Brown & Brown INSURANCE®

Market Trends Quarter 1 | 2021

COMMERCIAL INSURANCE & RISK MANAGEMENT

OUR GOAL

Brown & Brown's Market Trends allows you to connect quickly to succinct key topics and notable updates in the insurance marketplace. Dive deeper on any topic with our Brown & Brown Team to better understand how these trends may impact your business. We welcome the conversation.

DISCOVER

MARKET SUMMARY

Q1 | 2021

Rate increases, nuclear verdicts, stricter underwriting, and increased cyber threats continued through the last quarter of 2020. Workers' compensation remains a bright spot, with rates remaining relatively stable; however, increased rate pressure is anticipated in 2021. Adding to the pressure of 2020, record numbers of natural catastrophes contributed to the ongoing strain in the insurance marketplace. Thoughtful planning, early action, and thoroughly understanding risks remain paramount to more favorable outcomes.

PROPERTY

Q1 | 2021

As we look ahead to 2021, we expect property carriers to repeat 2020 – substantial rate and deductible increases, reductions in capacity, coverage restrictions, and exiting high-risk business segments. 2021 will create opportunities for insureds to strategically differentiate their risk in this challenging marketplace.

As companies grapple with the realities of the property market, many are developing proactive strategies to achieve the best outcome for their 2021 renewal. This proactive approach includes preparing a comprehensive submission with complete COPE information, current asset valuations, business interruption worksheets, complying with loss control recommendations, and a longer-term strategic risk improvement plan. It is also wise to engage senior leadership in expectations around budget, program structure alternatives, and ROI to include recommended CapEx risk improvements.

As the insurance marketplace struggles with loss ratios, additional claims associated with the pandemic, record number of natural catastrophes from wildfires, hurricanes and derechos, and non-CAT attritional losses, carriers continue to place heavy emphasis on underwriting profitability with added oversight from senior management on each renewal.

COVID-19 & Business Interruption

Property insurers have largely remained unified in their approach to COVID-19 claims submitted by policyholders. Carriers have taken the position that the virus does not cause physical loss or damage, which is a core coverage trigger under primary property policy coverages. Many property policies also exclude loss or damage caused by virus, contamination, or pollution, which carriers assert precludes coverage for COVID-19 losses. The limited number of carriers whose policies include affirmative communicable disease coverage generally contemplate smaller sub-limits and specific coverage triggers – including the presence of the virus at a policyholder's location. Carriers have firmly maintained their coverage stance, prompting some policyholders to explore legal remedies for their losses.

> "An early trend points to some courts finding the presence of a virus exclusion as persuasive in granting insurers' motions to dismiss.

Proactive Strategies for 2021 Renewals:

- Comprehensive submission with complete COPE information
- Current asset valuations
- Business interruption worksheets
- Loss control recommendations
- Longer-term strategic risk improvement plan

As of December 21, 2020, more than 1,400 COVID-19-related suits have been filed against insurers.[1] Legal arguments have primarily been based on determining what constitutes direct physical loss, including the effects of civil orders, governmental mandates, and the presence of the virus at an insured location. While litigation is ongoing, an early trend points to some courts finding the presence of a virus exclusion as persuasive in granting insurers' motions to dismiss (granting insurers' MTD in 43 of 51 cases).[2] To this point, courts have been more inclined to deny insurers' motions to dismiss when a virus exclusion is not present (denying insurers' MTD in 11 of 23 cases).[3]

To date, we are aware of one case that has conclusively been decided in favor of policyholders. A North Carolina court granted summary judgment to a group of restaurants, finding the loss of use of their properties following government orders constituted a direct physical loss. The court commented that the policies did not exclude virus-related causes of loss.[4] The insurer has appealed.[5] This case illustrates how jurisdictions may take a divergent approach to interpreting COVID-19 losses.

Looking forward, multiple approaches have been proposed to address the risk of future pandemics. Many of the suggested solutions involve a combined public and private response, similar to TRIA. Others have proposed a parametric model, where coverage is triggered if a defined parameter is satisfied, for example, if a business is closed by government order associated with a pandemic.[6] The insurance industry remains active in working with Congress to agree on the right approach in the future.

