2022 U.S. Casualty Market Outlook

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WHAT A DIFFERENCE A YEAR MAKES

While much of the Excess and Surplus (E&S) market has benefited from an influx of new insurance companies and managing general agents (MGAs), few areas have seen the tsunami of new entrants that the Casualty market has experienced. Over the past two years, more than 20 new, well-capitalized insurers have entered the E&S Casualty market.

"In my 30-plus year career, I've never seen so many new market entrants come in within a few months of each other," observed Bill Wilkinson, President, National Casualty Brokerage, at Risk Placement Services (RPS).

"These organizations have aggressive growth goals and aren't hobbled by the cost of legacy issues," he added. "The fact that courts were closed for much of the past two years could put them at an even greater advantage, as many believe that future nuclear verdict awards will be higher, putting further financial strain on long-time E&S Casualty insurers."

As is the trend across the industry, these new insurance companies and MGAs have lured experienced E&S Casualty underwriters—even entire underwriting teams—away from their longstanding employers with the promise of new opportunities. These moves have disrupted many long-term broker-underwriter and broker-carrier relationships, creating a new market dynamic.

THE MARKET PIVOTS

The impact of these new market entrants wasn't apparent early on. These insurers needed time to craft their underwriting guidelines and secure reinsurance support.

According to Adam Mazan, Vice President, Pacific Region, RPS, it didn't become clear until late 2021 that incumbent carriers were at a disadvantage on their renewals, with new market entrants and existing carriers alike aggressively targeting new accounts.

"In December 2021, we started seeing these new market entrants take business away from incumbents with better pricing," Mazan explained. "Now brokers are the ones driving displacement in the market, restructuring towers in an effort to reduce pricing increases that incumbent carriers continue to push." Without legacy loss issues—and with high return expectations for their investment in the Casualty market the new carriers appear willing to be more aggressive in the current rate environment than incumbent insurers who still have concerns about rising loss costs.

For example, in residential construction, the new market entrants are providing extremely aggressive wrap and project-specific options as they do not have the claims history or tail exposure that most of the longer-tenured markets are faced with in construction defect states.

Even the high-hazard excess trucking market is benefiting from this increased competition.

According to Adam Wood, casualty broker at RPS: "I recently worked with a retail agent that had a client with an expiring \$1 million umbrella policy in the mid \$50,000 range. The incumbent insurer came back with a significantly higher renewal quote," I went out and secured two quotes from other carriers, both new market entrants. One matched the incumbent's expiring quote. The other came in more than 30% less than the incumbent's renewal quote."

Wood's example speaks to another positive trend for insureds stemming from these new market dynamics: competition can lead to a reduction in the sharp rate increases seen in prior years. It didn't become clear until late 2021 that incumbent carriers were at a disadvantage on their renewals, with new market entrants and existing carriers alike aggressively targeting new accounts.

For the remainder of 2022, Casualty insureds should expect to see E&S premiums for general liability (GL) and umbrella anywhere from flat to 15% or more, depending on whether they are in a segment that the market views as a low-, medium or high-hazard risk. This is in-line with what the market experienced at the end of last year.

Of course, those numbers are just guidelines. The usual underwriting considerations—loss history, business-specific exposures, the number of employees and their experience level, to name a few—come into play, as does the structure of the Casualty program.

	COMMERCIAL AUTO	GENERAL LIABILITY	UMBRELLA
Fourth Quarter 2021	8.0%	6.4%	15.0%
Third Quarter 2021	7.4%	6.3%	16.9%
Second Quarter 2021	6.8%	6.0%	17.4%
First Quarter 2021	9.0%	6.2%	19.7%
Fourth Quarter 2020	9.1%	7.3%	21.3%
High	28.6%	26.0%	51.9%
Low	-11.6%	-13.6%	-13.5%

BY LINE, FOURTH QUARTER 2021 RATE CHANGES RANGED FROM 0.3% TO +15.0%

Source: The Council of Insurance Agents and Brokers



Given the influence of local jurisdictions and state laws on nuclear verdicts, insureds in states that are considered especially favorable to plaintiffs will fall on the high side of the renewals range.

