

2021 Management and Professional Liability Market Outlook

Helping you come
through for your clients



**“A smooth sea never
made a skilled sailor.”**

– Franklin D. Roosevelt

Although most lines of coverage for Management and Professional Liability exposures were already firming pre-COVID-19, this specialized segment of the casualty insurance market hasn't experienced the level of turmoil it is currently seeing since the early 2000s. Premiums are spiking, coverage limits are contracting, and client retentions are growing.

The coronavirus pandemic has unleashed a deluge of new challenges for management and professional liability underwriters, including COVID-19-related insolvencies, layoff-related discrimination and wrongful termination claims, and cyber breaches.

“There is light at the end of the tunnel. 2021 will be better than 2020, barring another collapse with COVID and the economy.”

In the first three quarters of 2020, 138 U.S. companies with over \$100 million in assets filed for bankruptcy, compared to a quarterly average of just 19 between 2005 and 2019. The 55 bankruptcy filings occurring during the second quarter of 2020 was the second highest for any quarter since 2005, and only slightly behind the 65 bankruptcies filed in the first quarter of 2009.

Meanwhile, approximately 28 COVID-19-related securities class actions were filed in 2020 targeting a variety of industries, including travel and leisure, biotech, healthcare and financial services. The allegations range from alleged misrepresentations about the safety and efficacy of each company's products or operations to their failure to adequately disclose the pandemic's impact on their businesses.

Federal government bailouts helped delay the wave of D&O claims following the global financial crisis of 2008-2009, but COVID-19 relief efforts did not prevent a spike in pandemic-related Employment Practices Liability (EPL) litigation, not to mention the many claims that did not trigger lawsuits but were still recoverable under an EPL insurance policy. Nor are the bailouts likely to stem the tide of EPL claims expected to be filed in connection with pandemic-related furloughs and layoffs, or employers' decisions on whether to force employees to return to work or be vaccinated, or whether to bring them back at all. As a result, EPL carriers have been pushing for higher rates and retentions with some adding COVID-19/pandemic-related exclusions.

Though cybercrime was already a concern for most U.S. organizations, which have become increasingly dependent on the internet to support communications and eCommerce, cybercriminals exploited network vulnerabilities that were created during the pandemic when throngs of employees began working from home. In response to this and other emerging risks, the cyber

market is now experiencing its first real hardening, with carriers laser-focused on managing ransomware and social engineering exposures.

Carriers writing virtually every Management and Professional Liability coverage are also reducing capacity, requiring many accounts to assemble layers of coverage using multiple insurers to obtain the desired limits. Increasingly, organizations that have experienced claims or are operating in distressed industry sectors like healthcare and hospitality are migrating to the E&S market as their admitted carriers opt to non-renew them.

But there are some bright spots on the horizon. A few lines of coverage, such as Reps & Warranties for M&A transactions, Kidnap & Ransom, Commercial Crime and some Professional Liability lines, remain relatively stable. While the Allied Healthcare market is undergoing a correction, it was long overdue after more than five years of decreasing rates. The market for Public Company D&O insurance appears to be peaking, although coverage terms for companies that are going public remain challenging, with high retentions and high premiums. The emerging issue will be the use of Special Purpose Acquisition Corporations (SPACs) to facilitate IPOs.

“But there is light at the end of the tunnel,” said Rodney Choo, Senior VP, Executive Lines at Risk Placement Services (RPS), referring to the market challenges. “2021 will be better than 2020, barring another collapse with COVID and the economy.”

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PUBLIC COMPANY D&O

Though the Public Company D&O market has been firm for the past two years, the firming followed a sustained soft market lasting more than a decade. The market first hardened in the IPO space, and then spread out from there. While there was hope that 2020 would bring some relief, COVID-19 hit and the bottom fell out. Based on various published reports, year-over-year rate increases Q4 2020 across the public company D&O market averaged over 50%, which was a marked improvement compared with the beginning of the year, when they were closer to 80% to 100%.

In addition, many buyers were seeing large increases in their retentions. Yet despite these undesirable conditions, industry reports cited carrier retention rates of more than 90% due to a tangible absence of meaningful competition, according to Choo. “What we saw was a level of collective underwriting discipline that we haven’t seen in a while, which is the essence of a firm market,” he explained.

In the first half of 2021, the environment remains challenging, particularly for companies going public. But we are slowly seeing more competition and new capacity coming into the market, so we are hopeful that things will continue to trend in a positive way, according to Choo. This new capacity is generally focused on excess layers, but that was where many companies were hit hard in 2020. Companies weren’t just struggling with increases to their primary layers, they were also seeing these adjustments on excess layers, or what is sometimes referred to as a “follow-on rate.”

During the preceding soft market, follow-on rates fell to as low as 50% of underlying rates, but that has adjusted during this cycle to 70% to 90% of underlying rates, depending on the risk. This multiplier effect inflated a primary increase of 30% to 40% into a much higher overall increase in total program costs.

