



2023 Q2

Umbrella and Excess Market Update

Adam J. Mazan

Vice President, Pacific Region

Russ Stein

Area Executive Vice President

While market conditions in the Excess Casualty space have remained relatively consistent over the past couple of quarters, several emerging conversations could influence a change in how the market reacts the second half of the year.

The Excess Liability insurance market conditions in the first quarter of 2023 didn't change much from what we saw at the end of 2022. What did change, however, were the conversations with Excess Liability underwriting heads and the increasing concerns from carriers about what lies ahead.

It's no secret that loss costs continue to increase and that, broadly speaking, carriers won't be able to get enough rate to keep up step-for-step with loss costs. Because most of the Excess Liability treaties renew between April and July, we spent a lot of time in the first quarter trying to understand the dynamics, to share what could be in our future.

REAL WORLD STATISTICS TELL THE STORY

Over the last few years, buzzwords like “nuclear verdict” and “social inflation” have been thrown around, and we want to share some statistics related to these buzzwords to help people understand the influences on the marketplace.

Nuclear verdicts are verdicts with awards that surpass \$10 million. In 2022, the awards from nuclear verdicts were in excess of \$18 billion, compared to \$9.1 billion in 2021 and \$4.9 billion in 2020. The most common losses were from auto claims, product liability, patent infringement and—increasingly—in the construction space.

Just a few years ago, a claim with a single claimant would typically be contained in the primary or lead excess layer; a claim would have needed multiple claimants for an award to exceed \$10 million. Social inflation has changed all of this, with single-claimant awards setting record after record, most recently a single-claimant loss in the oil and gas sector with a \$100 million award. There was also a single-claimant assault and battery loss at a nightclub with a \$40 million award and a single-claimant abuse claim from an apartment complex that yielded a \$50 million award.

Tying this trend back to the desk level of our carriers, the incurred loss ratios for a diversified Excess Casualty book with the typical attachment point of \$10 million or higher have increased to around 63% in 2022 from about 45% in 2018. The trend continues to put pressure on diligent underwriting, and the evolution of the reinsurance landscape doesn't alleviate this pressure at all.

TREATY RENEWALS

When it comes to the reinsurance segment, the industry has focused far more on Property reinsurance challenges since Hurricane Ian made landfall last September than it has on excess liability reinsurance. While the challenges on the casualty side might not be as bad as on the property side, there still are challenges that will impact the marketplace.

Because of the loss trends shared above, hedge fund money has started to leave the reinsurance space for higher returns in the equity markets. Reinsurers have been pushing seeding commissions down from 1 to 2 points for high-performing books of business to several points for not-so-great performing books of business.

It may be hard to believe, but there are still start-up managing general agents (MGAs) and managing general underwriters (MGUs) trying to come into the excess casualty space and numerous sources have told us that those MGAs and MGUs are struggling to get reinsurance support. Reinsurers will continue to require strong underwriting discipline and the outcome of upcoming treaty renewals could drive yet another shift in the excess liability market.

INCUMBENT CARRIERS' GOALS VS REALITY

Another consistent conversation we've been having with our partners is management's need for certain rate increases on renewal business. Holistically, markets are typically stating that they can't provide a rate decrease or even a flat rate at renewal, which causes an increase in premium and intensifies the need to find a palatable replacement.

While in years past this carrier strategy may have worked, we're starting to see incumbent carriers at higher attachment points in the Excess tower at a disadvantage, as standard carriers continue to stretch capacity and new capacity continues to be opportunistic.

LEGAL CHANGES AND THEIR POTENTIAL IMPACTS

February 15, 2023 saw the introduction of Bill HB 837 in Florida, which proposed dramatic changes to the civil litigation landscape in the state. Governor Ron DeSantis signed the bill into action March 24. The bill has ruffled the feathers of some of the larger personal injury attorneys in the state, with one firm vowing not to give insurance carriers "a single inch" in terms of granting discovery extensions. Many actually worked to file over 100,000 new lawsuits prior to the bill being passed, with the hope that these suits would be grandfathered in under the prior laws.

While the immediate impact of the bill's passing is yet to be determined, the below highlights some changes it introduced:

- **Modifies prior "pure" comparative negligence to "modified" comparative negligence.** Before HB 837, a plaintiff was entitled to recover a percentage of damages proportionate to the degree of fault of the defendant. Under the new modified system, if a plaintiff is more negligent than the defendant, the plaintiff cannot recover damages.
- **Two-year statute of limitation for general negligence claims.** HB 837 amends Section 95.11 of the Florida statutes to reduce the statute of limitations for general negligence claims from four years to two years. This change could allow evidence to be obtained closer to the time of the alleged incident. Earlier settlement and resolution of claims may see a quickened timeline as well.
- **Negligent security.** The owner or operator of a property can't be held negligent for damages to a third party attempting to commit or engaged in committing any criminal act on the property. The new bill also creates a presumption against negligent security liability for the owner or operator of a "multi-family residential property" if the burden of proof is met to demonstrate "substantial compliance" with crime assessments; crime and safety training for employees; and safety and security measures, such as lighting in common areas, security cameras at points of entry, locked gates at pools and locking devices on all windows and sliding doors.



- **Adjustment of attorney fees.** One-way attorneys' fees in insurance cases now only apply to declaratory judgment actions for the determination of insurance coverage against an insurer after a denial of coverage of a claim, which doesn't include a defense under a reservation of rights. Previously, "one-way attorneys' fees" applied in situations in which an insured prevailed in an action against an insurer. If a declaratory judgment is granted in favor of the insured against the insurer, the court shall award reasonable attorneys' fees, which are limited to those incurred in the action.

A wealth of information is available on this topic, and the discussion above is only a small portion of the overall bill; there are also adjustments to Bad Faith claims and evidence in past and future medical expenses. We would highly recommend continued research of the bill.

While market conditions in the Excess Casualty space have remained relatively consistent over the past couple of quarters, several emerging conversations could influence a change in how the market reacts the second half of the year. Will the treaty renewals be challenging enough to have a broad enough impact on pricing and capacity? Will incurred losses continue to increase at the rapid pace that they have been? Will other states look at tort reform similarly to Florida? And—probably the question that could have the biggest overall impact on losses—how much further will the plaintiff's bar push demands and drive higher and higher awards?

All of these questions will see evolving answers over time and all will determine how the carriers interact with each other, impacting rates and capacity the second half of 2023 and into 2024.