Commercial Risk

State of the Market Mid-Year Report

Executive Summary

In times of prosperity, and especially in those of uncertainty, it is abundantly clear that risk management is vital to the long-term viability of all organizations. And recent years have certainly put that principle to the test, with prolonged inflation, recurring natural disasters, and an increasingly litigious society pushing businesses' ability to withstand the unknown while meeting demands for their goods and services. In addition to these mounting pressures, the commercial property and casualty (P&C) market has proven to be challenging, with most insureds seeing rate increase after rate increase, year after year.

However, the insurance market's cycles are exactly that – cycles. 2023 brings hope for organizations, with several lines of coverage showing some signs of stabilization and rate moderation. More and more, we have seen how investing in loss controls and being prepared for renewal puts businesses in the strongest positions to get optimal rates and terms for coverage. And as your organization continues to adapt and transform to secure its success, we are here to help you navigate the uncharted terrain that lies ahead.

Market Drivers

- **Extreme weather events continue to take a toll on the commercial property insurance market.**
- **A challenging reinsurance market is also impacting the pricing and availability of coverage in the P&C market.**
- **Sustained inflation challenges carriers' ability to properly price coverage and protect profit margins.**
- **Social inflation and nuclear verdicts continue to impact the frequency and severity of claims in casualty lines.**
- **Geopolitical conflicts worsen global supply chain issues and inflation.**
- **Labor shortages within the insurance industry impact underwriters' bandwidth to process submissions.**
- **Because the P&C market continues to be challenging for insureds, we are seeing more organizations turn to captives.**

Commercial P&C Overview

- **Property:** The property market remains extremely challenging, especially for businesses in disaster-prone areas. In cat prone areas and based upon the level of catastrophic exposure, loss history, & construction characteristics, increases can range anywhere from +20% to + 200%.
- **General Liability:** So far, we are seeing renewals average a 4.6% increase in general liability, a promising sign that rates are moderating.
- **Commercial Auto:** Commercial auto liability remains challenging due to social inflation, third-party litigation, and nuclear verdicts. Renewals are averaging 8.3% in increases.
- **Workers' Compensation:** A bastion of relief for insureds, this line continues to perform strongly, with renewals mostly flat or even seeing slight decreases.
- **Employment Practices Liability Insurance (EPLI):** Social inflation continues to add rate pressure in the EPLI space, though results will vary greatly based on account performance and industry exposures.
- **Directors and Officers (D&O) Liability:** The D&O market is showing promising signs of softening, with more insurers entering the marketplace and creating greater capacity.
- **Fiduciary Liability:** Underwriters remain concerned with excessive fee claims, but rate increases remain nominal for this line.
- **Cyber Liability:** Surprisingly, the cyber liability market is also experiencing rate moderation. After years of rate increases averaging in the double-digit range, Q1 2023 saw average increases of 8.4%.
- **Umbrella Liability:** Underwriters will likely continue to practice discipline due to sustained claims volatility. New capacity is entering the market, though we have yet to see its impact on rates. Rate increases have averaged 8.5% this year.
- **Excess and Surplus (E&S):** New market entrants have increased capacity, particularly for higher layers. However, large loss trends continue to negatively impact pricing.

It is important to remember that these rates are averages, and that the results you see for your business will vary on a confluence of factors unique to its operational DNA. Furthermore, what we are seeing in the marketplace is significant bifurcation. Accounts with loss history and a lack of loss control mechanisms that cannot paint a compelling portrait of their risk to underwriters are seeing the worst results, and vice versa.

Containing the cost of risk and insurance continues to be challenging for many organizations, and though you might not be able to control the insurance market, you can influence the results.

In this report, we talk about how and where to start.

Market Drivers

As we detail throughout this State of the Market analysis, the usual suspects, namely extreme weather events, increased litigation, economic pressures, and geopolitical unrest, continue to have significant impacts on the commercial P&C market. While we predict that these factors will continue to place upward pressure on premium rates, these emerging market drivers are also shaping the insurance market in 2023.

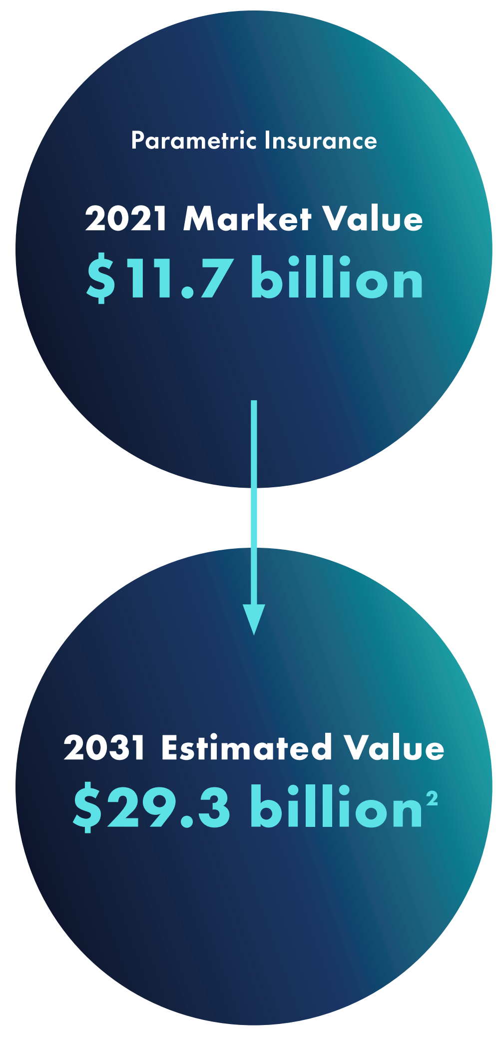
Worker shortages and a growing skills gap

Insurers are now encountering the worker shortage issues that have plagued so many other industries. Many underwriters have begun to retire, and there is not enough experienced talent to replace them. In fact, the U.S. Bureau of Labor Statistics projects 8,400 openings for insurance underwriters per year over the next decade.[1] When practiced underwriters retire, this leaves insurers with an experience and perspective gap, which can negatively impact policyholders, especially those with more complex risks and loss history. A shortage of underwriters can also lead to delays for insureds.

Additionally, carriers are finding that they are having to compete with other industries for technically skilled talent that can deploy and manage the advanced solutions needed for the insurance industry to address the challenges it faces both now and in the future.

The growing influence of artificial intelligence solutions

Artificial intelligence (AI) has become a buzzword in all industries and lines of work, and the insurance industry is no exception. The insurance industry is undergoing a digital revolution, and AI will very likely play a role moving forward. In a world where carriers can rely less on past trends to determine future risk and coverage pricing, AI solutions hold significant promise to help carriers more adequately assess risk, streamline processes, reduce human error, lighten staff workload, and improve customer experience.



Captive solutions – an alternative to the traditional insurance marketplace

Captives are having a big moment, with the U.S. captive market exploding in recent years. This is because more organizations want greater control, affordability, and flexibility around their insurance portfolio, and for entities with the right risk profile, captives can provide that. With the P&C market continuing to be challenging for insureds, we expect heightened interest in captives to continue in 2023.

Parametric solutions making waves

Parametric insurance is also surging in popularity due to the hardened property market. In this type of policy, coverage is triggered by a specific condition, such as wind speed or earthquake magnitude. It can help contain costs and offer meaningful protection for large CAT events. The global parametric insurance market is projected to more than triple in value within the next decade. In 2021, the market was valued at $11.7 billion, and it is estimated to reach $29.3 billion by 2031[2].

Insurance Trends

Property

A market beholden to Mother Nature's mercy

The commercial property insurance market has seen rate increases every quarter since Q3 2017, and 2023 is showing no signs that this streak will end. In '2023, the persistent volatility is causing a wide range of property insurance increases for insureds. Based upon the level of catastrophic exposure, loss history, & construction characteristics, increases can range anywhere from +20% to + 200%.[4]

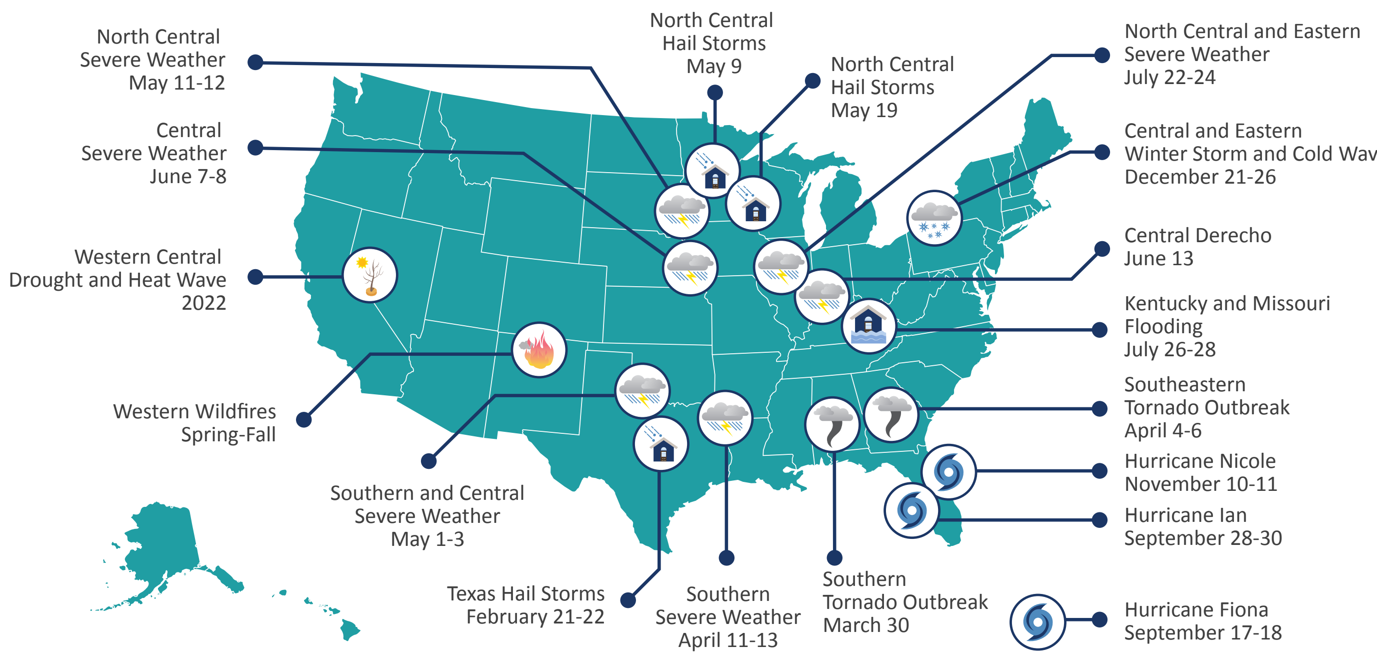
This is because natural disasters have been unrelenting in both their frequency and severity, leaving profound destruction and devastation in their wake. As these events continue to compound for yet another year with inflation, labor shortages, supply chain issues, geopolitical conflict, and a challenging reinsurance market, we expect the commercial property insurance market to continue to harden.