“It was that double-whammy that impacted a lot of companies, and there should be a difference this year,” Choo said. “The excess correction has occurred. We will continue to see primary increases for some time, but most insureds shouldn’t see that add-on effect.”

IPOS VS. SPACS

While the D&O market for mature companies appears to be stabilizing, the market for companies that are going public is still challenging, according to Choo. He noted that there is a continuing disconnect between the retentions being required and the premiums being charged. But there's a new twist — the rise of the SPAC.

More than half of all companies going public in 2020 did so through SPACs, and there is no indication 2021 will be any different. SPACs are public companies that exist for the sole purpose of acquiring another company or companies — often referred to as a de-SPAC transaction. SPACs have been around for a long time, but only recently have they come to challenge the supremacy of the IPO for companies seeking to go public. And, SPACs are now raising additional capital through the use of Private Investment in a Public Entity (PIPE) to help fund larger and larger deals.

“The use of PIPEs has implications from a securities law perspective, and it adds a level of underwriting complexity to what are already often

complex transactions. Combine that with greater SEC scrutiny, some recent high-profile de-SPAC securities cases, and the sheer volume of deals in the market right now, and it is not surprising that we're seeing rates and retentions go up for all parties involved, from the initial SPAC IPO to the de-SPAC go-forward program. I don't envy public D&O underwriters right now,” Choo said. “I have no doubt that plaintiffs' firms are laser-focused on this space.”

There is justification for how the market for IPOs corrected itself, Choo said. But, he added: “The concern is that it's swung too far in the other direction, particularly with policyholder retentions that often range from \$10 million to \$20 million and premiums that do not accurately reflect the exposure.”

It is a well-known truth that going public is fraught with risks. But what was different over the past few years was the rise of state-level Securities Act of 1933 Section 11 cases, with a particular focus on courts in Northern California. Whether those cases were only brought in state court or were filed at both the federal and

state level, the impact they had on the D&O industry cannot be understated.

“We saw a significant increase in overall costs to litigate and settle these matters, and that doesn't even begin to touch on the fact that many of these cases should likely have been dismissed outright. We had carriers paying out full \$10 million limits, for which they were being paid as low as \$40,000 to \$50,000 on an excess layer, on a case that never should have paid. That just wasn't sustainable,” Choo added.

The issue made its way to the U.S. Supreme Court in *Cyan Inc. v. Beaver County Employees Retirement Fund*, but this is a matter for Congress to fix. However, there is some relief in sight. A recent Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the use of the “federal forum provision” in Section 11 cases was an important milestone, Choo said. States will continue to accept that reasoning to finally put this issue behind us. That should bring greater stability to D&O markets over time.”

SEMI-ANNUAL CLASS ACTION FILINGS SUMMARY

	Semi-annual (1997 H1–2019 H2)			2019 H1	2019 H2	2020 H1
	AVERAGE	MAXIMUM	MINIMUM			
Class Action Filings	112	222	55	207	221	182
Core Filings	95	134	55	134	134	117
Disclosure Dollar Loss (\$ billions)	\$68	\$175	\$11	\$175	\$108	\$81
Maximum Dollar Loss (\$ billions)	\$331	\$1,121	\$52	\$798	\$394	\$584

Source: Cornerstone Research “Securities Class Action 2020 Midyear Assessment”

PRIVATE COMPANY D&O

The Private Company D&O market was already firming going into 2020 as insurers started to see an uptick in claims. Then COVID came along, exacerbating the situation. Underwriters today are more cautious, in most cases requiring unaudited financial statements and a COVID-19 supplemental as they sleuth for potential liquidity issues that could lead to bankruptcies down the line.

“Historically, if an underwriter was concerned about financial viability, they’d add a bankruptcy or creditor exclusion, but that was the final step when there was no other recourse,” said Bryan Dobes, Executive Lines Producer at RPS. “I’ve had more bankruptcy and credit exclusions added in the last year than in the prior eight years combined. Insureds are in a position financially where they’re frankly not sure if they’re going to be around in a year.”

Because underwriting has gotten so intense, turnaround time has slowed. At the same time, some of the more experienced underwriters have left for other carriers, putting even more strain on those who remain. Renewal underwriters are handling 1,000 accounts a month, in some cases receiving 150 new submissions in one day, according to Dobes.

The volume of submissions “has raised the bar for brokers to get through to underwriters,”

he said. “Unless you have ironclad relationships with underwriters, they don’t have the bandwidth to get to those accounts.” He added that while four or five years ago, you’d at least get a response from underwriters, now brokers are getting no response at all on half of the submissions and carriers are asking for more information on those they will consider.

Dobes said that there hasn’t been this tough of a market for Private Company D&O since the late 1980s following the 1987 stock market crash, when premiums skyrocketed 200% or more and retentions doubled or tripled.