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[1] *https://cclt.law.upenn.edu/cclt-case-list/*
[2] *https://cclt.law.upenn.edu/judicial-rulings/*
[3] *https://cclt.law.upenn.edu/judicial-rulings/*
[4] *https://www.claimsjournal.com/app/uploads/2020/10/NorthStateDeliruling.pdf*
[5] *https://cincinnatifinancialcorporation.gcs-web.com/static-files/b9fb3a7b-07e7-48b7-a695-316827ddefae*
[6] *https://content.naic.org/sites/default/files/inline-files/JIR-ZA-39%20%28002%29.pdf*

CASUALTY

Q1 | 2021

The commercial insurance casualty marketplace trends show upward rate pressure and restriction of capacity in Q4 2020 for auto, general liability, and umbrella/excess. A.M. Best reports that U.S. property/casualty net underwriting income fell 86% in the first nine months of 2020 compared to the same period in 2019. Driving trends include:

Nuclear Verdicts

The *National Law Journal* recently published the 2019 Top 100 Verdicts, ranked by estimated gross jury awards. Products liability is the leading category, with an increase from $5.9 billion in 2018 to $11.6 billion in 2019. Motor vehicle verdicts moved up to the third leading category, increasing from $897 million to $2.1 billion in the same time period. The impact of distracted driving, driver fatigue, high rate of speed, and negligent entrustment were significant contributing causes to the awards and settlement results for the motor vehicle verdicts.

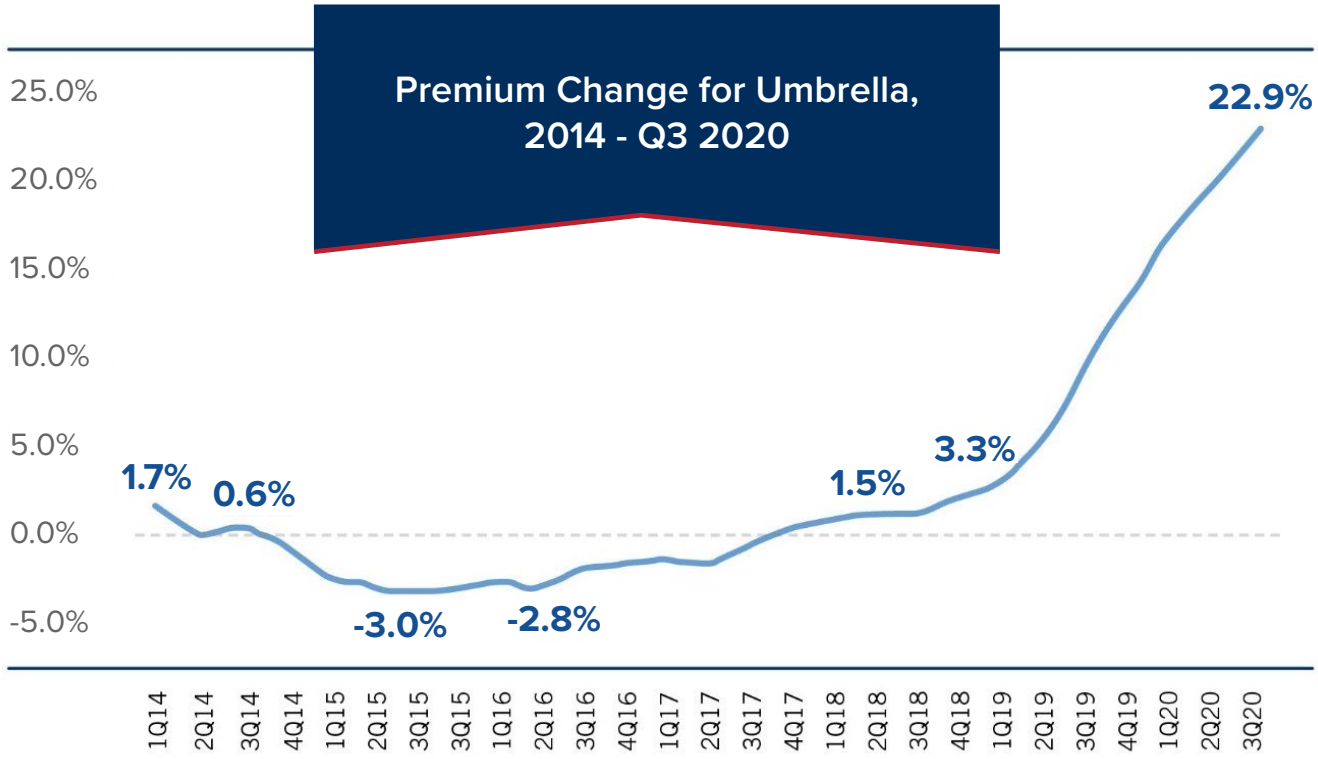
Negligent Entrustment

In minor and major motor vehicle accidents, lawsuits typically seek damages and punitive awards because the organization did not follow its driver and hiring standards by entrusting someone who is reckless or inexperienced. With improved use of technology, there is increasing consideration to implement license monitoring and telematics programs. Maintaining the best employee driver pool and utilizing a preventative safety program are equally important components in risk mitigation efforts.