Issues that impact the availability and pricing of coverage:

Extreme weather events

In 2022, the United States was plagued yet again by natural disasters, with 18 extreme weather events surpassing the $1 billion mark in damages in the United States alone, amounting to $165 billion in insured and uninsured losses.[5] Global reinsurer Munich Re estimates that 2022 global insured and uninsured losses amounted to about $270 billion, following $320 billion in total losses in 2021.[6] When 2022 was looking like it would be a tamer year for natural disasters, Hurricane Ian hit the state of Florida, with estimates of insurable losses for this event approaching $65 billion.[7]

U.S. 2022 Billion-Dollar Weather and Climate Disasters

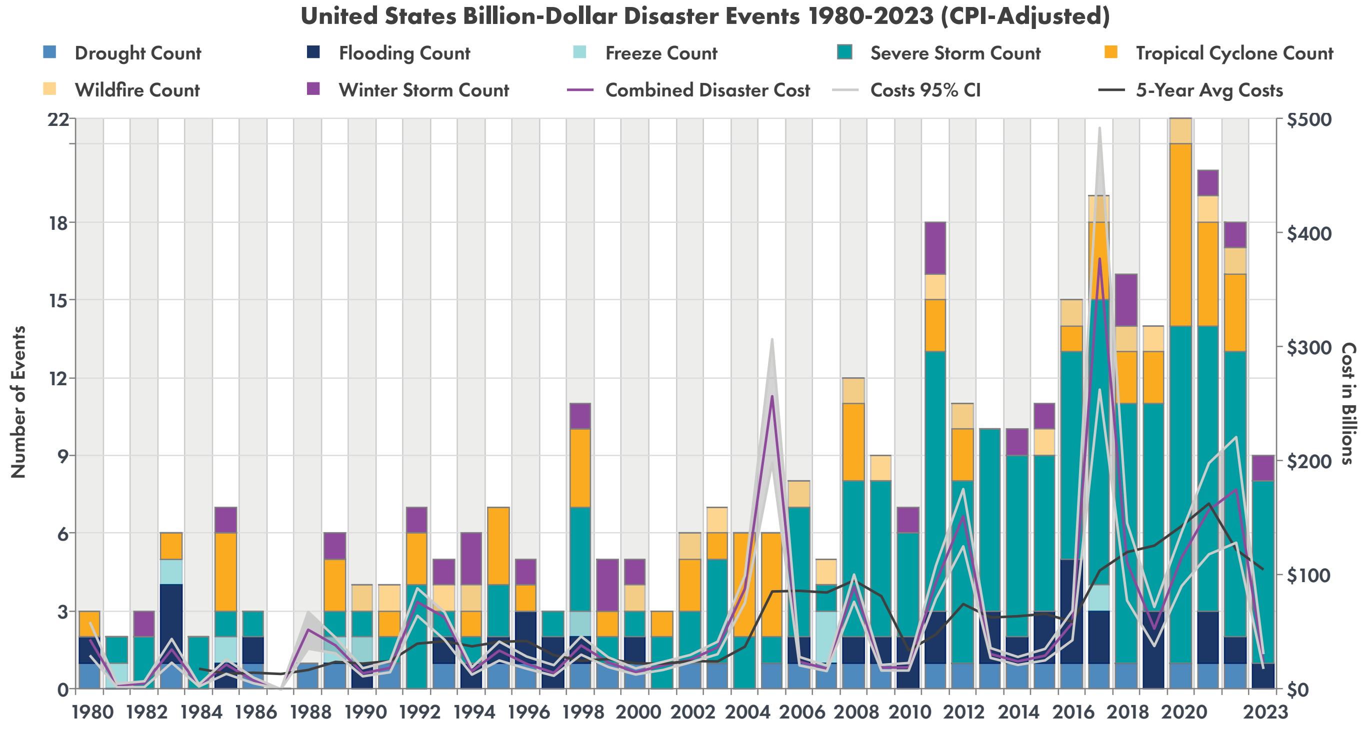


Source: NCEI[8] *This map denotes the approximate location for each of the 18 separate billion-dollar weather and climate disasters that impacted the United States in 2022.*

And while large-scale events dominate headlines, we cannot understate the cumulative impact of smaller events and secondary perils on the commercial property market. For example, in the U.S. alone, floods accounted for $28 billion in total losses from 2018 through 2023, which doesn't include flooding losses related to hurricanes.[9] And in 2021, at least 6.8 million U.S. properties had at least one damaging hail event.[10]

Insurance carriers that cover extreme cold, fires, hurricanes, floods, and tornadoes are feeling the effects of weather events firsthand. Sustained underwriting losses have eroded profit margins and have carriers retreating from riskier markets. This makes it increasingly difficult for insureds in challenged geographies to find commercial property coverage. And when coverage is available, policyholders may see exorbitant rate hikes, restrictive terms and conditions, higher retention levels, and an overall reduction in limits.

Climate change is also reshaping the world as we know it. The insurance industry has yet to adapt underwriting strategies and climate models to account for the nature of interconnected weather events. Recurring natural disasters amount to an increased severity in insurance claims, and when carriers experience poor loss ratios over a prolonged period, this could threaten their ability to remain solvent.



Source: NCEI[11]

Economic uncertainty

Economic uncertainty driven by inflation and the threat of recession makes it difficult for carriers to maintain pricing and keep pace with unpredictable loss patterns. Throughout 2022, inflation continued to climb, reaching a peak of 9.1% in June 2022.[12] When compared with historical trends, rising prices contributed to about a $32 billion increase in how much insurers had to pay out in 2022.[13] Though the annual inflation rate in the United States fell to 4.9% in April 2023, this is still much higher than the 2.1% average reported from 2000 to 2020.[14]

In a high inflationary environment, the costs to rebuild could be significantly higher, which results in higher loss ratios for carriers. P&C insurer replacement costs are projected to increase between 4.5% and 6.5% in 2023.[15] With the cost to rebuild and replace higher, many property valuations are not up to date, which can result in significant coverage gaps for policyholders. In fact, a study found that only 43% of business owners have increased their business insurance policy limits to account for inflation.[16]

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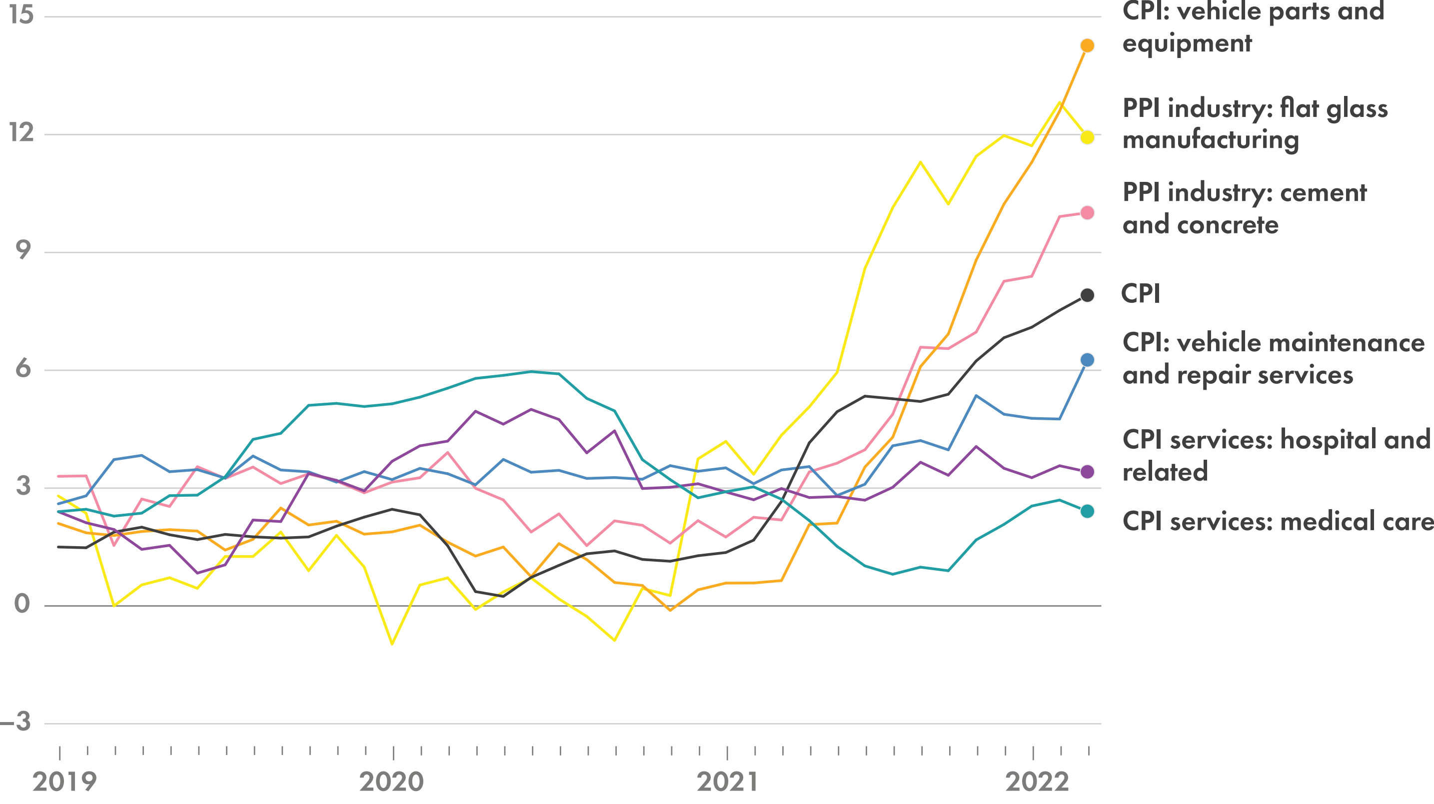
Furthermore, insurance carriers are as susceptible as all businesses to the threat of a recession, which economic experts fear is on the horizon due to rising interest rates, sustained labor challenges, reduced economic activity, and financial institution failures.

Inflation has had an adverse impact on most property and casualty lines of insurance, dampening favorable trends and accelerating unfavorable ones.