“Now we’re seeing minimum retentions grow four and fivefold, and entire areas of the country or industries are being completely excluded. No terms whatsoever are being offered to many first-time buyers of D&O or EPL, and most markets that previously were quoting home healthcare, retail, auto dealers and hospitality won’t even look at those accounts, regardless of how clean they are,” he said, noting that rate increases on renewals for these types of accounts has ranged between 75% and 100%.

“Most policies are watered-down four-corners off-the-shelf policies where you’re losing 100% allocation on defense costs. Defense outside is completely off the table, there are antitrust exclusions, and unfair trade practices coverage

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is cut out completely, especially in California, or limited to \$1 million to \$2 million, depending on the class. It requires a lot of negotiation to get it added, and most carriers will require a high retention, or sublimit it, or have coinsurance as high as 35%,” Dobes said.

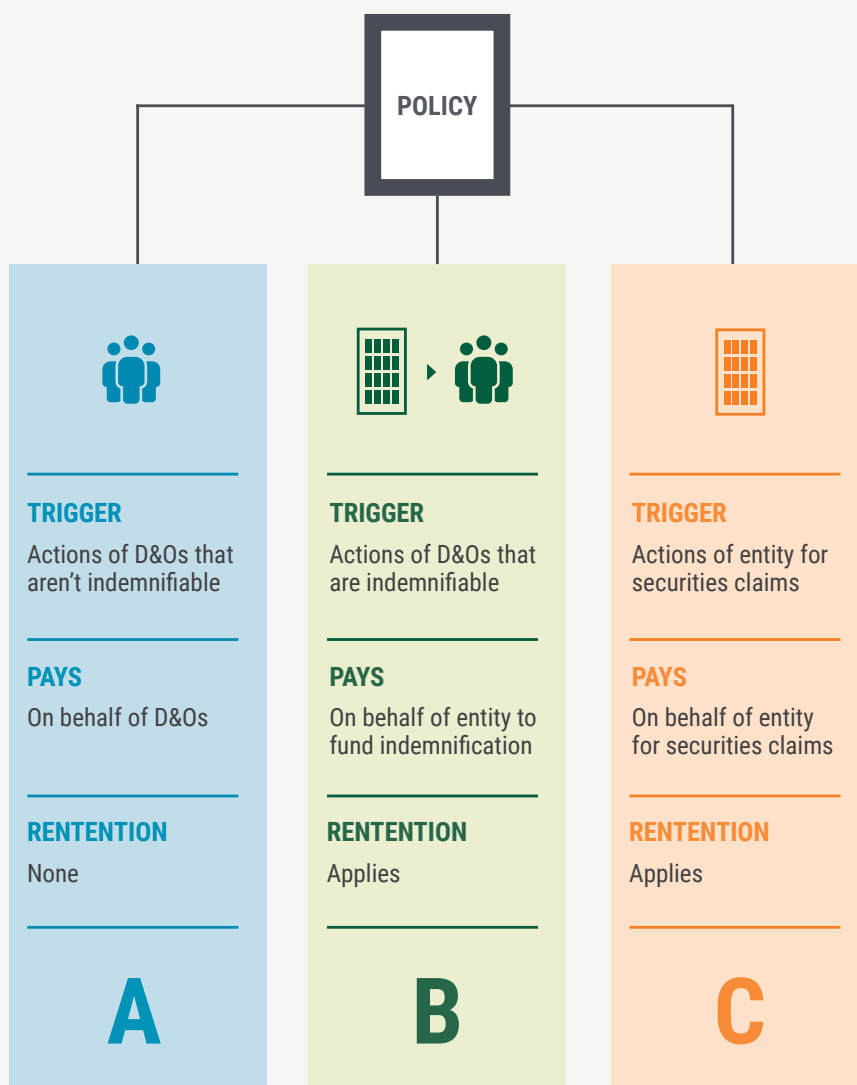
Carriers are also being stingy with capacity. Whereas five or 10 years ago, a buyer could get \$5 million in limits for \$15,000–\$20,000, today they’ll only get \$1 million for that premium. And sometimes two, three or even four carriers are needed to amass \$5 million in total limits. One California-based home healthcare company Dobes recently placed coverage for, which had been paying \$15,000 for \$5 million in limits, wound up having to shell out \$85,000 for the same limits, divided among two carriers.

Though the situation seems dire in the near-term, there appears to be a little relief on its way from new carriers coming into the market, though most are playing on the small side — companies with 250 or fewer employees. Four or five new facilities, mostly wholesale, and some open brokerage and online platforms have come online in recent months as D&O rates have surged. “I’m hopeful that the Private Company D&O/EPL market will stabilize by 2022 as the economy starts to reopen, but I expect the rest of 2021 to remain turbulent,” Dobes said.

“As Warren Buffett once said, ‘You don’t know who’s swimming naked until the tide goes out.’ I think a lot of brokers were swimming naked. So it’s been a wake-up call. This market is not for the faint of heart,” Dobes noted.