While this list includes the usual jurisdictions, such as New York City, the Miami-Dade area in Florida, and all of California, it also includes Georgia, Texas and Louisiana. The American Tort Reform Foundation has also put Florida, Colorado, Maryland and Minnesota on its watch list of plaintiff-friendly jurisdictions.¹

ANTI-CORPORATE SENTIMENT

Potential nuclear verdicts lurk in the backlog of existing court cases. S&P Global Market Intelligence noted that federal civil caseload statistics suggest that the time from file to trial had lengthened and that the percentage of civil litigation that had been pending for more than three years had also increased.²

Based on conversations with several carrier claims teams, it appears the majority of settlements over the past two years were for low-to-medium value cases. Parties involved in high-value cases are willing to wait their turn to take their cases to trial.

Social-media driven changes in societal behavior, an increase in classaction suits and the normalization of large settlements are additional contributors to the social inflation that results in nuclear verdicts.

Third-party litigation funding increasingly provides plaintiffs with a war chest that allows them to go for a nuclear verdict.

This involves a third party, such as a hedge fund, paying for all or part of the legal costs—sometimes even covering plaintiff's living expenses in return for a percentage of the settlement. Litigation funding deals

Potential nuclear verdicts lurk in the backlog of existing court cases. can be structured so that the longer it takes for the case to be resolved, the higher the investor's return.³

Reptile theory, a plaintiff's attorney strategy that ignores liability and negligence while highlighting injuries and damages, is another contributing factor to nuclear verdicts. This approach feeds on jury members' distrust and makes them angry about the defendant's actions as well as fearful that they may happen again. Those who see jury duty as an opportunity to enact social change or right social wrongs are especially influenced by this approach.

Traumatic brain injury (TBI) allegations are also on the rise. These claims can easily move into nuclear verdict territory if the injured person requires a life care plan.

The high hospital costs associated with TBIs, which one study cited as ranging from \$2,130 to \$401,108, are another factor.⁴ Most TBI claims arise from auto accidents, although student athletes present an exposure for the education segment.

Without obvious symptoms, such as loss of speech or qualifying for long-term disability, TBIs can be challenging to prove. "It often boils down to which expert is most persuasive, the plaintiff's or the defendant's," Wilkinson noted.

COVERAGE FOCUS

The Casualty market is extremely diverse. While GL, auto and umbrella are the primary coverages in the commercial E&S market, a number of coverages that respond to specific exposures have developed over the past 12 months, often due to negative societal changes.

Environmental

As the world continues to recover from Covid-related shutdowns in 2022, buildings that were long vacant, such as offices and hotels, may have mold or legionella contamination due to deferred or inadequate maintenance. This could lead to an uptick in indoor environmental claims. Construction job sites that were halted may also need mold remediation.

The E&S market is also seeing opportunities for waste management and recycling firms, along with manufacturing and distribution risks that require products pollution coverage.





Additionally, per- and polyfluoroalkyl substances (PFAS), known as "the forever chemical", continue to be a concern.

PFAS either slowly or never break down in the environment. Studies have linked these substances to various health concerns. It's not uncommon for people to ingest or consume PFAS via drinking water. They may also be found in food packaging and can even be airborne.

Carriers are not consistent in how they approach PFAS exposures. Some are starting to add PFAS exclusions to environmental policy forms or quotes, even when it isn't clear that there is a present or potential risk factor. Others are asking questions about PFAS as part of the underwriting process to see if they can get comfortable with offering coverage.

While some see PFAS as the next asbestos, Sarah Wirtz, National Environmental Liability Practice Leader at RPS, doesn't necessarily agree.

"Plaintiffs' attorneys are trying to link PFAS to various health issues," Wirtz observed. "But because PFAS appear in many everyday products—everything from cookware to clothing—it makes it hard to prove a link between a specific product or company and bodily injury."

Regarding Professional Liability (PL) coverage in the Environmental marketplace, there is limited appetite on a combined form.

There are, however, carriers that specialize in PL coverage when the insured has an environmental exposure. They can often help satisfy a contractor's contract requirements for both coverages on a combined form.

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ACTIVE SHOOTING INCIDENTS

YEAR	NUMBER OF MASS SHOOTINGS
2017	348
2018	336
2019	417
2020	610
2021	692

Source: The Gun Violence Archive.