Price indexes across select consumer price index (CPI) and producer price index (PPI) categories, % change

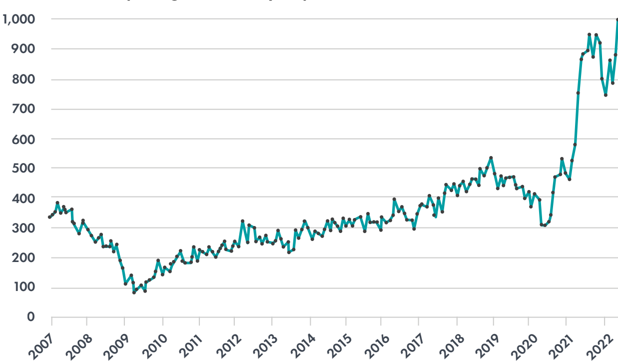


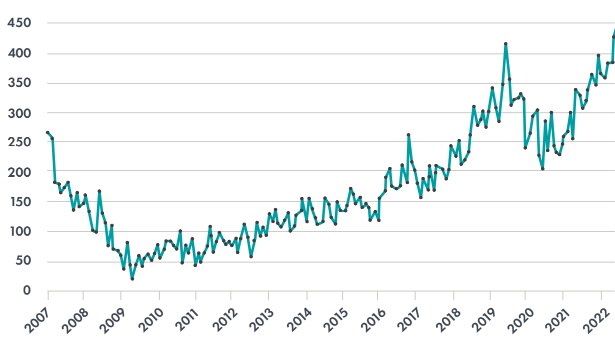
Source: McKinsey & Company[17]

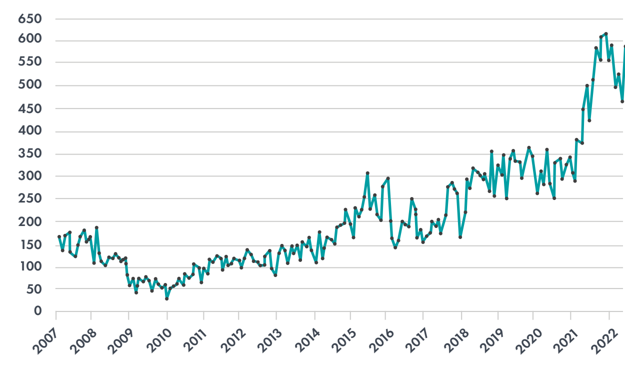
Labor shortages

Labor shortages continue to persist in 2023. Job openings and an aging workforce in key industries, including construction, manufacturing, and transportation, worsen supply chain issues. As of March 2023, the U.S. Bureau of Labor Statistics[18] estimates that the U.S. construction industry was short 341,000 workers and the manufacturing sector was short 693,000, while the American Trucking Association (ATA) estimates the U.S. trucking sector was 78,000 drivers short in 2022.[19]

Labor shortages in the construction industry mean that there are fewer available workers to meet labor demands in regions that experience severe losses due to extreme weather events, while labor shortages in the manufacturing industry impact the ability to produce materials and components needed to rebuild and repair. Without workers to transport goods, this also impacts recovery timelines and costs. To attract and retain talent, employers in these industries are raising wages, which is another factor contributing to ballooning rebuilding costs. Insurers are struggling to adapt risk models to account for growing wages in these key sectors.







Source: Wolf Street[20]

Supply chain issues

Supply chain disruptions have impacted many industries and businesses, and this includes insurance carriers. Increased demand and slowed production during the COVID-19 pandemic triggered severe supply chain issues that led to a shortage of raw materials and goods, manufacturing delays, and higher repair costs, all factors that increase losses for insurers. The Russia-Ukraine conflict, geopolitical trade tension, weather events, and labor shortages also negatively impact global supply chain resiliency and the availability of raw materials and goods.

Geopolitical conflict

Geopolitical conflicts, such as the Russia-Ukraine war, strain the P&C market by contributing to inflation and impacting the availability of key commodities, which further destabilizes supply chains. These conflicts also pose an additional risk, as they can lead to financial and trade sanctions, and may result in insurance claims stemming from business or supply chain interruptions. Additionally, sanctions may also impact how insurance policies respond to a triggering event, as government action may prohibit insurers from providing payment for a claim if it violates sanction laws.

Reinsurance market capacity

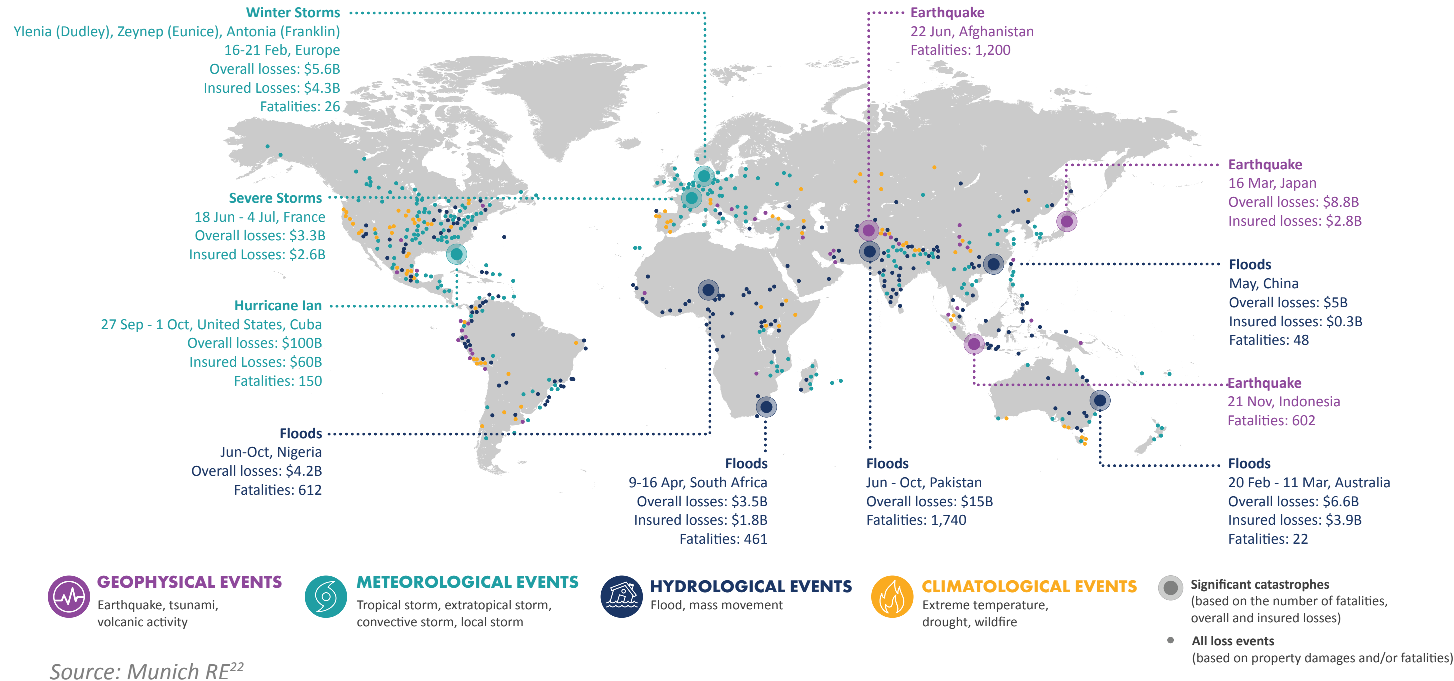
We are in the midst of a reinsurance-led market.

Because property losses have been so severe, even the reinsurance market is feeling the impact. While the primary insurance market covers financial liability for policyholders as a result of a triggering event, reinsurance is insurance for insurers.

Premium increases from reinsurers in 2023 are a result of inflation and recurring natural catastrophe losses. According to Howden's index, reinsurance rate increases for property catastrophe business have averaged 37% in 2023.[21] Since the reinsurance market supports global insurance markets, both domestic and global events impact its pricing and availability. Beyond Hurricane Ian in 2020, these 2023 global events include the Russia-Ukraine conflict, severe flooding in Pakistan, flash flooding in Australia, monsoon rains in Nigeria, and more.

Reinsurers' capacity to insure exposures has been limited by a lack of overall pricing adequacy. A shortfall in capacity leads to upward pricing pressure, tightening of terms and conditions, or, in certain instances, a lack of available capacity to support a client's renewal programs. This leaves many clients in disaster-prone areas having to make decisions about how much risk they can retain versus rising costs.

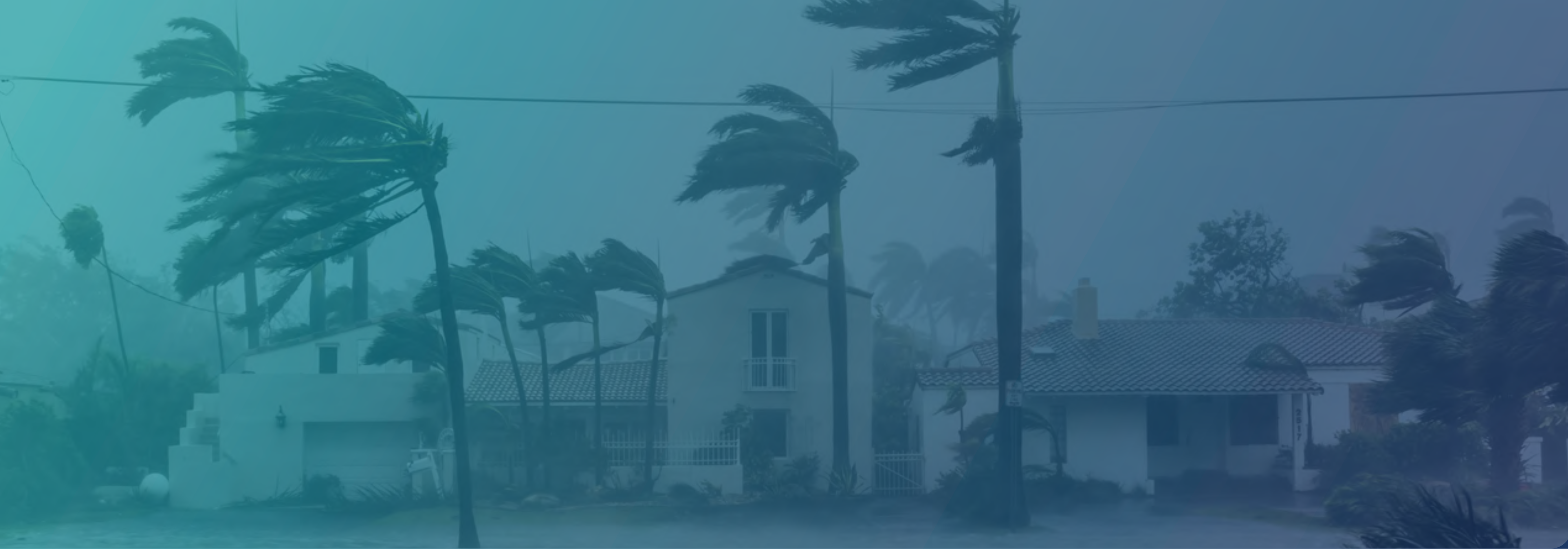
This same thought process applies to primary insurers who are having to decide between increased "costs of goods sold" or non-renewing large portions of their book.



