial loss indications across the portfolio are exemplary.
- Problematic jurisdictions continue to force for-rent, non-frame projects into the E&S marketplace, with large rate increases on both primary and lead as most carriers consider the lead excess to be a working layer.

New York controlled insurance programs (CIPs)

The liability market continues to trend drastically upward with no signs of slowing down.

- Historically, projects in the five boroughs of New York City have faced extra underwriting consideration. Now, however, most of the marketplace underwrites any risk impacted by New York labor law as a statewide risk, affecting every project in the state.
- Under a CIP, if an enrolled contractor's worker sustains an injury resulting from a fall or a falling object, the typical result is a labor law general liability claim in addition to the workers compensation claim.
- Due to inflation, nuclear verdicts and insurance payouts trending upward on labor law claims, payouts are not expected to slow down or level out any time soon.
- New York State courts tend to lean as broadly as possible to favor injured employees.
- Alternative dispute resolution (ADR) has been employed on a major upstate project, resulting in reductions in the frequency and severity of labor law claims. However, such programs require long lead times to initiate and implement properly.

Builders risk

With the exception of wood frame construction, competitive terms and conditions are still achievable on most new ground-up projects. Prototypical technologies, unique construction methods and extreme natural catastrophe-exposed projects continue to face hesitancy from the marketplace and/or more restrictive terms and conditions.

- Underwriter scrutiny continues to delay the quote process. Providing complete and accurate underwriting information is a prerequisite. Highlighting best-in-class supply chain efficiencies and material procurement protocols will help raise underwriter comfort levels.
- Water damage continues to plague the market. Higher water damage deductibles can be expected, especially on high-rise, residential and wood frame projects. Water mitigation plans are a more frequent requirement in these sectors.
- Carriers are still looking to achieve technical adequacy with high cat-exposed MBRs as natural catastrophe events seem to worsen year after year.
- Specific coverage extensions, such as LEG 3 and damage to existing property, continue to be closely scrutinized by underwriters and available limits are decreasing. If and when offered, higher rates and/or deductibles usually apply.
- Due to increasing costs on materials, we see growing concern over the adequacy of the original policy limit in the event of a complete loss. Construction costs should be monitored throughout the project life cycle and the limit of liability adjusted as needed. Brokers should also push for higher escalation clauses, although carriers have been reluctant to offer significant increases to this point.

While extensions remain challenging on some projects, carriers have been more flexible and are offering more reasonable terms and conditions.

- Increased rates and deductibles, in addition to possible restrictions in coverage, can still be anticipated on extensions. Projects with losses, heavy cat-exposed locations or opportunities backed by reinsurance support can still expect more severe restrictions and corrections in rate and overall terms.
- Carriers continue to scrutinize underwriting data and seek additional approvals, causing overall quote delays.
- Engaging with the carrier as early as possible when an extension is needed remains crucial. Correspondence should include all available information about the status of the project and the reason for the extension.

The wood frame market continues to be extremely challenging, with finite capacity causing rates to rise.

- Large-scale developments/projects are becoming more common, and the need for multiple carriers on a single risk leads to premium increases and possible non-concurrent terms and conditions.
- Adequate lead time for wood frame submissions is critical – turnaround takes weeks to months depending on project size and complexity.
- Site security has become a requirement for most wood frame construction. Risk managers and contractors should look at site security as part of the all-in construction cost instead of an additional cost. Electronic service monitoring can be costly, depending on the scope of work and length of the project. Engaging vendors early will assist in estimating costs.
- Along with site security, water detection service implementation on wood frame projects is encouraged. While not always a requirement, it does help separate a project from others and increase carrier appetite.
- Crime scores are closely monitored on all projects, as civil unrest, riots, arson and looting in certain geographies have proven challenging to underwrite. Buyers should anticipate higher rates and even stricter security requirements in these locations.
- Wildfires continue to be front of mind for underwriters, and wildfire deductibles or restrictions may appear on new placements.

Professional liability (PL)

The construction professional liability market remains relatively competitive, although increased underwriting scrutiny continues, with carriers careful about capacity deployment and retention levels.

- Adequate capacity and continued competition are keeping rate increases manageable compared to other P&C insurance lines. However, we are continuing to see upward pressure on rates and retentions, especially for project-specific capacity.
  - Total U.S. capacity continues to be in excess of $300 million, with additional capacity available through London, Bermuda and other international markets.
  - While there is still significant total capacity in the market, carriers are generally restricting capacity for any one risk.
  - Protective indemnity and rectification coverages are now included in standard forms offered by leading carriers, but terms and limits can vary considerably, and we are seeing added underwriting scrutiny for these enhancements.
  - Some underwriting authority is being removed from the field, leading to a longer underwriting process.
- Project-specific placement solutions vary based on the controlling party (contractor/engineer/owner) procuring the insurance; regardless, we are seeing increased underwriting scrutiny, motivating brokers and underwriters to find innovative solutions for evolving contract structures.
  - Market capacity for architects and engineers (AE) project-specific solutions has contracted, especially for large project-specific placements.
  - Many carriers in the contractor's professional liability market are reserving project-specific capacity for existing clients.
  - Large design-build infrastructure projects continue to produce adverse loss experience for the AE market, creating risk allocation challenges for contractors, particularly when employing design-build contract delivery.