COVID-19 Impact To Workers' Compensation

Multiple jurisdictions have enacted presumptive workers' compensation coverage for employees, which varies depending on the job classifications for first responders, health care providers, and in some cases, non-essential workers. In the applicable states, presumptions establish rules that employers are to abide by based on the number of COVID-19 cases within a determined time period or at a linked outbreak location. Rebuttal effort actions by employers include implementing clearly documented safety protocols.

As we enter 2021, insurance carriers continue to evaluate the workers' compensation loss trends associated with COVID-19. Early findings show that the average severity of a COVID-19 workers' compensation claim is low. The frequency has increased but is lower than expected during the first eight months. Concern remains over the longer-term impact, including occupational disease/lung damage. In general, workers' compensation rate changes have not significantly changed year-over-year, but rate pressure is expected. Presently workers' compensation rates are averaging about a 1% increase.



Umbrella/Excess

Per the Council of Insurance Agents & Brokers (CIAB), umbrella pricing has increased on average 22.9%, as compared to 3.3% two years ago in the fourth quarter of 2018. Social inflation and nuclear verdicts continue to be cited as contributing factors to umbrella and excess pricing.

Reduced capacity and increased pricing continue to be the trends for businesses of all sizes. Insurance carrier positions on attachment points, rate, and coverage requirements are regularly subject to change by quarter as well as by their risk and industry appetite.

EXECUTIVE LIABILITY

Q1 | 2021

The public Directors and Officers (D&O) market continues to harden, with no end in sight. After many years of competitive pricing, a surge of D&O claims since 2017 has resulted in continued rate increases that are upward of 40% or more. Depending on the business sector, rate increases can be in excess of 100%. In addition, there is continued pressure to reduce limit capacity and increase retentions by most carriers.

Claims related to the pandemic's economic fallout may take several years to play out; however, not all scenarios will take that long. Early action fell on The Cheesecake Factory Incorporated in December when the U.S. Securities and Exchange Commission (SEC) settled charges stating the company made misleading disclosures about the impact of COVID-19. While this is an early example, there is much uncertainty with D&O carriers.

Recent developments also include Nasdaq exploring new requirements for board diversity for companies traded on its exchange. In rules proposed in early December, Nasdaq outlined guidelines for consistent reporting on diversity statistics for board directors. Additionally, these rules covered new proposed requirements for having at least two diverse directors, which it outlined as one who self-identifies as female and one who self-identifies as an underrepresented minority or LGBTQ+. The proposed rules allow flexibility for foreign companies and smaller companies by satisfying this diversity requirement with two female directors.

Similar to the public D&O market, there is heightened underwriting pressure in the private company sector. In addition to limited capacity in some instances and increased retentions, rates have continued to trend upwards. Additionally, the employment practices liability sector is also seeing similar rate pressure and increased retentions, specifically in California and mass class-action suits. #MeToo and Equal Pay Act claims continue to be hot button issues within the EPL marketplace.

There is also more underwriting scrutiny in the fiduciary liability sector. A recent uptick in excessive fee claims against fiduciaries has resulted in underwriters requesting more detailed information and adding higher retentions to compensate for the upward trend. Plan fiduciaries have a duty to ensure plan fees are reasonable. Participants are alleging fiduciaries failed to audit and manage fees accordingly in addition to the plan performing well. Cases can be expensive to defend and settle.

Finally, event-driven litigation remains a concern within the marketplace and reputational risk is emerging as an issue as well.

CYBER LIABILITY

Q1 | 2021

The cyber market has continued to harden, and this trend is likely to continue for the foreseeable future. Most insureds will experience rate increases of 20% to 40%, though certain industries are likely to experience much higher increases, sometimes exceeding 100%. Similarly, buyers lacking certain controls, policies, or procedures will experience higher increases. Buyers with large excess towers may experience changing carrier appetites and increasingly strict standards for excess rates and pricing per million of coverage.