Source: Munich RE[22]

As carriers must pay out more claims and meet financial obligations to policyholders, they turn to the reinsurance market to be able to do so. Projections from catastrophe models have claim expenses increasing up to 30% because of inflation and availability of materials and labor, among other factors. Additionally, reinsurers are expected to bear the brunt of the growing cost of losses across the U.S. and the number of poorly capitalized carriers in geographic areas that have seen continuous natural disasters.

To protect their profit margins, reinsurers increase rates across the board, and this cost increase impacts all insurance carriers. Though businesses in disaster-prone areas are seeing greater increases, price hikes are hitting most markets around the country, even those that don't experience many natural disasters.



Regional differences

It is important to remember that occupancy class, geographic location, and construction type have a great impact on the pricing and availability of coverage. Nonchallenged assets in favorable geographic locations will likely see much lower rate increases than, for example, multifamily buildings in wildfire or hurricane zones.

A property insurance market in crisis

As a response to the variables detailed above, insurance carriers have increased premiums, diminished capacity, and increased underwriting scrutiny. Because inflation, supply chain issues, and labor shortages have made it challenging for carriers to properly price coverage, expect underwriters to zero in on asset valuation during the underwriting process and demand up-to-date numbers. Failure to provide accurate valuation numbers will likely result in higher rates, or maybe even declination of coverage.

Additionally, many carriers have fled climate-vulnerable states or become insolvent, leaving thousands without disaster coverage and scrambling to find some type of financial protection. Though Florida has been in the eye of the storm when it comes to insurance carrier insolvency, this issue is also impacting other states. Several insurance companies in Louisiana have recently become insolvent, and Texas has also seen carriers flee the state.[23] Many carriers have also dropped policyholders in fire-prone areas, such as California, Colorado, Washington, and Montana.

> **Many carriers have fled climate-vulnerable states or become insolvent, leaving thousands without disaster coverage.**

Because of the property insurance market crisis, the Florida legislature passed sweeping reforms that seek to keep carriers from fleeing the state.[24] The legislation aims to make it harder and more expensive to sue insurance companies, with the hope being that this will lower rates for policyholders. Louisiana is also currently considering insurance market reform.[25]

Unfortunately, there is no easy fix for the property insurance market's dilemma. Carriers need to adapt underwriting strategies and data analytics to the new normal of unpredictable, extreme weather events – a tall order in and of itself. Technology, public policy, and insurance need to come together to find viable solutions so that individuals and businesses can buy the coverage they need to be protected from the effects of natural disasters.

Until that happens, it's essential for carriers and insurance advisors to educate policyholders about risk mitigation, resiliency planning, and recovery strategies for natural disasters.

Your Beacon of Opportunity

Commercial Property

You can never predict when natural disasters will strike or how destructive they will be, but you can take certain steps that can make your business more resilient.

Our recommendations:

- Make business continuity and disaster preparedness plans for different weather events and regularly review, test, and update them to meet your evolving business and workforce needs.
- Though it is an up-front cost, consider making investments to harden any buildings you own. If you are in the process of rebuilding, it is a good opportunity to implement upgrades that make your infrastructure more resilient to extreme weather events.
- Be sure to update your appraisals and try to insure to value so that you don't end up with a significant coverage gap where you would have to cover the cost to rebuild out of pocket.
- Finally, be prepared for your renewal. Explore all insurance coverage options with a BRP advisor if you have limited marketplace options or want to manage the cost of your insurance while maintaining the financial protection you need.
- Work with lenders early to understand flexibility if you can tolerate retaining more risk and utilize property modeling to understand key Probable Maximum Loss (PML) drivers. This will help you make informed decisions about where retaining more risk makes sense versus transferring it to an insurance company.

Casualty

The haves and the have-nots - market bifurcation driven by loss history and hazard class

In recent years, the commercial casualty market has also been challenging for insureds as carriers have responded to a rise in the frequency and severity of claims by tightening underwriting standards, increasing rates, and reducing capacity. With both the property and casualty markets having hardened, buyers have truly been stuck between a rock and a hard place.

However, the casualty market is showing some signs of stabilization. In 2022, improved results in several lines, including workers' compensation, directors and officers (D&O), and cyber liability paved the way for rate deceleration. Though rates have continued to grow for several lines in 2023, increases are occurring at a slower pace than what we experienced from 2019 through 2021.

What has become abundantly evident is that the casualty market is experiencing bifurcation, as policyholders' renewal rates have varied greatly based on a number of variables. Organizations in industries with low or moderate exposures that have a good loss history and can provide evidence of loss controls are likely to see flat to smaller increases. On the other hand, businesses with loss history in challenged industries, such as real estate, healthcare, education, manufacturing, hospitality, and transportation, are likely to see higher rate increases for casualty lines.

In 2023, carriers continue to be concerned with the pervasiveness of growing claims as a result of economic inflation and these issues:

- Nuclear verdicts – These are when a jury provides an award in a civil liability case that's over $10 million, an amount so steep that it surpasses what most people would consider reasonable. When we consider verdicts that surpass the $1 million mark, from 2010 to 2018, the average size of verdicts increased almost 1,000%, rising from $2.3 million to $22.3 million.[26] In 2022, the median verdict amount ballooned to $41.1 million, with the number of verdicts doubling.[27] Nuclear verdicts are driven by social inflation and third-party litigation funding.

The average size of verdicts increased almost 1,000%.

- Social inflation - This describes the rising cost of insurance claims as a result of increased litigation, plaintiff-friendly legal decisions, broader contract interpretation, larger jury awards, and anticorporate sentiment.
- Third-party litigation funding – This is when a funder who is not a party to the lawsuit agrees to fund it in exchange for a return of the litigation's settlement.

Though nuclear verdicts, social inflation, and third-party litigation funding continue to cast a shadow on the casualty market, expect variance in rate trends by product line.

Next, we detail the ups and downs shaping casualty capacity.

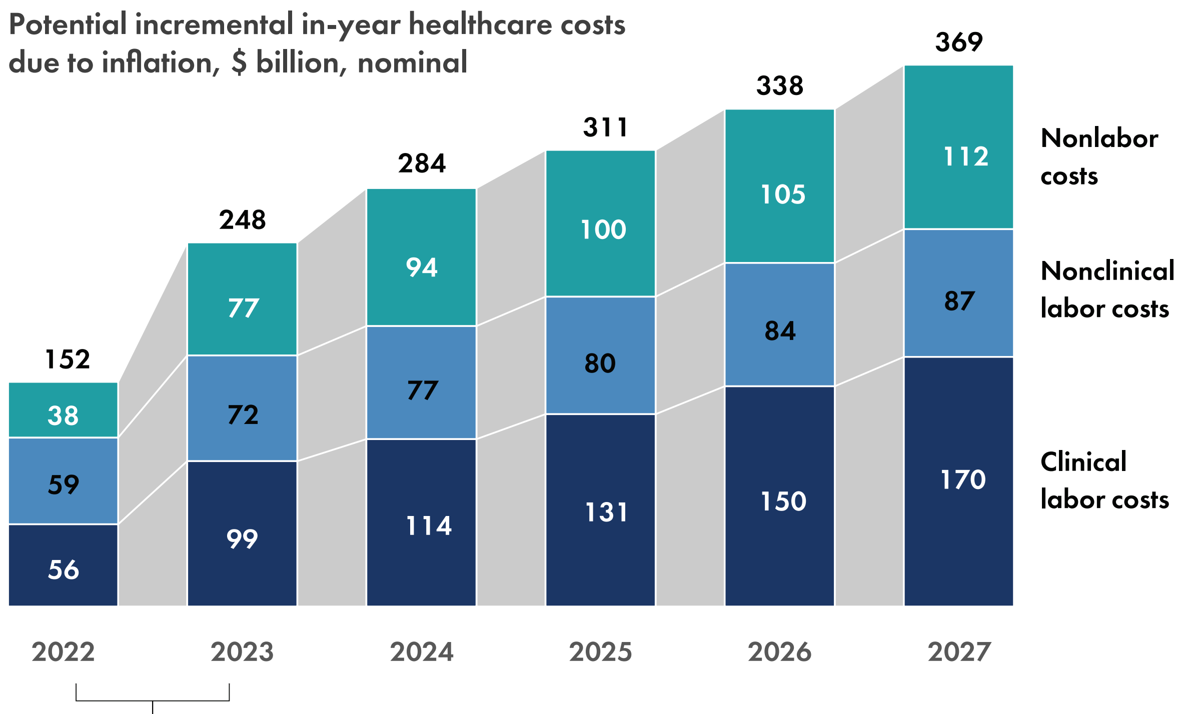
General Liability

Frequency of large claims creating rate pressure

Emerging Trends

Inflation and growing medical costs

Medical costs are growing due to economic inflation. Projections from McKinsey estimate that the annual U.S. national health expenditure is likely to be $370 billion higher by 2027 due to the impact of inflation compared with pre-pandemic projections.[29] With many general liability policies providing financial relief for medical costs arising from third-party injuries, organizations need to be aware of how the rising costs of medical care could lead to coverage gaps.



Inflation and clinical labor wage growth are significantly above baseline trends in 2022 and 2023 before returning to a lower rate of growth on this elevated baseline

Source: McKinsey & Company [30]

Active assailant exposures

Unfortunately, more organizations are now facing increased exposure to active assailants. Active assailant incidents can be extremely devastating, leading to serious injuries, post-traumatic stress disorder, and fatalities. Beyond the intangible impact of these incidents on human life, businesses that experience this type of event may have to pay significant recovery expenses or regulatory penalties. Because of the increasing occurrence of this type of loss, organizations might find themselves without enough coverage under a general liability policy for claims that arise post-event.

Hazardous chemical exclusions

A heightened focus on the manufacturing industry and use of hazardous chemicals has increased liability exposures for a larger group of companies. Insureds whose businesses handle hazardous chemicals and materials need to be aware of exclusionary language in their general liability policies and stay on top of regulations and compliance requirements, as they are rapidly evolving.

Reviver statutes

Finally, several states amended laws for plaintiffs to be able to bring or reopen sexual abuse claims beyond previous statutes of limitations.[31] Organizations with sexual abuse exposures might struggle to obtain sufficient coverage and need to pay attention to exclusionary language regarding these situations.