D&O BASICS

TRADITIONAL ABC PRIMARY POLICY



WHO IT PROTECTS

Both individuals where indemnification is not provided or available (A Agreement) and the corporate balance sheet (B & C Agreements) – retentions only apply for the Company for a covered claim.

NONPROFIT D&O/EPL

The state of the D&O/EPL market for nonprofits is relatively stable, outside of California and healthcare-related entities, with flat to 10% premium increases on 2021 renewals. In California, the market hardening is driven by the EPL exposures there, according to Zach Kramer, Area Assistant Vice President at RPS.

“Most accounts I work on in California have EPL claims. We’re starting to see 30% to 100% rate increases on California EPL accounts, accompanied with a bump in retentions,” he said. For example, retentions for small California-based nonprofits are increasing from \$5,000 and \$10,000 to \$25,000, while retentions for large nonprofits are increasing from \$50,000 to \$100,000.

But underwriters are evaluating financials on a much stricter basis on nonprofit accounts everywhere, regardless of their geography, and are non-renewing accounts that have had claims or fall within a difficult class of business.

Many underwriters are concerned about COVID-19-related bankruptcies and increased EPL exposures stemming from COVID-19-related furloughs and layoffs. When organizations start calling employees back to work, those who are not re-hired may feel they have been discriminated against and may file wrongful termination claims, Kramer explained.

“I recently worked on an account in New York that was non-renewed due to its poor financial condition. After approaching the entire marketplace, only one carrier agreed to offer terms: one with several restricting coverage amendments including a bankruptcy exclusion and a COVID-19 exclusion,” Kramer said, adding: “These are terms that we don’t like to provide to our clients, but given the hardening state of the marketplace, they are terms nonetheless.”

Another account, a large country club that usually buys a tower of \$30 million placed with four carriers, required six carriers to obtain the same limits on renewal. Additionally, when the primary carrier only offered half the capacity at \$2.5 million in limits, Kramer persuaded them to still provide \$5 million, but they assessed a 100% premium increase.

Kramer said he has been more involved with explaining the hardening marketplace to retail brokers’ clients. Meanwhile, every account is being marketed to multiple carriers to ensure that buyers are getting the most competitive products available to them.

“As underwriters have been inundated with requests from all their brokers in their attempt to support their increases in renewals, I have had to really rely on my long-term relationships to get things to the top of their priority list and across the goal line.”

KEY TRENDS IN BANKRUPTCY FILINGS 2005– Q3 2020

	2005–2019 Quarterly Average	Q1 2020	Q2 2020	Q3 2020
Chapter 11 Bankruptcy Filings	18	33	54	49
Chapter 11 Mega Bankruptcies	5	6	31	15
Chapter 11 Bankruptcy Filings by Public Companies	11	8	34	26
Chapter 11 Bankruptcy Filings by Private Companies	7	25	20	23
Chapter 7 Bankruptcy Filings	1	1	1	0
Average Asset Value at Time of Filing (Billions)	\$2.21	\$0.66	\$3.01	\$1.52

Source: Cornerstone Research “Trends in Large Corporate Bankruptcy and Financial Distress”

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CYBER LIABILITY

The Cyber Liability market is definitely in a state of transition with rate increases in the double digits and more in-depth underwriting, with the focus on ransomware threats. Some markets are imposing sublimits, coinsurance or even exclusions for cyber extortion. Concerned about their aggregate cyber risk, carriers are becoming more willing to walk away from opportunities they don't find profitable. Some are withdrawing from certain industry sectors altogether, such as public entity/government, healthcare, manufacturing, construction and wholesale distribution.

Deteriorating carrier loss ratios — driven primarily by ransomware, business email compromise and social engineering claims — are behind these market changes, according to Steve Robinson, Area President and National Cyber Insurance Practice Leader at RPS.

One needs only to read the increasingly frequent news reports on data breaches and ransomware attacks on U.S. government agencies and many private companies to see the havoc being wreaked by cybercriminals today. Cyber placements involving public entities and schools, especially colleges and universities, also have become more difficult because of the rash of claims.

And claims costs are growing, Robinson observed, because a ransomware attack can trigger several insuring agreements in a cyber policy. In addition to the extortion itself, a claim might also involve business interruption, data restoration and breach response costs. Moreover, many recent ransomware claims have involved not only the threat of blocking system access in exchange for payment in cryptocurrency, but also actual data breaches, with the perpetrators demanding additional payments for a promise not to leak sensitive data.

While comprehensive Cyber Liability coverage is readily available on both an admitted and non-admitted basis, pricing is changing, as are terms and conditions. Because standard markets are required by regulators to file their rates and forms, they aren't able to adapt coverage grants, exclusions or large pricing disparities as quickly as non-admitted markets can. Larger cyber risks are almost always being placed in the non-admitted market, which allows greater flexibility for customized endorsements, etc.

Although a couple of carriers have exited the market or reduced capacity, a few Insurtech MGAs have entered the space in the past year. Their rates and willingness to write certain risks have been a bit more favorable than their well-established counterparts as they seek to capture market share. But no carrier is immune to the current loss environment, so their appetite is likely to level off within a year to 18 months of their entry, Robinson predicted.