Ransomware, business interruption, social engineering, and invoice manipulation continue to be significant drivers of losses across all industries. Ransomware and the ensuing business interruption continue to impact carrier portfolios significantly. These losses affect both primary insurers as well as reinsurers, with many carriers' reinsurance negotiations involving double-digit rate increases.

Underwriters continue to push for additional information, and most underwriters show a preference for collecting supplemental applications related to ransomware, business interruption, and social engineering. Carriers also continue to supplement manual underwriting with third-party analytics providers that scan applicants' public-facing computer assets. Buyers without robust business continuity planning, incident response planning, who liberally grant local administrative rights, or who lack multi-factor authentication will experience limited appetite and increased pricing and retentions.

Despite the hardening market, very few carriers are narrowing the scope of their coverage. Many carriers have expressed a desire to sub-limit coverage for ransomware and business interruption, although a minority of carriers have attempted to implement this strategy.

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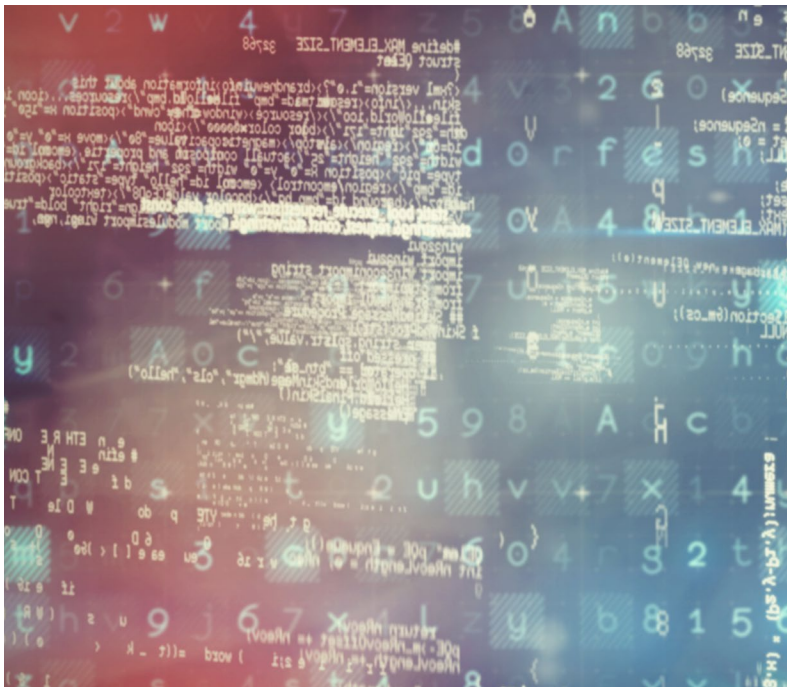

INTERNATIONAL

Q1 | 2021

A majority of U.S. multinational companies continue to see stability for rates in international casualty programs. The main coverages included under the international casualty programs are international liability, international automobile liability, and international voluntary workers' compensation/employer's liability. Global litigation continues to be slower than the U.S., and therefore, rates remain stable due to a competitive marketplace. International casualty remains a profitable underwriting class.

Company size and marketing continue to impact renewal rates. Recent renewals on middle-market multinational casualty programs have experienced flat rates, with some pressure to increase rates depending on the insurer. Larger multinational casualty programs are highly dependent on loss history. Through marketing, insureds can experience flat renewals or rate decreases subject to loss history. Many insurers are opening their capacity for international casualty programs to tougher products and risks than in the past.

Many companies have experienced reductions in revenues during 2020. Insurers have not been reducing premiums in equal proportions to their clients' reductions in revenues. Most insurers have evaluated risks and know the floor of their premium regardless of exposures.

Some insurers continue to incorporate communicable disease exclusions into their policy forms. However, several insurers are taking a measured approach to adding the communicable disease exclusion. Companies with minimal exposures and/or good corporate protocols for managing the communicable disease risk have generally been able to avoid the exclusion. Communicable disease exclusions should be removed whenever possible.

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BROWN & BROWN AND COVID-19

The Brown & Brown team is closely monitoring the outbreak. If you have any questions, please reach out directly to your service team. We're here to help.

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