Entrenched Trends

Because of an increasingly litigious society, organizations in the U.S. are facing more liability lawsuits due to actual or alleged wrongdoings, with settlements seeming to grow year after year. This increases the frequency of large claims, and underwriters have taken note.

Rate increases are present, but seem to be moderating for many insureds, though organizations with poor loss history and/or in high-hazard industries will likely see increases in the double digits.

Your Beacon of Opportunity

General Liability

Start with obtaining an up-to-date assessment of your organization's risk and a review of your policy and limits to help prevent incidences of coverage gaps or overlaps.

Explore standalone coverages for outlier events, and work with your BRP advisor to ensure you understand what they cover, in addition to any exclusionary language. You also want to review and assess your loss mitigation practices with your advisor to help ensure that you have appropriate incident response plans in place and workplace safety training programs that align with your operational, workforce, and client needs.

Commercial Auto

Familiar forces driving rates upward

Emerging Trends

Limited talent pool: the fallout

As commercial fleet owners and operators continue to experience challenges finding experienced drivers to operate vehicles, we are seeing the fallout from having to hire younger, less experienced drivers and keeping bad drivers employed for longer.

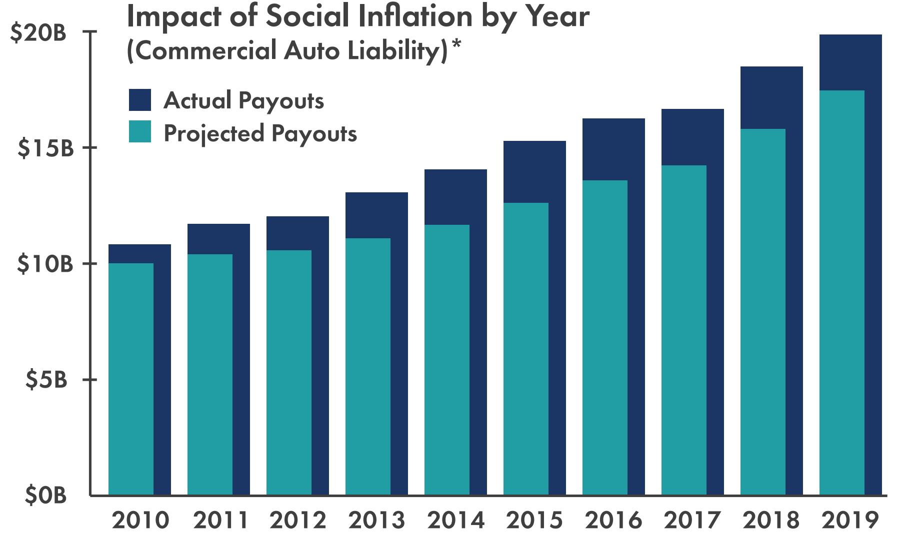
Consider this: Data from the National Highway Traffic Safety Administration showed that young drivers, while only 5.1% percent of all licensed drivers in 2020, accounted for 8.5% of all drivers involved in fatal crashes.[33] With more workers retiring from transportation jobs, fleets have had to come to terms with a growing skills gap.

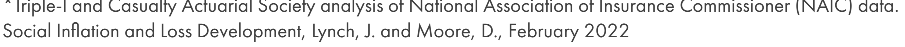
Many training programs haven't been able to keep up with an uptick in demand for skilled labor, leading to a shortage of qualified workers. The results are greater accident frequency and severity, which lead to more claims.

Entrenched Trends

Commercial auto liability has been in the eye of the storm of increased claims activity stemming from nuclear verdicts, social inflation, and third-party litigation. The Insurance Information Institute estimates that social inflation increased claims by an estimated $20B (14%) from 2010 to 2019 in commercial auto liability.[34] As an example, in one of the largest nuclear verdicts to date, a jury awarded a plaintiff $411 million in his suit against a trucking company.[35]

Additionally, persistent supply chain issues and economic inflation continue to impact claims, with the cost to repair and maintain vehicles outpacing the rate of inflation since 2012 and spiking dramatically within the last year.[36] And if vehicles are not properly serviced, this can also increase the incidence of accidents and claims.

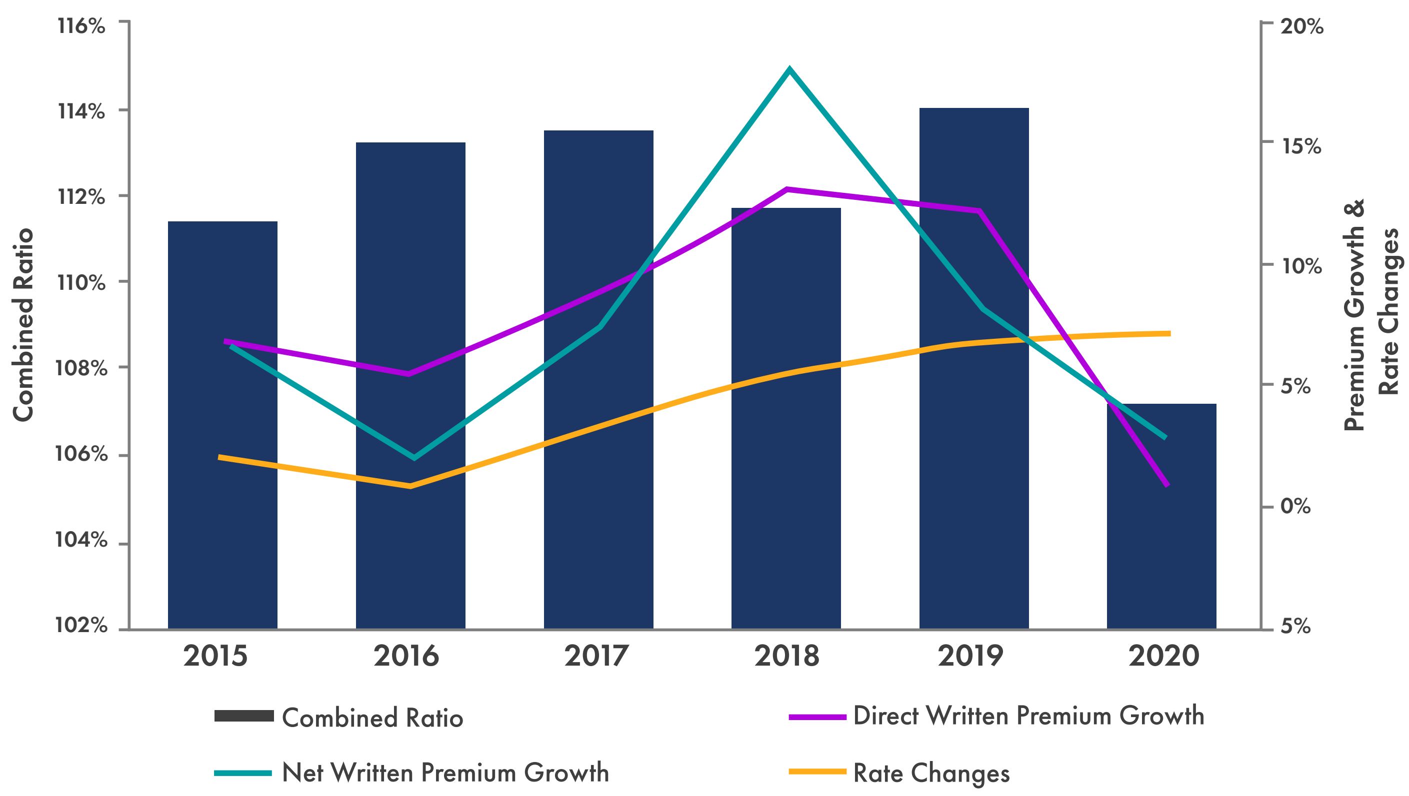




*Triple-I and Casualty Actuarial Society analysis of National Association of Insurance Commissioner (NAIC) data. Social Inflation and Loss Development, Lynch, J. and Moore, D., February 2022

Source: Insurance Information Institute[37]

Commercial Auto Liability Calendar Year Written Premium, Combined Ratio, and Rate Changes



Data sources: National Association of Insurance Commissioners (NAIC) data sourced through S&P Global Market Intelligence, Market Scout Market Barometer.

Source: Milliman[38]

Your Beacon of Opportunity

Commercial Auto

Though the shortage of drivers is a complex issue with no simple solution, fleet owners and operators should consider zeroing in on worker recruitment and retention by offering attractive benefits. Harnessing the power of telematics is also one of the most effective strategies businesses can use to control the risks and costs of owning and operating a commercial fleet. Telematic solutions are GPSs and cameras that allow you to identify where a vehicle is and has been, what it is and has been doing, and what is happening around the vehicle. In addition to helping companies manage their fleet costs and stay on top of maintenance issues, telematics is a mandatory prerequisite for coverage for many commercial auto liability insurers. Work with your BRP advisor to review all mandatory coverages and help ensure you're properly covered.

Workers' Compensation

The best performing casualty line remains stable and profitable

Emerging Trends

Shifting workforce demographics

Though the Great Resignation occurred in 2021, we might just be starting to see its impact on the workers' compensation market, as short-tenured workers are more likely to sustain workplace injuries from lack of experience and training.

A review of 2016-2020 data from Travelers Companies, Inc. found that first-year employees, regardless of age or industry experience, accounted for 34% of all claims and nearly 7 million missed workdays.[40]

The workforce is also aging, which presents a twofold challenge. Firstly, though older employees are less likely to get into workplace accidents, when they do, they take longer to recover, usually because of comorbidities.[41] Secondly, as more people retire, there will be more new workers in positions, which can also lead to more claims.

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Remote work – the impact

With the advent of remote work due to the COVID-19 pandemic, employees who work from home and do not have ergonomic workstations are more likely to develop ailments, such as back pain, carpal tunnel syndrome, eyestrain, headaches, and neck pain.

In the earlier months of the pandemic, Chubb conducted a survey that revealed that 41% of Americans reported feeling new or increased shoulder, back, and wrist pain since they started working from home.[42] Employers who do not have telecommuting policies in place to address these health concerns could see more workers' compensation claims.

Healthcare costs and inflation

Finally, the cost of healthcare in an inflationary environment could also lead to greater claims costs that we are not yet seeing reflected in current rate trends.

Entrenched Trends

Though most renewals without losses this year are trending flat or seeing minimal increases, organizations need to keep a pulse on emerging risks to maintain competitive results for this line.