Limits from \$1 million to \$10 million are available for a single account, but insurers that previously offered \$10 million with some regularity are now only offering up to \$5 million. And accounts requiring limits of \$5 million or higher are undergoing more underwriting scrutiny, he said. Almost no carrier is offering more than \$10 million in limits, so the process of building a tower has become much more onerous.

Because of the market constriction, retail brokers really need to start planning earlier for their Cyber Liability renewals. It's no longer a buyer's market, so expect significant premium increases and prepare clients for the inevitable sticker shock. Robinson also recommends that retailers learn the basics of a ransomware supplemental application and become familiar with the vernacular and acronyms used by underwriters in this space. RPS is available to participate on underwriting calls alongside our retail partners when a placement warrants more in-depth expertise.



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REPRESENTATIONS & WARRANTIES

While most of the Management and Professional Liability market is firming, it's still a great time to place Representations and Warranties insurance. There is more capital coming into the market for these products, and rates have come down dramatically from where they were four or five years ago, according to Andrew Jarousse, Area Executive Vice President at RPS.

For example, \$1 million to \$3 million in coverage that would have cost about \$200,000 three years ago can now be had for between \$120,000 and \$150,000.

But pricing aside, there are some industry classes that carriers are avoiding, most likely because they've gotten burned in the past. These include healthcare, government contractors and any business that's highly regulated. Underwriters are also sensitive to environmental issues because of the tail exposure. Businesses with such exposures are encouraged to purchase extensions on their other business insurance policies to cover those liabilities.

“Reps & Warranties insurance isn't a catch-all. You're only insuring the representations that the buyer and seller make. It also acts as a backstop to the due diligence, because insurance companies will bring in outside advisers such as accounting firms and law firms to help underwrite the due diligence that's been done,” Jarousse said.

Demand for Reps & Warranties insurance hasn't slowed during the pandemic. While COVID-19-related business shutdowns in the first quarter of 2020 may have paused some transactions, activity resumed last summer and has picked up since then. With this uptick has come a surge in demand for the R&W product as more businesses become aware of its availability.

“It's advantageous for a buyer to come to the table with R&W coverage in their Letter of Intent. From the seller's perspective, if the buyer comes across a representation that wasn't accurate or true, the buyer can go to the insurer instead of chasing down the seller. It enables the seller to more cleanly walk away from the transaction,” Jarousse explained.

R&W insurance is also a great tool for private equity firms. “If sellers know they have two offers on the table and one has an R&W policy, that one will be more attractive to the seller,” Jarousse said.

The only tough R&W placements in the current market have been those where the due diligence was poorly executed. For example, Jarousse described a situation where a buyer hadn't already verified the schedule of inventory it was acquiring. The underwriter said he wouldn't insure any representation regarding inventory unless it had been verified.

Timing is also important in placing this coverage, Jarousse said. “You've got to remember that the Reps & Warranties space is still predominantly occupied by a small group of professionals. There are some markets saying they don't have the bandwidth to do it.” He advises retail brokers to “get out in front and don't wait until the last minute.”

LEGAL PROFESSIONAL LIABILITY

While pricing is relatively flat in the admitted market for Lawyers Professional Liability coverage, carriers are cutting back on capacity, especially for small firms with just one to 10 attorneys, which comprise the majority of law firms in the U.S.

And though a firm might have been able to easily acquire \$5 million in professional liability coverage in the past, carriers are now offering only \$3 million in limits, or maybe \$2 million on an account that previously bought \$3 million. Firms that need larger limits will require multiple carriers to get there.

In some cases, brokers are utilizing quota share arrangements where a group of carriers quote together on one higher limit, because that's often easier than stacking smaller limits. Deductibles are also doubling from \$2,500 to \$5,000, or from \$5,000 to \$10,000.

In addition to reducing capacity, underwriters are placing more scrutiny on firms in tougher practice areas or those that have members “dabbling” outside of their areas of expertise. Those tougher practice areas include law firms operating in the Securities and Exchange Commission space; intellectual property, class action and medical malpractice plaintiffs’ attorneys; and attorneys handling wills, trusts and estates.

“Underwriters traditionally have looked carefully at lawyers who dabble in areas that are not the norm for them. Say you have an attorney who might do civil litigation or construction law, and this year their application might say they’re doing 1% plaintiff’s work. The underwriters know that you’re more susceptible to claims when you’re dabbling because it’s nothing you do routinely. You may not be up on changes in the law. So when the market is hardening and underwriters are scrutinizing submissions, attorneys that dabble have a bullseye on them,” observed Ron Kiefer, Area Senior Vice President at RPS.

