2019 US Mid-Year Market Overview

Design and Construction Professional Liability

Professional Liability Sentinel | Issue 12: Q3 2019

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Premiums and Self-Insured Retentions

Approximately two years ago we first observed a change in professional liability insurers' attitude toward Architects & Engineers (A&E) risks. Several insurers revised their underwriting guidelines and increased premiums and self-insured retentions. Other insurers decided to stop underwriting A&E policies.

After 15 years of a soft market, insurers in both the US and London began to critically review their A&E professional liability books of business. The threat to underwriters' profitability came from several directions:

Initially, **underwriting results** had significantly deteriorated due to the frequency of severe losses.

The **competition** from the soft market had also driven rates down against increasing A&E revenues, meaning that the premiums had not kept pace with exposures.

Finally, the number of **A&E Mergers** has significantly reduced premium volumes from the market.

The general firming of the A&E market was only a precursor to a much more radical hardening of the construction professional liability market for risks outside the US. The recent Lloyd's of London review concluded that non-US professional liability insurance was one of the worst performing classes of business. Over the past nine months, insurers outside the US have reduced capacity, especially in the area of construction professional liability. Of particular concern are the issues surrounding the Grenfell Tower fire in the UK and the revelation that cladding and the fire containment system standards used over the last several decades are inadequate. Although this is not directly a concern for US domestic A&E firms, any risks with global exposures are being re-rated with this extraordinary risk in mind.

We are seeing US A&E rates rise by as much as 5% on "clean" risks but where insurers have claims concerns, the rate increases can be more than 25%. For larger risks with a poor claims history, the most significant increases are being seen on first excess layers, as these are now seen as a "working" layer. Somewhat surprisingly, US contractor rates have remained flat in light of the increasing number of claims and continued shift to Design-Build.

Since April, rates on all lines of professional liability are increasing (e.g., lawyers and accountants). Professional liability underwriters are having to compete for capacity internally because property rates are soaring, and it is likely that the property portfolio – which is a short tail class – will give a quicker return on capital than professional liability. Restricted internal allocations of capacity, plus Lloyd's requirements that there must be a return to profitability without overall portfolio premiums increasing, have left underwriters with limited options. Consequently, the continued pressure to increase self-insured retentions and achieve some rate increase, even on the best risks, is expected to continue.

Coverage

At a time when insurers are looking to implement a conservative approach toward underwriting professional liability risks, we are receiving requests to ameliorate or delete the *Insured vs. Insured* or *Related Parties* exclusions when firms are working in partnership, or participate in joint ventures.

Outside the US, changes or relaxation to these exclusions are not unusual; however, with the market hardening, insurers are now taking a similar view to US policies, and denying a vast proportion of these requests.

The *Insured vs. Insured* and *Related Parties* exclusions become particularly problematic when the joint venture consists of a contractor and a designer. In these arrangements, the JV's project policy will not respond to losses suffered by one partner due to the negligence of the other, nor will the annual program of negligent partner respond in full, if at all, to a claim made by the JV.

Thus, it is imperative that any firm contemplating such a joint venture carefully craft the joint venture agreement to precisely allocate each party's duties, responsibilities, and accountability to the other for losses attributable to the other partner's negligence during the course of the project.

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Snapshot of US Market Trends

Architects & Engineers

2019 Q1 & Q2 Direction				2019 Q3 & Q4 Outlook
Rates are increasing for Architects & Engineers even for insureds with low claims frequency and severity.	↑	**Pricing/ Rates**	↑	Rate increases of 10% or more are common for insureds with claims.
Excess insurance is still readily available at competitive prices; however, due to the increased premiums on primary and first excess layers, most firms have not opted to procure higher limits.	⇔	**Limits**	⇔	We believe most firms will be focusing on maintaining their current limits in a changing market.
With the advent of larger claims, insurers are looking for increased retentions, and firms are considering higher retentions to offset premium increases.	↑	**Deductibles/ Retentions**	↑	We believe the current trend will continue, especially with claims inflation running at 3% per year.
Neutral, as previous enhancements are being evaluated by insurers.	⇔	**Coverage**	⇔	No changes are expected in the near future.
Overall capacity remains stable, but reduced appetite for primary and first excess business.	⇔ ↓	**Capacity/ Appetite**	⇔	As rates increase, we are hearing that new insurers are considering entering this space, but this may only replace capacity that has already left the market.
Losses are increasing in severity and frequency.	↑	**Losses**	↑	Losses are increasing with more claims coming from Design-Build contractors where there has been under-design at the bid stage and insufficient contingencies built in by contractors.

Snapshot of US Market Trends

Contractors

2019 Q1 & Q2 Direction				2019 Q3 & Q4 Outlook
To a large extent rating is highly dependent upon client specific factors, most notably, claims history. On “clean” risks, expected rate change: 0% to -5%.	↔ ↕	**Pricing/ Rates**	↔ ↕	Expect this to continue with some carriers coming off insureds perceived as poor risks.
Many clients have increased their limits due to the perceived severity of professional liability loses. In addition, owner requirements are more restrictive and the demand for higher professional liability limits is becoming more common.	↑	**Limits**	↑	Expect the trend to continue, we are seeing alternative delivery procurement models driving requests for higher limits, particularly on project policies.
Most clients have maintained their deductible/retention levels.	↔	**Deductibles/ Retentions**	↔ ↑	No material change is expected, though there are indicators that carriers are pushing (forcing) higher retentions on larger clients to offset the risk of claims deterioration.
No material changes in the annual programs.	↔	**Coverage**	↔	No material changes on annual programs. On projects we are seeing insurers “chasing rates,” which often yields a standard policy form with little to no manuscripting.
Excess professional liability insurers offered an abundance of capacity, often in excess of $200M.	↑	**Capacity/ Appetite**	↔	Capacity is expected to level off as insurers re-evaluate their portfolios (decreasing appetite out of Lloyd’s of London).
Claims activity in the construction sector was fairly constant, but claims severity increased.	↔ ↑	**Losses**	↑	We expect this trend to continue, with year over year escalation in claim values and defense costs.

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