Your Beacon of Opportunity

Workers' Compensation

Employers have an opportunity to leverage solutions, like telemedicine, well-being initiatives, safety training programs, wearable safety technology, mental health resources, and proactive communication, to help employees avoid workplace injuries and provide support to treat injuries should they occur. Have clear policies in place for remote employees, reminding them to take necessary breaks and providing them resources to create ergonomic workspaces at home. Though these solutions have initial up-front costs, consider the long-term savings that they could provide in the form of prevented claims. Your BRP advisor can help create worker safety programs designed to benefit the company's bottom line and keep your employees safe.

Management Liability

Is respite from the hardened market finally in sight?

After years of dealing with limited capacity, higher retentions, and steep rate increases, the management liability space seems to be stabilizing, with rate increases slowing overall for professional lines of business. Of course, this likely will not be the case for accounts with loss experience. To avoid claim incidences and reap the benefits of a softening market, insureds need to keep a pulse on these existing and emerging risks.

Employment Practices Liability (EPLI)

Emerging Trends*

Environmental, Social, and Governance (ESG) Initiatives

Organizations with an environmental, social, and governance (ESG) strategy need to consider employees' perceptions of these policies. If individuals feel excluded from ESG initiatives or sense that the workplace environment does not align with ESG polices, this might lead to allegations of wrongdoing.

The return to office

From 2022 through 2023, we have seen more employers enforce return to office policies. Companies that choose to enforce a return to office for their workforce must ensure that they have a clear transition plan in place and consider different individuals' needs. Failure to accommodate health conditions could lead to claims. Those that support hybrid workforces need to ensure that remote and in-office employees receive equitable treatment – remembering to ensure that remote employees take necessary breaks, as required by law.

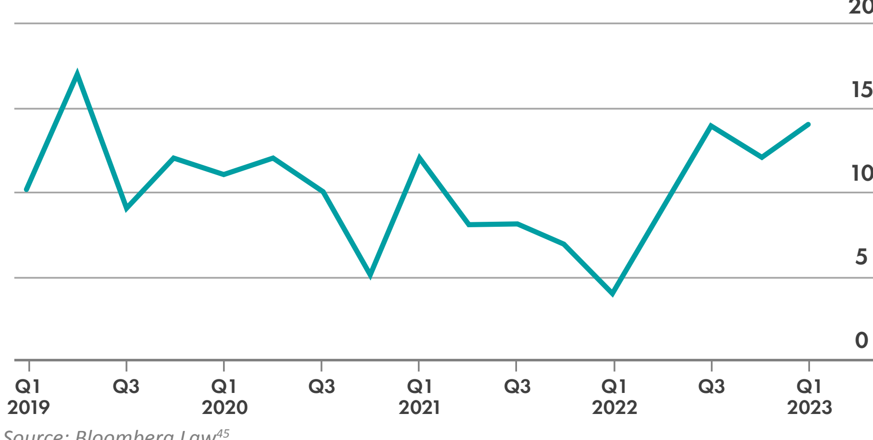
Pay transparency laws

In recent years, we have also seen several states and counties within states pass pay transparency laws. Failure to comply with these laws could lead to regulatory fines or lawsuits from third parties that feel their wages do not align with publicized pay scales due to discrimination.

Mass layoffs

Through 2022 and into 2023, we have also seen several rounds of mass layoffs from various companies. And with these layoffs have come a surge in lawsuits under the Worker Adjustment and Retraining Notification (WARN) Act.[44] Companies that intend to implement rounds of layoffs impacting several employees need to be aware of their legal obligations at both the state and federal levels.

Federal WARN Act Complaints Rose in 2022, Early 2023



Source: Bloomberg Law[45]

**Trends applicable to both public and private companies.*

Implicit bias and Artificial Intelligence (AI)

Because AI helps organizations improve operational efficiency, AI continues to become embedded into more business practices, including recruitment and hiring. If you choose to employ AI systems for recruitment and hiring, be aware of any bias algorithms may hold toward specific groups because this may result in discrimination litigation and EPLI claims.

Larger claims

Finally, we are seeing fewer EPLI claims, but the claims that we are seeing have been larger. Many organizations have implemented corrective measures in the wake of social justice movements that address workplace harassment and discrimination, leading to fewer claims. However, when companies are found liable for failing to address deep-seeded, systemic, problems, they are paying the price.

Entrenched Trends

Social inflation, nuclear verdicts, and third-party litigation funding continue to be significant concerns for underwriters. Developments in social justice movements and their impact on laws and regulations continue to impact EPLI claims and drive rates up. Underwriters continue to pay close attention to industry-specific exposures and whether your company operates in states with employee-friendly laws and regulations.

Your Beacon of Opportunity

Management Liability

As workplaces continue evolving to accommodate the needs and expectations of diverse employees, they need to partner with trusted legal counsel to ensure compliance within a complex regulatory landscape. Be sure to review your employee handbook and related policies with your relevant stakeholders, including legal, compliance, risk management, HR, and IT leaders, to build appropriate, inclusive policies that you can clearly communicate with your employees. Seek guidance from your BRP advisor to help ensure alignment of regulatory requirements and your risk management strategy.

Directors & Officers (D&O) Liability

Emerging Trends

Softening market

Public companies are now experiencing a softening market, with renewals being flat or even slightly decreasing in some cases. This is because more insurers have entered the D&O marketplace, creating more capacity. Since IPO and SPAC activity decreased in 2022, several D&O insurers increased their underwriting appetite to compete for business opportunities.

In the private D&O space, rates have also begun to moderate, but at a slower pace than in the public D&O market. Though new carriers have entered the market, because private D&O carriers often find themselves having to pay big claims for smaller premiums in comparison to their public counterparts, this creates greater exposure.

Public companies are now experiencing a softening market, with renewals being flat or even slightly decreasing in some cases.

Environmental, Social, and Governance (ESG) Initiatives

For public and private company D&O, underwriters have begun to pay more attention to ESG policies and their implications for claim incidences. This is because activists have brought litigation against business leaders for misrepresentations of their company's actions around board diversity, climate change, and social equity.

Entrenched Trends

For both public and private companies, social inflation and nuclear verdicts are ever-present concerns. Additionally, underwriters will continue to look for evidence of strong cybersecurity practices. Board members of both private and public companies must continue to provide buy-in for appropriate cybersecurity policies and controls because failure to do so could lead to lawsuits, especially in the event of a cyberattack.

Your Beacon of Opportunity

D&O Liability

Get an analysis of your D&O program structure from a trusted advisor to ensure you have a complete understanding of your exposures. Once you understand your risks, take the proper steps to address risks and remain compliant.

It's important to also understand what other companies in your same market cap are paying for D&O Liability Insurance and the limits and applicable retentions. Having this visibility enables you to assess whether your company is properly covered – paying too much or too little based on current claims and litigation data.

We recommend the 2023 NASDAQ D&O Benchmarking Report. The report provides key policy information from over 350 publicly traded U.S. companies listed on NASDAQ.

Access the report here and learn more about the data provided.

Fiduciary Liability*

Emerging Trends

Environmental, Social, and Governance (ESG) policies and fiduciary risk

More organizations are factoring ESG into their investment policies, but if they do so, they need to be aware of potential litigation that could arise. In fact, we are already seeing litigation around ESG divestiture in pension plans. This is because ESG is yet another issue that has become highly politicized in the U.S. Plan sponsors that want to align their investing decisions with the goal of limiting global warming could face claims that these choices are at odds with their fiduciary duty to beneficiaries to maximize investment returns. On the flip side, plan sponsors that do not consider ESG in their investment policies might be met with claims that they are not properly addressing the threat that climate change poses to long-term investments.

SECURE 2.0 Act

On December 29, 2022, President Biden signed into law the SECURE 2.0 Act, as part of the Consolidated Appropriations Act, which includes retirement plan reform legislation.[48] The SECURE 2.0 Act includes several provisions that impact retirement plans. Be sure to consult with a trusted legal and retirement advisor to learn how you can comply with these changes to avoid fiduciary claims.

Inflation's impact on health plan administration

Finally, rising medical costs due to inflation might impact your organization's ability to offer health benefits. Should you have to cut back on offerings or increase co-payments, consult with your legal and risk management teams about any potential fiduciary exposures. Furthermore, when we consider the growing popularity of reference-based pricing (RBP) in the employee benefits space and the Federal Government's endorsement of RBP as a cost-containment strategy, claimants may argue that fiduciaries should at least evaluate its merits before cutting back on health benefits.[49]

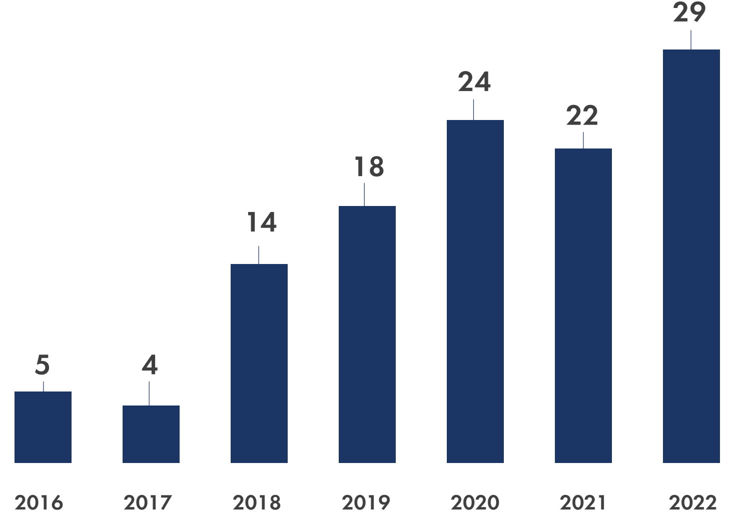
Entrenched Trends

Social inflation has even had an impact on the fiduciary liability market, as evidenced by an uptick of excessive fee litigation. In excessive fee claims, plaintiffs argue that plan fiduciaries have failed in their duty to ensure optimal investment performance, maintain appropriate documentation, and pay reasonable management fees.

We first noticed filing activity for excessive fee claims increase substantially in 2020, with this trend continuing in subsequent years through 2023. In fact, in 2022 claimants filed 88 excessive fee lawsuits against retirement plans, the second most ever. Lawsuits have impacted organizations in the public, private, and nonprofit sectors with retirement plans amounting to less than $500 million to billions in investments.[50] The average settlement value of cases resolved from 2016 to 2022 was about $9.3 million.[51] Carriers have responded to this worrying trend by increasing retentions and premiums, with underwriters asking questions about retirement plan management protocols.

Underwriting questions will also ask about cyber protections, as plan sponsors have an obligation to properly mitigate cybersecurity risk. The Department of Labor (DOL) issued cybersecurity guidance for employee retirement plans in April 2021.[52] Plaintiffs could use the DOL's guidelines as a point of comparison in proving that plan sponsors have not taken the necessary steps to mitigate cybersecurity concerns related to plan administration.