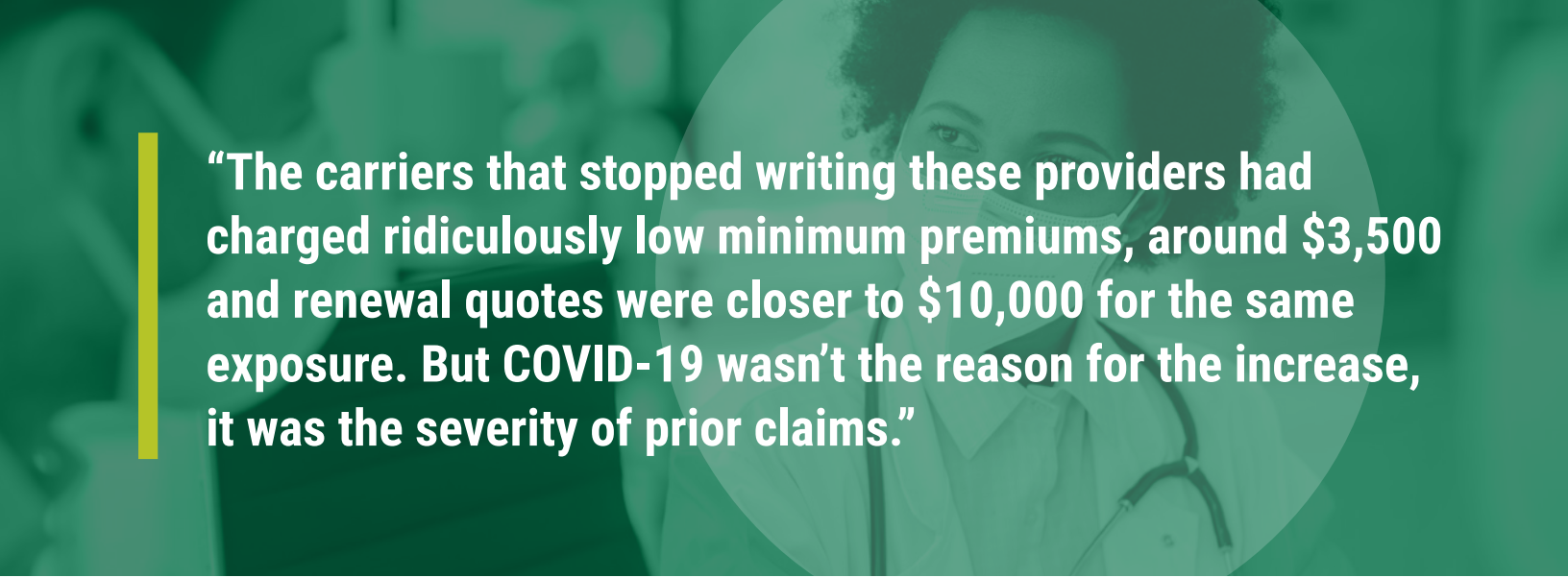
Premiums for Lawyers Professional Liability insurance placed in the admitted market will likely spike in 2021 because “that’s what’s left. We are expecting a firming of the premium in the months ahead,” Kiefer said. “The volume of claims coming in now will result in increased premiums later. That’s just the way professional liability works. There’s about a two-year lag before a claim really manifests itself.”

Because this market is in a state of flux, law firms are showing interest in shopping for alternatives and, in some cases, they’re entertaining quotes from non-admitted insurers. But prices for LPL insurance are substantially higher — 20% or more — in the non-admitted market, which caters to firms that have a claims history or larger firms that seek customized professional liability policies. Kiefer estimated that about a quarter of his placements are now in the non-admitted market.

One of those placements involves a firm that was non-renewed by its admitted carrier after it submitted a large legal malpractice claim three years ago. It had another smaller claim last year, but the older claim, which had been settled, is still tainting the firm’s claims history. The non-admitted carrier has declined to renew the firm, so “we are now in the marketplace again, explaining two claims instead of just one, which makes it tougher,” Kiefer said.

Many large, sophisticated law firms are in the non-admitted space already because they can obtain more flexible terms and customized coverage with policy language tailored to the firm’s exposures. By contrast, if a firm insured by an admitted carrier has a unique coverage need, the carrier has to create an endorsement, file it with regulators and wait for approval, which could take several months. In the non-admitted market, an underwriter can draft an endorsement that day, enabling the placement to proceed much quicker.

In addition to reducing capacity, underwriters are placing more scrutiny on firms in tougher practice areas or those that have members “dabbling” outside of their areas of expertise.



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ALLIED MEDICAL

Allied Healthcare Professional Liability insurance has been undergoing a market correction, with rate increases ranging from 10% to 25%, averaging about 15%, according to Tyie Moore, Area Senior Vice President of the Executive Lines division at RPS. Rates had been relatively flat for the last five years, she said, so this line was due for a correction.

Excess coverage premiums are also increasing from 50% of the primary premium to 75% or 80%. Minimum premiums have been bumped up from \$7,500 to \$10,000. In years past, some carriers attempted to impose step rate increases for prior acts, since this is a claims-made coverage. But they changed their minds after realizing they could lose the business to a competitor, since there are other carriers willing to write these accounts without charging that step rate factor for prior years, Moore noted.