- Buyers can expect underwriting scrutiny of coverage enhancements, such as rectification/mitigation. Underwriters are also conducting detailed contract reviews related to insurance requirements, limitations of liability and contractor assumption of design responsibilities.
- There is continued interest in owner-procured professional indemnity policies for further protection on project risk.
  - Increasing project values create a corresponding rise in professional liability risk, yet many contractors and design professionals do not carry limits that adequately address these larger exposures.
  - Traditional project-specific professional liability policies covering all design risk on a project can still be obtained, but many buyers prefer the cost efficiency of professional liability products that offer a protective indemnity coverage approach.
  - Shrinking capacity for architects and engineers and continuing pressure for contractual limitations of liability are driving increased demand for owner-procured protective indemnity (OPPI) for projects.

Contractors pollution liability (CPL)

The expected increase in construction activity in 2022 will likely raise the demand for contractors pollution liability (CPL) coverage. Recent carrier entries as well as contraction in the site pollution market makes CPL coverage a highly competitive product line. Though even with the increased competition, slight rate increases are expected.

- Regulatory scrutiny has increased in the past few years regarding per- and polyfluoroalkyl substances (PFAS), as several lawsuits have been filed and verdicts reached. PFAS exposure is being monitored more closely than ever.
  - According to the Center for Disease Control (CDC), the persistence of PFAS is a concern because the chemical does not break down in the environment, hence it being called a “forever chemical.” It can move through soils, contaminate drinking water and has been found to build up in fish and other wildlife.
  - PFAS are used in many household products, but also have been used in building materials, such as coatings, sealants/adhesives and wires/cables.
  - While most general liability policies include pollution exclusions, contractors will need to be aware of the coverage provided and mindful of the materials they use to ensure they are adequately protected.
- The following exposures continue to fuel the need for practice- and project-specific CPL coverage: pollution exposures during work and after completion, indoor air quality, Legionella, mold and water-related issues, application of chemicals, installation of building products, excessive siltation, emergency remediation expenses, contractor-owned locations, beyond-the-boundaries scenarios, and transportation and disposal of construction debris.
- The largest expected rate increases continue to be associated with monoline habitational, hotel, hospitality and hospital risks – sectors that continue to experience the highest claim activity.
- Site pollution coverage that may accompany a pollution wrap-up program will require special attention, as this product line continues to experience reductions in capacity and tightening of policy terms, as well as limited appetite with respect to emerging exposures and such contaminants as PFAS.
- Claim activity related to redevelopment of brownfield properties continues – although carriers try to limit exposure by adding exclusions associated with historic fill, dewatering and voluntary site investigations. In addition, we are seeing increased claim activity related to stormwater run-off from construction sites. We are seeing claims brought by project owners, citizen action groups and regulatory agencies.

Subcontractor default insurance (SDI)

SDI carriers continue to add capacity in anticipation of continued growth in demand into 2022 and beyond. As delayed projects get back online, we are seeing steady increases in backlog for 2022. Access to qualified labor will be a key challenge in getting this work done. Owners, developers and general contractors continue to leverage the comprehensive coverage SDI provides to ensure operations and projects are protected against subcontractor default.

- The SDI marketplace now has seven carriers, including five that we consider actively engaged in the product line. Four of those five can offer single limits of $50 million or greater per loss.
- Carriers continue to offer flexibility for annual and multiyear programs and on subcontractor enrollment amounts, which is opening SDI programs for small, mid and larger sized contractors.
- Talent is shifting in the SDI sector. Leaders have changed firms, and there is a new market which is set to open in 2022 led by ex-leaders of a key SDI player.
- With the introduction of new capacity and choice, buyers should review current policy terms, conditions and pricing.
- Underwriting in the current environment will continue to present challenges. SDI carriers are critical of contractors who are altogether new to SDI, and virtual underwriting meetings may not be sufficient to build trust. Carriers are beginning to methodically open travel for in-person underwriting and risk engineering visits, which is driving more concrete relationships.
- For the near term, contractors will have to contend with inflation, material and supply uncertainty and ongoing qualified labor constraints. We expect contractors to consider a balance of SDI and subcontractor bonds to get through this period of growth and uncertainty.
- Despite current uncertainties, the SDI marketplace is robust. Markets are responding responsibly with some adjustments to their program offerings. In addition to the overall increase in market capacity, the anticipated entrance of a new carrier offering significant limits, without legacy exposure, provides an additional option for both the near and long term.

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