Active Shooter

Interest in active shooter coverage continues to grow along with the increase in these events. Even COVID-19 restrictions on schools, workplaces and public gatherings wasn't enough to stem this trend. In fact, pandemicinduced stress may have exasperated the growth of these events.

Although it is an outgrowth of a General Liability policy, an active shooter policy has a property component that covers physical damage and business interruption. It also provides additional coverages for expenses associated with this type of traumatic event, such as loss of attraction and brand rehabilitation expenses, victim crisis management, counseling and prevention costs.

In today's marketplace, there are a limited number of underwriters who offer this coverage. Of those that do, many are starting to require insureds confirm there have been no threats, incidents, or violent or criminal events on the insured's property, whether a claim was reported or not. This requirement alone can put a lot of organizations, particularly those most likely to experience an incident, as not eligible for coverage.



SEGMENT OVERVIEW

Habitational

The habitational market faces as many challenges in acquiring Casualty insurance as it does for Property insurance. Generally regarded as a high-hazard risk, habitational property owners should anticipate premium rate increases of 15% and higher on their E&S coverage.

This sector has also been impacted by increasing claim costs with slip and fall claims that had historically been contained within a GL policy but are now piercing into the excess layers.

The uptick in assault & battery (A&B) claims and concerns around human trafficking at apartment buildings and motels have deterred many markets from offering coverage in the lead excess space. There are no indications that this will change anytime soon.

Habitational portfolios that hold higher-hazard profiles, such as affordable housing, senior living or assisted living; properties located in a zip code with a high crime score; or properties with adverse loss experience, face the biggest challenge in this market.

Many carriers now either exclude or sublimit A&B claims in an effort to reduce their exposure and maintain underwriting profitability for the class. Underwriters are spending more time researching location characteristics on the internet, with some checking online reviews to see if it is a place they would live in themselves before insuring.

Habitability claims, which are related to living conditions and do not necessarily entail bodily injury or property damage, are another area of focus on the underwriting side.

Insurance companies have seen an uptick of habitability claims in California, especially in San Francisco and Oakland, two cities with higher-than-average rents. Examples of these claims include bed bugs, lack of security, leaking roofs, neighbors smoking, utility issues and more.

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CONDO COLLAPSE SETTLEMENT MOVES THE NEEDLE ON NUCLEAR VERDICTS

The E&S Casualty market is now feeling the impact of the June 2021 collapse of the Champlain Towers South condominium building, a 12-story building which had been located in Surfside, Florida.

In May 2022, a Miami-Dade circuit court judge announced that lawyers representing the families of victims and survivors of this tragedy had reached a \$997 million settlement. At the time of the building's collapse, the condo association had a \$31.4 million property policy for the building and approximately \$18 million in liability coverage. A number of parties were held liable for making up the shortfall between the condo association's coverage and the settlement.

The largest contribution, \$500 million, came from the building security firm's primary and excess GL policies. That company provided guard services and operated safety systems for the condo building. There were nine insurance companies involved in the security firm's GL insurance program. On the surface, habitability claims appear to be more of an issue from a frequency than a severity perspective. However, a \$25,000 claim can become a \$250,000 claim in a 10-unit building if all the tenants are involved. That multiplier effect means that claims could easily exceed the building owner's GL policy limit. In addition, if the lease contained an attorney's fee clause, when the tenant's claim is successful, the building owner must pay their legal fees.

Construction

"New entrants are definitely driving competition, as you now have fresh eyes and fresh capacity looking at construction risks," said Russ Stein, Area Executive Vice President at RPS. "I recently saw a renewal where a new carrier undercut the incumbent by 30% on a \$10 million excess of \$5 million liability program."

Given the uptick in construction operations across the country, there are more and more project-specific and wrap policies being utilized for new residential construction and even larger commercial jobs.

The new market entrants are unencumbered by the legacy losses that often plague carriers that have been writing residential wrap ups for the last two decades. As such, they are able to drive market competition in the sector and shift the environment back to being friendlier to the buyer than to the carrier.

As inflation and supply chain delays contribute to project costs, they also drive up the cost of the GL coverage.

Still, new capacity doesn't eliminate all the GL insurance challenges in this market.

The construction segment is feeling the impact of two post-pandemic economic trends, labor shortages and supply chain issues, both of which have an impact on insurance programs.