Some insurance markets have withdrawn from middle-market accounts or stopped writing certain areas of practice, such as correctional facilities’ medical clinics. But small residential care facilities have been the most impacted by the firming market.

“The carriers that stopped writing these providers had charged ridiculously low minimum premiums, around \$3,500,” said Moore, adding that renewal quotes were closer to \$10,000 for the same exposure. But COVID-19 wasn’t the reason for the increase, she said, rather, it was the severity of prior claims.

Placements requiring higher limits have also become more challenging. In years past, every single market would put up options, but now carriers are saying they won’t write

above a certain limit on an individual risk, even though they have the capacity. Others are willing to take an excess position, but not primary. Carriers also are declining to provide blanket Additional Insured (AI) endorsements with a waiver of subrogation on the professional liability portion. Rather, underwriters are asking to see the list of additional insureds that a business wants to include so they can underwrite and charge for them.

Because of COVID-19, almost every Allied Healthcare account now has a telemedicine exposure, but so far no carriers have added telemedicine exclusions. They also aren’t adding COVID-19 exclusions since infectious diseases were always a known risk for Allied Healthcare businesses. While some accounts did experience a reduction in patient visits due to COVID-19, which normally would lead to a reduction in premium, their renewal premium was flat, which technically represents a rate increase. Underwriters also are asking whether a business has taken out a PPP loan, which is being perceived as a positive, since it indicates they will be able to withstand a reduction in business income.

To ensure that Allied Healthcare businesses can secure needed professional liability coverage at the best rate and terms, “we’re fully shopping all accounts — new and renewals,” Moore reported.

“I’ve gone through hard markets, soft markets, stagnant markets. Allied Healthcare is firming, but it’s not firm yet,” Moore added. “But there are some retail agents who’ve never experienced a firm market, so they’re scared to talk to their clients about the higher premiums, especially if an account has been clean, with no claims.”

ARCHITECTS & ENGINEERS

There are basically two markets for Architects' & Engineers' Professional Liability coverage. One is for highly desirable, low-to-moderate-hazard accounts, where plenty of capacity is available with reasonable terms. The second is for less-desirable accounts, not necessarily because they have unfavorable claims history, but because they are providing services that underwriters are concerned about. In particular, there's been a noticeable drop in capacity for firms that provide structural services, as well as those involved in residential projects, especially apartment and condominium complexes.

As an example, one recent placement for a design firm that is 100% involved in structural engineering services, with a 25% concentration in apartment projects, was forced into the non-admitted market after the incumbent admitted carrier sought a 64% rate hike on its 2021 renewal. Last year, the firm paid \$18,000 for \$2 million in coverage with a \$10,000 deductible. In the E&S market, the firm is paying \$30,900 for those same \$2 million limits in 2021, but was able to obtain an aggregate deductible, which was a competitive advantage over the terms its admitted carrier offered.

While architects and engineers involved in condominium projects have long faced significant scrutiny because they are often pulled into litigation over construction defects, "the issue with apartment projects is that what might start out as an apartment building can be easily

converted to a condo complex as it gets closer to completion," explained Robert Kenney, Area Senior Vice President at RPS. "Construction defect claims have been a major factor for firms involved in condominium projects. If there is litigation, or other demands, the design team is usually included, so there's a high frequency of such claims," Kenney added.

While many construction defect claims are resolved quickly, some do end up being litigated, with carriers paying defense costs and indemnity costs in the case of settlements. But it's difficult for carriers to assess their exposure upfront, because there's no real pattern indicating which cases will be resolved easily and which will not.

"As an underwriter, you might look at a loss run and, over the past five years, there might have been three or four construction defect claims. If one or two of them are still open, you don't know where there're going. You don't know if this is going to be a risk with four claims and nothing paid, or four claims with one paid for \$125,000. It's just difficult to tell," Kenney said.

Though the COVID-19 pandemic has reportedly caused construction delays in parts of the country, the A&E firms among RPS's book of business have actually seen more business.

"From an E&O perspective, underwriters are paying attention to COVID-19 disruptions, but that has not been a major stumbling block," Kenney said.

Although the market for Architects' & Engineers' Professional Liability coverage is relatively stable, it's still a good idea for retail brokers to collect renewal information and submit it to markets at least 60 to 90 days prior to renewal to allow the underwriters time to digest the information. This documentation should include as much detail as possible, because the better the underwriters understand the exposure, the more likely it will be for the firm to secure the most favorable terms.

OTHER INDUSTRIES

Many other industries have been impacted by the firming market, including, ironically the Insurance Agents and Brokers (IABs) Professional Liability market. The recent surge in natural disasters — hurricanes, tornados, excessive heat, and floods — that has negatively impacted the loss ratios of carriers in the property and personal lines markets also has led to numerous underinsured or uncovered claims, prompting an increase in Errors and Omissions (E&O) claims against insurance agents and brokers. Smaller IAB's (under \$250,000 in revenue) have traditionally had a harder time finding coverage as their loss ratios have always been close to break even. The onset of these new claims — particularly claims that might allege a failure to cover COVID-19 related matters — have led to many carriers exiting this market segment which has definitely led to harder market conditions as supply is limited.