**Trends applicable to both public and private companies.*



NUMBER OF SETTLEMENTS PER YEAR

Image Source: Chubb[53]

The average settlement value of cases resolved between 2016 to 2022 was approximately **$9.3 million.**

The total amount paid in settlements from 2016 to present is over **$1 billion.**

Your Beacon of Opportunity

Fiduciary Liability

Ensuring compliance with ERISA, DOL, and IRS regulations is the first step you can take to help reduce fiduciary exposures. Take action to ensure, establish, and maintain prudent processes for fiduciary decisions, documenting them in a clear and organized manner. Also, be sure to talk to your BRP advisor about the underwriting questions carriers may ask you to help prepare for your renewal and get the best terms for coverage.

Emerging Trends

Signs of rate stabilization

If you needed evidence that the insurance market is like a roller coaster, consider cyber coverage. Widespread cyberattacks amounted to significant losses for carriers in recent years, with policyholders feeling the impact in the form of steep rate increases, intense underwriting scrutiny, and sometimes declination. Fortunately, several signs indicate that the cyber insurance market may be stabilizing. Though many organizations might still see rate increases, they seem to be moderating.

Because of pricing increases and strict underwriting standards, carriers have recouped some of their losses from previous years. Since more organizations have fortified their cybersecurity defenses and are able to demonstrate that they are prepared to rebound from attacks, this amounts to less exposure for carriers and results in improved rates.

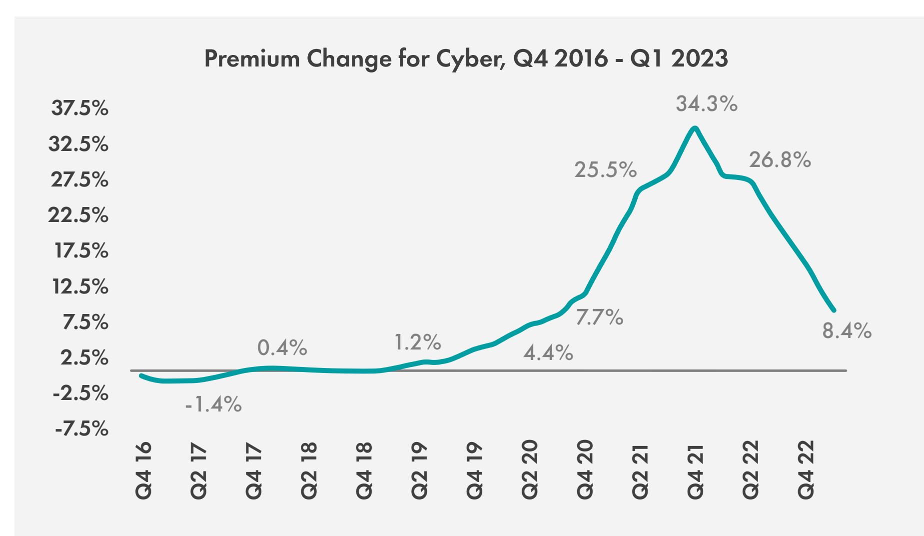


Image Source: CIAB[55]

The FTC has recently ramped up its setting, scrutiny, and enforcement of cybersecurity and data privacy standards.

Keeping up with the FTC

Considering these positive developments, pay heed to emerging areas of risk stemming from the regulatory landscape. The FTC has recently ramped up its setting, scrutiny, and enforcement of cybersecurity and data privacy standards, and this impacts organizations of all sizes and industries. Entities that fail to comply are paying the price to the tunes of millions or hundreds of millions of dollars.

BIPA litigation

Another area of growing cyber risk is the increased frequency of litigation tied to the Illinois Biometric Information Privacy Act (BIPA). Nearly 2,000 lawsuits have been filed since 2017 alleging violations of BIPA alone.[56] And the insurance market is paying attention, with several carriers beginning to add BIPA exclusions to their policies.

Privacy legislation at the state level

More states have also begun to introduce privacy regulations that emulate the European Union's General Data Protection Regulation (GDPR), though there is no equivalent to the GDPR at the federal level. Failure to comply with these various legislations could result in legal action from third parties and hefty fines from regulatory bodies.

Acts of war – exclusionary language

Considering geopolitical conflicts, such as the Russia-Ukraine war, insureds also need to be aware of exclusionary language that continues to emerge in policies around acts of war. Companies seeking cyber coverage may be affected as the scope of exclusions is broadening to include consideration of cyber war exclusions for many policies.

Entrenched Trends

As is always the case, old threats remain, and as malicious actors become craftier, new cyber threats continue to emerge. How you demonstrate your ability to respond and curtail cyber threats, such as ransomware, insider threats, supply chain risks, service provider outages, business email compromise, and human error, will continue to impact your limits, rates, and terms for coverage. Though rate increases have moderated a bit, this is not an indicator that you should neglect cybersecurity at your organization. Consider this: the average cost of a data breach is projected to exceed $5 million in 2023.[57]

Your Beacon of Opportunity

Cyber

From staying up to date with cybersecurity regulations to defending valuable data from malicious actors, there's no question about it – the cybersecurity risk landscape is complex. Though each business has a unique cyber risk profile, implementing the recommendations in the FTC's consent decrees, knowing carrier requirements for coverage, and understanding best practices around data collection and storage is a good foundation from which you can build on.

As your coverage and policy language changes, you need to understand what is in the fine print so that you do not experience significant coverage gaps in the event of a cyberattack. BRP's experienced cyber insurance advisors can explain what your insurance policy covers, and help you take advantage of insurers' pre-breach services, which often include vulnerability scanning, employee training, and more.

Umbrella Liability

Underwriting discipline to continue in light of claims volatility

Emerging Trends

Growing market capacity

After years of dealing with diminished capacity due to a growing number of claims, new capacity is now entering the umbrella liability market. This new capacity has helped the umbrella market begin to stabilize, though underwriters will likely continue to practice discipline to address ongoing concerns with nuclear verdicts and social inflation.

Exclusionary language

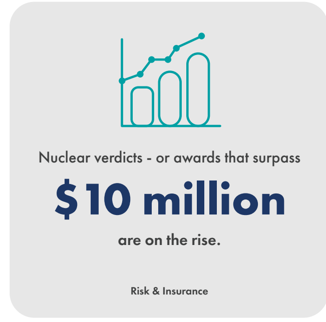
Organizations with sexual abuse and molestation exposures also need to pay attention to carriers adding exclusionary language around these claims, especially considering a shifting legislative landscape at the state level.

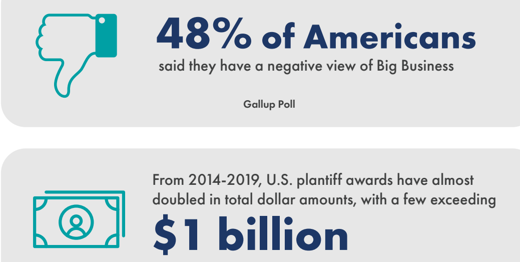
Entrenched Trends

For yet another year, economic inflation, social inflation, and nuclear verdicts are the dominant forces placing upward pressure on rates for umbrella liability.

The Facts

Social inflation has had a significant impact on public opinion and jury awards.





Source: AmTrust Financial[59]

Your Beacon of Opportunity

Umbrella Liability

Organizations that implement the best safety, operational, and financial controls will likely achieve the best outcomes. BRP advisors will help you determine how to paint a narrative of your risk that underwriters will understand. For example, if you did experience a loss, be able to explain why it happened, what lessons you learned from it, and the steps you will take to try and avoid it in the future. Additionally, our advisors can explore options with you to counter rate increases, including, but not limited to, increasing self-insurance or using better performing lines, like workers' compensation, to leverage rate negotiations.

Excess & Surplus Market

Large loss trends negatively impacting pricing

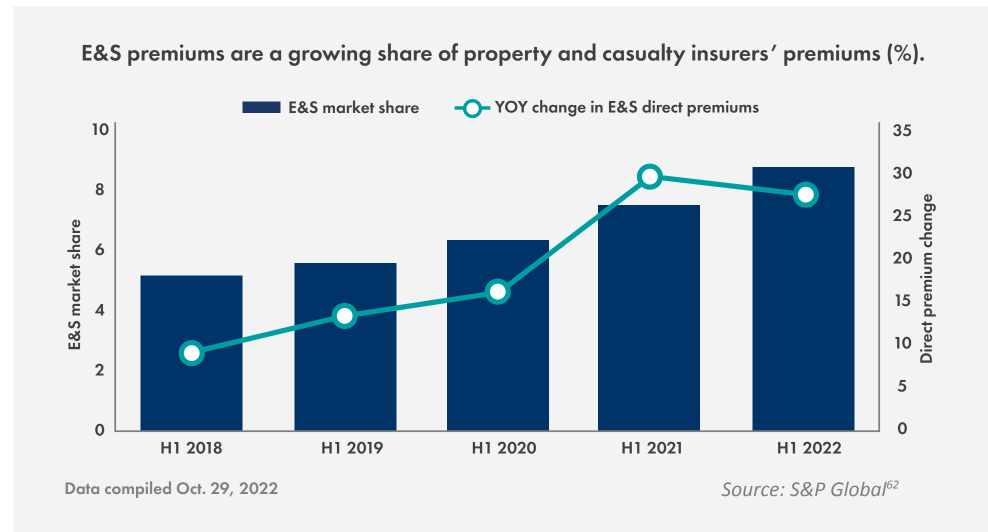
The excess and surplus (E&S) market provides coverage for risks that standard insurance companies are unwilling or unable to insure due to high-risk or unique exposures. E&S insurance is a popular choice when markets are challenged because it offers more flexible underwriting, higher limits, and specialized expertise.

Emerging Trends

Increased uptake

Since insureds have experienced significant challenges obtaining coverage and the effects of a hardened market, more organizations are now utilizing excess and surplus (E&S) markets to secure coverage.

In fact, an S&P Global Market Intelligence analysis found that E&S direct written premiums in the U.S. increased 27.6% year over year in the first six months of 2022. In comparison, the total U.S. P&C market excluding E&S premiums grew by 8.4% in the same time period.[61]



New market entrants

In 2022, we also saw over 20 new entrants in the market, which have increased E&S capacity, though the effects on rates have yet to be seen.[63]

Entrenched Trends

Though not as high as in 2022, organizations will likely see rate increases for E&S lines. This is because catastrophic losses due to extreme weather events and nuclear verdicts continue to impact the availability and terms for coverage.

The economic environment also continues to impact the E&S market, with inflation holding steady and making it difficult for underwriters to properly price coverage.