The current demand for new construction has created a need for experienced, highly-skilled construction workers, such as carpenters, electricians and plumbers, as well as construction site managers. It has been estimated that this industry segment would need to attract 650,000 workers on top of the normal hiring level just to keep up with demand.⁵

"The likelihood of something going wrong is greater with a construction worker with two years of experience than it is for one who has been doing the job for 20 years," acknowledged Stein. An incident could result

INFRASTRUCTURE OPPORTUNITY

While it will take time for its impact to be felt, the Biden administration's \$1 trillion infrastructure package will create even more opportunities in a market that is already stretched to capacity. The package allocated \$110 billion to roads, bridges and other major infrastructure projects.

Of course, with any opportunity comes challenges. Bridge construction is regarded as a high-hazard risk. Road construction projects carry exposure to land subsidence and sinkhole claims. And pollution exposures, such as fuel leaking from construction equipment or improper waste disposal, abound.

To take advantage of these opportunities, construction firms will need GL and other coverages from insurers that meet the stringent minimum financial requirements for these contracts. This is typically a rating of A-VII or higher from A.M. Best.

And while insurers will be eager to underwrite these coverages because of the large premiums associated with heavy civil projects, some may be prohibited by reinsurance treaties.

"Significant GL and umbrella capacity will be needed for these infrastructure projects, so it will be all hands on deck," predicted Wirtz, who works with the construction segment. "Construction firms will need to partner with a solid, financially-qualified carrier who will be there for the long haul."

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from a construction defect, a premises loss related to safety, or the worker's own lack of knowledge and/or experience on a construction site.

As inflation and supply chain delays contribute to project costs, they also drive up the cost of the GL coverage.

With rate based on construction value, "We're having to do more negotiations with underwriters, as construction budgets keep climbing and project timelines lengthen due to previous delays from COVID or supply-chain issues," Stein stated.

Multi-year, rolling wrap GL policies also become a negotiation point with underwriters, Stein added.

"Because of the labor shortages and supply chain delays, projects are taking longer than anticipated," he explained. "The project still isn't completed, but the policy is expiring and the carrier doesn't necessarily want to stay with the project."

Public Entity

"Public entities have a greater diversity of exposures than a construction firm or manufacturer," explained Mazan. "You have a significant premises exposure, a broad range of employees, sizeable fleet schedule and utility exposure. There is also typically a law enforcement component."

Carriers are paying close attention to the litigation environments where the municipalities are located as well as to recent case precedents.

The market for public entity risks hasn't experienced the benefit of new market entrants with aggressive business goals. Only a handful of liability carriers are active in the public entity space.

Given this lack of competition, it is no surprise that municipalities could see liability premium increases up to 15-25% for accounts with a clean loss history, and higher for the lead layer or accounts with a more challenging loss experience.

Carriers are paying close attention to the litigation environments where the municipalities are located as well as to recent case precedents.

To control rising insurance costs, insureds are looking at



increasing their self-insured retentions, reducing the limits they purchase and/or self-insuring part of their exposure.

Law enforcement has continued to present one of the biggest challenges for municipalities. There has been an increase in claims from police actions, jail supervision and law enforcement-related auto claims.

Over the past couple of years the utilization of monoline law enforcement carriers has increased in popularity as a mechanism to reduce costs or keep retention levels down.

While coverage is still available, Mazan cautioned that it is not as easy to secure as it was in prior years. This approach has evolved from being a strategy to contain cost or limit retentions to being a last resort when no other options are available.

On the environmental liability front, municipalities have had to deal with waterway contamination due to firefighting foam containing PFAS. Most carriers have started adding a PFAS exclusion to their policies and as of yet there has not been significant pushback from buyers, noted Mazan.

Higher Education

Like public entity, higher education is a segment that many insurers steer clear of.

"The lack of markets is perhaps the biggest challenge that higher education faces," Mazan admitted. "It's challenging to secure the desired limits with the required coverages, let alone manage premium increases."

Educational institutions should anticipate premium increases in excess of 10-15% in 2022.

Unlike some other classes of business, it can be more challenging to secure excess capacity than lead capacity in the education space. This is driven by a handful of primary and lead markets that focus on educational risks and dominate the primary and lead placements. Unlike some other sectors, educational institutions seem to be much more concerned with limits and coverage than cost.