AN INCH WIDE AND A MILE DEEP

All of the aforementioned challenges illustrate why retail brokers should take a big breath before they dive head-first into the quagmire of Management and Professional Liability lines placements.

COVID-19 has had a definitive impact on all RPS insureds. Reductions in revenue and employee headcounts across all industry sectors has been common. Some companies were fortunate enough to be able to reopen during the pandemic, but this brought about a number of return-to-work issues — and underwriter questions — that insureds had to address.

Unfortunately, many companies were forced to shut their doors permanently. But in the first quarter of 2021, industries that were impacted the hardest such as restaurants, hospitality and hotels predict growth in 2021. As we settle in to our “new normal,” there will still be lingering effects from the pandemic, and employers will need to address many return-to-work issues. Cyber risks will continue to take center stage as work-from-home environments provide less-secure access points for cyber criminals to exploit. This ever-changing and challenging environment is even more reason why retailers should partner with the RPS Executive Lines team, which offers management and professional liability insurance services.

President Franklin D. Roosevelt was once quoted as saying “A smooth sea never made a skilled sailor,” observing that challenges are often teaching moments. Similarly, the vicissitudes of the Management and Professional Liability insurance market provide many opportunities for retail brokers to hone their skills and become better stewards of their clients’ Management and Professional Liability risks.

RPS stands ready to help agents and brokers navigate today’s turbulent Management and Professional Liability market. RPS has the substantive knowledge and depth of coverage expertise needed to educate agents’ and brokers’ internal teams, as well as their insureds. These difficult times, which may be a first for many clients, require reasoned counsel and guidance. As a wholesale broker, RPS has longstanding relationships with underwriters in the Excess & Surplus market, where a lot of hard-to-place programs are being placed. While buyers will have to pay more for non-admitted policies, they can obtain more flexible terms and customized coverage.

By going “an inch wide and a mile deep,” the insurance experts at RPS can help retail agents and brokers ensure that premiums fit their client’s wallets while still meeting their Management and Professional Liability insurance coverage needs.

“That’s the added value that we provide,” said Manny Cho, EVP of Executive Lines at RPS. “This is all we do. We look at these policies all day long, so the ability to create endorsements to shore up any gray areas and provide more clarity is really important.”

Moreover, RPS offers a proprietary technology-enabled platform to make complex coverages easier to understand and, in turn, easier to sell. This exclusive RPSSmallBusiness.com portal enables agents and brokers to rate, quote and issue cyber policies from three admitted markets in about one minute. Additionally, RPS provides legal and claims advocacy to support the life cycle of policies that are in place to ensure the best outcomes for policyholders.

By going “an inch wide and a mile deep,” the insurance experts at RPS can help retail agents and brokers ensure that premiums fit their client’s wallets while still meeting their Management and Professional Liability insurance coverage needs, Cho said.

SLEDGEHAMMER REDUX

This spring, RPS reintroduced its Sledgehammer platform for online quoting of D&O, EPL and Fiduciary coverages with a new carrier and its own dedicated domestic underwriter.

Sledgehammer was designed to simplify the application and underwriting process using Artificial Intelligence. It takes only about 10 minutes for a retail broker to input basic information and answer relevant questions. After the application is submitted, Sledgehammer either generates a competitive quote with broad coverage or a referral to a wholesaler for more complicated placements.

“Algorithmic rating using technology is the future,” explained Greg Seligman, Area Vice President, Executive Lines at Risk Placement Services (RPS). “For many risks, you can put it into a black box and program a computer to really think like an underwriter. It’s much more efficient for everybody.”

The platform also creates a new business opportunity for retail brokers seeking to expand their client base to include private companies. Directors and officers of private companies can be held personally liable, and this insurance provides protection for their own assets.

“In these very uncertain economic times, even if a company doesn’t have shareholders, it still needs D&O and especially EPL insurance,” Seligman noted.

The Fiduciary Liability policies available through Sledgehammer provide broad coverage for retirement plans. Many small and midsize businesses have defined contribution plans that in recent years have been targeted in litigation over clerical errors and excessive fees for administration or investment management. It also covers liabilities associated with Employee Stock Ownership Plans (ESOPs).

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Risk Placement Services (RPS) is one of the nation's largest specialty insurance products distributors, offering solutions to independent agents and brokers in wholesale brokerage, binding authority, programs, standard lines and nonstandard auto. The RPS team, fueled by a culture of teamwork, creativity and responsiveness, works with top-rated admitted and non-admitted carriers to design robust coverage for clients through its more than 80 branch offices nationwide.

For more information, visit RPSins.com.

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