Ultimately, organizations in industries with legal risks, operations in Nat Cat exposed geographies, and loss histories will experience a difficult market, while those with favorable risks are likely to see flat or single digit increases.

Your Beacon of Opportunity

Excess & Surplus Market

Getting ahead of your renewal will be key to obtaining the best market results in the E&S market, especially if your company fits any of the parameters of a challenged risk as detailed previously. Be ready to have a conversation regarding the valuation of your assets, and be prepared to provide evidence of any loss controls you have in place. If you want to understand best practices regarding risk management protocols and preventive measures, connect with your BRP advisor.

Rates

By-Line Fourth Quarter 2022 Rate Changes Ranged from -1.1% to +16.0%

	Comm'l Auto	Workers' Comp	Comm'l Property	Gen'l Liability	Umbrella	Average
Fourth Quarter 2022	7.3%	-1.1%	16.0%	4.9%	9.6%	7.4%
Third Quarter 2022	7.6%	0.7%	11.2%	5.7%	11.3%	7.0%
Second Quarter 2022	7.2%	-1.2%	8.3%	4.7%	11.3%	6.1%
First Quarter 2022	5.9%	-0.5%	8.6%	3.9%	10.5%	5.7%
Fourth Quarter 2021	8.0%	0.3%	10.5%	6.4%	15.0%	8.1%
High	28.6%	24.9%	45.4%	26.0%	51.9%	35.3%
Low	11.6%	-12.3%	-15.0%	-13.6%	-13.5%	-13.2%

Rate Changes in Other Lines

Broker E&O	3.3%	15.4%	-4.5%
Business Interruption	6.7%	28.8%	-10.2%
Construction	5.4%	38.7%	-10.7%
Cyber	15.0%	34.3%	-1.5%
D&O Liability	4.4%	32.4%	-8.7%
Employment Practices	4.2%	21.9%	-8.1%
Flood	5.1%	8.6%	-2.7%
Marine	2.8%	4.5%	-10.6%
Medical Malpractice	4.3%	32.5%	-4.1%
Surety Bonds	1.6%	11.2%	-2.3%

Source: Council of Insurance Agents and Brokers, "Commercial Property/Casualty Market Index Q1/2023", Q1 2023

Answering the Call – Managing the Cost of Risk and Insurance

Insurance premiums are higher, the overall cost of owning a business is growing, and you are left to figure out how to manage it all. It is no wonder why 80% of respondents in CIAB's Q1 2023 P&C market survey stated that they were deeply concerned about high premiums and future increases.[3] With carriers increasing underwriting scrutiny as a response to unfavorable conditions, getting ahead of the underwriting submission process, preparing a narrative of your risk that carriers can easily understand, and investing wisely in both insurance and loss containment can be the difference between getting the coverage you need, seeing exorbitant rate increases, or worse – getting declined.

We understand that you cannot control the P&C market and all variables that are driving the cost of premiums upward. However, there are many things you can do to help get optimal marketplace results for your business's exposures. You might need to transform your approach to and perspective about risk management, but doing so can empower you to make the best of today's circumstances so your business can thrive when conditions improve.

Though a hardened insurance market is undoubtedly difficult to navigate, and there is no magical solution that can fix all the problems we collectively face, current market conditions highlight the importance of being as proactive as possible in managing the overall cost of risk to get the best underwriting results from carriers. Implementing these strategies can pay dividends in good times, and especially in challenging times.

Consider taking the following steps to help **manage the overall cost of your risk and insurance:**

Identify your risks and understand how they impact your cash flow

In order to know how to mitigate your risks and how you can best use insurance to financially protect your business, you need to identify the exposures your organization faces, and the financial consequences should you fail to address them. Quantifying risk in dollar amounts empowers you to invest intelligently in loss controls and properly structure coverage to avoid coverage gaps and overlaps. This process also helps you see areas where you might be able to transfer risk to vendors or subcontractors.

Regularly conduct risk assessments

Because risks take all shapes and forms and come from many directions, regularly conducting risk assessments better positions your company to adapt to the constantly evolving risk landscape that characterizes the world today. When any of your operations or assets change, so do your risks. Communicate with your trusted advisor to ensure that insurance coverages align with these changes as they happen.

Reconcile all valuations

With carriers zeroing in on valuations during the underwriting process as a response to inflation's impact on replacement costs and profit margins, insureds and brokers need to confirm all assets are measured accurately. Failure to do so could land your submission on the bottom of the pile. Staying on top of the valuation process can also improve negotiation leverage in the market.

Evaluate your risk tolerance and deductible structures

Understand how much coverage you're purchasing and how deductibles impact your liabilities. If you have a higher risk tolerance, you may be able to lower premiums after reviewing for financial feasibility. Ask your advisor to evaluate creative program structures, like deductible buydowns, deductible indemnity agreements, captives, and parametric insurance (loss mitigation).

Explore captives

Captives are options that provide companies of all sizes more control over risk management and cost containment, which reduces the overall cost of risk. A captive is an insurance company that is wholly owned and controlled by its insureds. Its primary purpose is to insure the risks of its owners and its insureds benefit from the captive's underwriting profits. Though captives may not be the right solution for everyone, financially stable companies with good loss ratios, good claims histories, and good risk management strategies might be good candidates for this option.

Invest in loss controls and risk mitigation strategies

Investing in loss controls has up-front costs, but these investments are usually insignificant compared to the financial burden of a loss. Examples of loss controls include investments in hardening your buildings, employee safety training programs, disaster preparedness plans, cybersecurity tools, establishing safety protocols, and more. Underwriters want to see that both proactive and reactive measures are in place. Proactive loss controls are the actions you take to prevent claims from happening. Reactive loss controls are the corrective measures you take as a response to loss to prevent similar events from happening again in the future. For example, if you experience a cyber breach, what actions will you take to prevent a similar breach from happening in the future?

Vet all vendor relationships

Understand how contracting with other parties can create risk for your business, and find ways to reduce this risk. Most companies rely on third-party service providers and vendors to support their business, and they introduce layers of risk to your organization. This can take the shape of cyber risk, supply chain risk, and more. When you are entering an agreement with vendors and service providers, all involved parties need to think about how contractual risk fits into the picture.

Be prepared for your renewal

Do not wait until the last minute: begin preparing for your renewal at least four months before coverage is bound. Develop and document a strategy to keep yourself and your advisor accountable throughout the renewal process so that you can do everything within your power to get the best terms from carriers. Work with your advisor to hold stewardship meetings to keep everyone informed of current market conditions and what to expect at renewal.

Prepare a narrative underwriters will understand

The underwriting data you provide to the market needs to be complete and easy to understand. In many cases, tailoring the data for input into various underwriting models will help expedite the process and result in better market feedback. Although it is not always the case, generally the price underwriters charge for uncertainty is greater than if they know the full scope of an account's history and all underwriting information is provided in a user-friendly manner.

Demand a thorough coverage analysis from carriers

Both you and your broker should have full policy forms and endorsements on file. Doing an audit of all policies helps ensure coverages are adequate and meet your goals. In a hard market, insurance companies will seek to include endorsements and policy language that limit or remove previous coverages. Be sure to address all policy changes.

A Partnership That Delivers Results

Because of market conditions, it is important for you to partner with an advisor who has demonstrated knowledge and experience, within your industry and with various complex coverages, that can help you execute the aforementioned strategies. Working with our team of experts can help you quantify your risks, determine where you are most financially susceptible to exposures, and determine which loss controls you should implement to protect your assets and investments.

BRP has cultivated creative, insightful advisors who comprise our specialized Industry Practice Groups and coverage Centers of Excellence. Our commercial risk advisors focus on retaining specialized expertise within the industries our clients operate to help design and place multifaceted programs across all our areas of specialization. Having seen countless scenarios play out, they have the experience and resources to help you improve how you approach risk and find insurance that meets your needs as they evolve. We know how to put you in a position where underwriters are more likely to see your risk profile in a favorable light.

We strive to become an extension of your team and deliver risk mitigation strategies and insurance architecture that align with your goals from day one, in addition to assisting with the implementation of loss control strategies to manage the overall cost of insurance.

Here are some ways we help our clients:

Keeping you abreast of market changes

We stay up to date with the market and communicate how changes to underwriting standards may impact your coverage.

Accessing global markets

Our team has access to global markets and knows how to align insurance coverage and risk mitigation coordination for global operations. We have strong, long-term relationships with the world's top insurance carriers.

Navigating regulatory requirements

With commercial risk experts who understand the challenges of both the insurance industry and specific industries in which businesses operate, we can help you understand the complex web of regulations you have to adhere to, which can help you avoid regulatory fines and costly litigation.

Tailoring your insurance program

Determining the right coverages and limits for complex operations requires the highest level of expertise. With decades of industry experience, our advisors know how to tailor insurance programs for clients' unique needs. We look at all coverage options, from those available in the insurance marketplace to captive programs, and make recommendations based on your company's specific needs.

(continued on the next page)

Breaking down communication silos

Implementing an efficacious risk management program within your company will require collaboration between various individuals, from board members to the C-suite, and even individual contributors. Our commercial risk advisors know how to communicate with stakeholders so that all relevant parties understand the importance of investing in risk management, and their respective roles and responsibilities in applying best practices. This allows us to communicate to underwriters that there is a culture of risk management at your company, which can result in improved rates and terms for coverage. We also create an open channel of communication between your business and carriers so there are clear expectations for all parties involved regarding the submission process.

Loss control services

We provide insights and access to resources, such as safety training programs and technology, that reduce the likelihood of claims occurring. Our goal is to establish a culture of risk management that prioritizes safety, compliance, and education, so that our clients can manage their exposures, stay ahead of the competition, and protect their most valuable assets. This allows you to obtain better results in the insurance marketplace and be more defensible should a lawsuit occur.

Providing detailed claims analysis

Our in-house team of advocates helps expedite and manage the entire claims process so clients can maximize recovery and reduce their cost of risk. We identify what caused a claim to happen and provide recommendations about risk mitigation strategies to reduce the severity of claims in the future.

Employee benefits expertise

In addition to commercial risk advisors with specialized expertise in the various industries, our employee benefits advisors can help you build a cost-effective benefits program. Having both your benefits and commercial risk programs live under the same broker eliminates communication silos and allows both teams to collaborate with ease. While commercial insurance and employee benefits manage different corporate risks, they do not operate in silos. Information that nominally impacts a commercial risk coverage can often impact rates and provisions available from benefit carriers and vice versa.

With underwriting scrutiny at an all-time high and carriers providing less favorable terms for coverage, now is the time to work with a team of experts with a proven track record of success.

Contact our team today to learn more about how we can help you assess your risks and protect your assets and investments.