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Typically, institutions only reduce capacity when they can no longer secure either abuse or athletic participants' coverage in the layers that they have historically purchased.

In recent years, colleges and universities have encountered some of the highest sexual abuse claims of any segment.

Over the past few years, several states have removed the statute of limitations on sexual abuse claims. As a result, insurers are now examining how they are covering this exposure, with a handful moving to a claims-made coverage trigger from the occurrence coverage trigger that was typical in the past.

In 2021, one insurer even introduced a sunset clause for sexual abuse claims, which took the limit on the policy to \$5 million after 10 years.

The knee-jerk reaction from the excess market was to invoke a sublimit clause to avoid dropping down coverage in the event a claim occurs more than 10 years after expiration of the policy.

Overall, higher education has had greater success in addressing another major exposure, traumatic brain injury (TBI). Schools with football, hockey and soccer programs now do baseline testing of incoming student athletes. They have also increased the monitoring of students after a head injury occurs.

Through these loss control efforts, and the fact that a lawsuit from a former college-athlete has yet to materialize, TBI is becoming less of an underwriting concern for these institutions.

Excess Trucking

Excess trucking remains a high-hazard segment for many insurers. However, fresh capacity has driven renewal increases into the single digits in some cases.

Incumbent carriers that want to retain existing accounts need to take a cautious approach to pushing rate increases. That said, insurers are still exiting problematic states and jurisdictions, such as Florida, Texas and Southern California.

Less desirable risks are also benefiting from fresh market entrants and new capacity.

TECH-SAVVY UNDERWRITING

Technology is providing underwriters with greater insight into risks. With the electronic data and information they gather, they can make better underwriting decisions, benefiting both the insurer and the insured.

Telematics are gaining acceptance in trucking, driven in part by the discount that insurers are willing to extend to companies that agree to put forward-facing and rearfacing cameras in a cab.

With telematics, a camera captures everything from how the driver brakes to how many hours they are driving. "When I'm trying to broker a deal for an account that uses telematics, the first sentence out of my mouth is that 'they have cameras in every truck'," said Wood.

In construction, Stein reported that underwriters are increasingly using drones, particularly for project-specific or wrap policies.

"A drone can fly over a completed project. The insurer can review what it records and compare it to the original project schematic," he stated. "The drone makes it possible to see if something is even off by an inch."

"I have more options for those accounts than I did 12 months ago," Wood stated. "My concern, though, is that these insureds could see their rates rise significantly in tougher states on renewal."

A unique aspect of this market is that one of the underwriting considerations is the relationship between the primary and excess carriers. "I have excess carriers who will put \$4 million over one primary insurer but not another," said Wood.

As insurance costs have increased, smaller trucking firms have found it increasingly challenging to meet their contractual obligations to carry \$10 million in limits.

Demonstrating the creative problem-solving that wholesalers are known for, Wood offered two ways that smaller trucking companies can cost-effectively meet contractually required excess limits.

One option is a schedule-unit excess policy that's specific to a truck VIN number, which will be used just for that client's business. A second strategy is a contract-specific policy, which applies solely when driving on behalf of the client, but isn't tied to a specific truck.

Another aspect of the excess trucking market is the third-party carrier fleets that exist across many industry segments. For instance, the energy industry is ramping up production again and construction remains strong throughout the country. The considerable trucking fleet schedules in those segments pose unique challenges. RPS brokerage teams frequently partner with segment experts in energy and construction, in particular, to tailor a program for an individual insured's needs and exposures.

While the energy market deals with complex, heavy equipment, one of the primary causes of claims come from vehicles.

Energy

"Energy is high risk because of the inherent nature of drilling a well, which involves extremely heavy and high pressure equipment," observed RPS' Grant Bryant, Area Senior Vice President for Energy and Environmental. "Over the past year, as rigs have come back online, insureds are restarting equipment, such as fracking pumps, which were stagnant. This needs to be done with care to avoid a dangerous situation."

One emerging concern in this segment is new companies coming into the Energy market that lack experience such as a new equipment hauler owned by a former banker.

In this segment, auto, GL and umbrella are the three primary E&S coverages. Depending on an insured's



business, inland marine and environmental liability may also be required. Often the latter is added as an endorsement on either the primary or excess GL policy.

While the energy market deals with complex, heavy equipment, one of the primary causes of claims come from vehicles. For 2022, energy insureds should anticipate premium increases of 7.5-15% for their auto coverage.

Bryant anticipates that with more drilling activity and more cars driving around oil fields, auto losses could go up this year. The nature of the insured's auto fleet also drives the excess layer pricing, with rate based on the size of the fleet.

THE ROLE OF THE E&S MARKET

Coverage Towers

"As wholesale brokers, we are the quarterbacks of tower building," noted RPS' Wilkinson. While insurers and MGAs have brought new capacity to the E&S Casualty market, they have been cautious about limits, often capping them at \$5 million and as low as \$1-2 million within the lead \$5 million.

Often, there's now a broader group of insurers to choose from, but towers will continue to involve more carriers than they did a few years ago. Competition generally improves above the \$10 million mark in most segments.

Consider the Excess Trucking market. While the first \$10 million of coverage used to be considered the working layers, larger settlements and nuclear verdicts have taken their toll on carriers. Wood noted that while it used to be possible to build a \$10 million tower with just one or two carriers, it now requires a minimum of three.

Often, there's now a broader group of insurers to choose from, but towers will continue to involve more carriers than they did a few years ago. Competition generally improves above the \$10 million mark in most segments. In construction, a large auto fleet can also make it difficult to build a tower for an insured.

As litigation rises, an increasing number of construction contracts require \$10-\$20 million in excess limits. Depending on the size of the contract, it can be hard for an energy company to justify the cost of the additional excess coverage.

In the energy market, Bryant finds that sometimes insureds benefit from building separate GL and pollution liability towers.

"With a separate tower, you don't run the risk of environmental claims eroding the GL and the auto," he explained. "The results is a better insurance program for the client."

Wirtz noted that a concern among carriers in the lower layers is how their pricing compares to the pricing in the upper layers.

"They'll ask, 'What is the carrier above me charging?" she said. "They want to make sure they aren't receiving less premium per million than an insurer higher in the tower who is, in theory, taking on less risk than they are at a higher attachment point."

Submission Strategies

As it is across the U.S., the labor shortage is also impacting the E&S Casualty market.

"Be prepared for underwriting submission bottlenecks," advised Mazan.

With underwriters stretched, they prioritize the most complete and thorough submissions and move them to the top of their queue. Quality is important and details matter.

"The market is a lot different than it was a few years ago, and there's an increased need for underwriting information about a construction project," Stein observed. "The accounts that provide the best information generally get the best results."

For habitational accounts, for example, underwriters now consider a statement of values with life and safety core information to be provided up front.

Insureds should also provide details on any loss control measures that have been taken, especially when there has been a large loss. When appropriate, the retail agent should explain how their client is handling security. With underwriters stretched, they prioritize the most complete and thorough submissions and move them to the top of their queue. Quality is important and details matter.



An insured's website sometimes unknowingly creates an underwriting issue.

"A company website may have a picture of a massive transmission line operation, which could indicate a much larger environmental liability risk than they actually have," said Bryant. "Based on that picture, the underwriter may decide to decline the risk."

In these situations, he added, insureds benefit from having a specialist on their side who doesn't just accept a coverage declination for something that is misrepresented on a website.

While starting the renewal process at least 90 days ahead has always been a good strategy, it is more important than ever in 2022.

INSURANCE IN A TIME OF DISRUPTION

The global economic and geopolitical uncertainty during the first quarter of 2022 shows no sign of abating anytime soon and will likely continue throughout the year.

In the U.S., the Casualty insurance market is grappling with the effects of rising inflation, a looming recession, supply chain issues and labor shortages.

As the backlog of court cases continues to unwind, the potential for nuclear verdicts remains strong. Price inflation, wage increases and the rising costs of doing business, coupled with social inflation, will factor into future awards and settlements.

There is some positive news for insureds.

The influx of new entrants into the casualty market and the shifting of experienced E&S underwriters from carrier to carrier will help alleviate some of the double-digit rate increases the market has experienced over the course of the last few years.

It can, however, be a challenge to sort through these new entrants and keep track of underwriter moves. A wholesaler with deep knowledge of these markets can serve as a valuable resource in helping clients derive the greatest benefit from the current E&S Casualty market.

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For more information, visit RPSins.com.

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