



# **Midyear Claims Journal and Trend Report**



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A bronze statue of Lady Justice, blindfolded and holding a pair of scales, is the central image. The statue is positioned on the right side, with its left arm raised holding the top of the scales. The scales hang down towards the left. The background is dark and out of focus, showing some architectural lines. The text 'Claims Journal' is written in a white, serif font in the upper left corner.

Claims Journal

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# **Financial Services and Management Liability**

# Financial Institutions

The first half of 2023 saw a significant amount of legal and regulatory action, driven in no small part by the rapid failures of three large regional banks. Even without the quick collapse of Silicon Valley Bank and others, the first half of 2023 was ripe with action as federal and state regulators continued to push stronger regulatory enforcement.

There were also **several notable** cases these first **six months**, including a **\$1B security** class action **settlement**.

We summarize these major legal trends below, while also briefly outlining several issues on the horizon for the back half of this year.

## Silicon Valley Bank Fallout

The legal and regulatory response to the collapse of Silicon Valley Bank (SVB), Signature Bank and First Republic Bank in March was almost immediate. Dozens of lawsuits will play themselves out in the court system over the next several years, and proposed regulatory rulemaking may take equally as long. In the meantime, it is likely that the most immediate impact will be felt through the regulatory supervisory process of various federal and state agencies.

### Class Action Suits Filed

Multiple proposed class action lawsuits were filed almost immediately following the banks' failures. These include suits against bank executives and underwriters. Goldman Sachs, Bank of America and Morgan Stanley were among the underwriters sued in relation to the SVB collapse. Plaintiffs alleged in their complaint that along with SVB executives, the defendants "concealed the magnitude of the risks facing the Company's business model that would result from any decision by the Federal Reserve System raising the federal funds rate." *City of Hialeah Employees' Retirement System v. Becker et al*, Case No. 23-cv-1297 (N.D. Cal. April 7, 2023).

Suits were also filed against auditors, accountants and consultants. In one such suit, Credit Suisse shareholders filed a proposed class action against Credit Suisse executives and the global auditing firm KPMG. The complaint alleges that KPMG and its partners allowed a "common course of misconduct and civil conspiracy" to go unchecked for over a decade at the bank, ultimately leading to Credit Suisse's collapse. The complaint also alleges violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act and breaches of statutory duties. *Stevenson v. Thornburgh et al.*, Case No. 23-cv-04458 (S.D.N.Y. May 28, 2023).

### Regulatory Response

The regulatory response was also immediate, although long-term consequences remain to be seen. Lawmakers and federal regulators questioned how these large regional banks collapsed. In short order, the Federal Reserve, FDIC, New York State Department of Financial Services, and the Government Accountability Office all released reports in late April regarding the failures of SVB and Signature Bank. Congress also responded, raising concerns from the mismanagement of bank executives to questioning why bank customers kept billions in oversized deposits in the banks.

The Swiss government also responded. It ordered Credit Suisse to cut or reduce bonuses for approximately 1,000 senior bankers. This will save up to \$66.3 million, as any outstanding bonuses for the executive board will be cancelled and bonuses for members below executive level will be reduced by half to a quarter.

Back in the US, while any new changes through rulemaking by either lawmakers or banking regulators could potentially take years and face legal challenge, we anticipate that we will continue to see an increase in the regulatory supervisory and enforcement process as well as more scrutiny during routine exams.

## Increased Regulatory Scrutiny

Our belief in further regulatory scrutiny through exams and enforcement process is in line with the approach federal regulatory agencies have taken in the first half of 2023. In notable news, the SEC challenged major crypto players and signaled an escalation of its efforts to rein in the digital asset industry. The Federal Reserve, FDIC and the Office of the Comptroller of the Currency (OCC) released new policies and guidance that hint at stronger bank enforcement actions. And Colorado is attempting a first-in-kind legislation to rein in online banking.

### SEC Challenges Cryptocurrency

In early June, the SEC sued two of the largest crypto companies. On June 5, the SEC brought suit against Binance Holdings Ltd., the world's largest crypto platform, and its founder, Changpeng Zhao. The SEC alleged that Binance had blatantly disregarded federal securities laws and, in doing so, enriched themselves by billions of dollars while placing investors' assets at significant risk. The complaint further stated that the defendants purposefully planned to evade US regulatory oversight. In a related statement, SEC Chairman Gary Gensler stated that "Zhao and Binance entities engaged in an extensive web of deception, conflicts of interest, lack of disclosure and calculated evasion of the law." *SEC v. Binance Holdings Ltd., Case No. 23-cv-1599 (D.D.C. June 5, 2023).*

The following day, the SEC sued Coinbase Inc., the largest crypto exchange in the US, alleging that it operates as an unregistered crypto-asset trading platform. According to the SEC complaint, Coinbase services over 100 million customers and accounts for billions of dollars in daily trading volume in hundreds of crypto assets. The SEC alleged that Coinbase has operated as an unregistered broker, exchange and clearing agency since at least 2019. The complaint further states that:

By collapsing these functions into a single platform and failing to register with the SEC as to any of the three functions, and not having qualified for any applicable exemptions from registration, Coinbase has for years defied the regulatory structures and evaded the disclosure requirements that Congress and the SEC have constructed for the protection of the national securities markets and investors. *SEC v. Coinbase, Case No. 23-cv-4738 (S.D.N.Y. June 6, 2023).*

The SEC also this year has begun labeling dozens of cryptocurrencies as securities in order to bring them under SEC control. It has also warned broker-dealers and investment advisors to use "heightened scrutiny" when advising clients on risky or complex products for clients, including crypto assets, and determining whether they are in the investor's best interest.

Through these escalating actions, the SEC is targeting the digital asset industry. Whether the courts or Congress intervene to enact regulations for these crypto markets will be one of the key events to watch for in the back half of this year.

### Federal Regulators' New Warning and Guidance

Federal banking regulators were also busy this first half of the year. On May 25, the OCC issued a revised version of its manual regarding bank enforcement actions. The policy and procedure manual revisions could be viewed as a potential warning for increasingly severe enforcement measures against banks that exhibit "persistent weaknesses."

The Federal Reserve, FDIC, and OCC also jointly issued a unified set of risk management guidance for third-party bank risks on June 6. Banks have increasingly engaged in third-party relationships related to technology, professional services, and other business and outsourcing relationships in an effort to expand customer offerings. The use of third parties can offer banking organizations significant benefits, such as quicker and more efficient access to technologies, human capital, delivery channels, products, services and markets.

However, as these third-party relationships proliferate, so do the potential risks. These can include operational disruptions, compliance violations, strategic risk, cybersecurity incidents and, potentially, financial losses.

The joint guidance states that banks must **"identify, assess, monitor and control"** these relationships, and sound **third-party risk management** takes into account the level of risk, complexity, and size of the banking organization and the nature of the **third-party relationship**.

The three regulators issued the joint guidance to "promote consistency in supervisory approaches," and it replaces each agency's existing general guidance.

### Colorado Attempts First of Its Kind Bank Legislation

Colorado recently became the first state to opt out of federal banking laws that allow state-chartered banks – mostly online banks and fintech firms – to lend nationally at the maximum interest rates allowed in their home states, regardless of the local usury law limits.

By **opting out** of this federal law, Colorado is attempting to **stop high-cost lending** by out-of-state banks and **force** all banks doing business in Colorado to **abide** by the **Colorado interest rate limits**.

It remains to be seen whether other states will follow and if this new law will withstand legal challenge. Fintech firms and other online banks may also pull out of the state altogether, which would potentially have the opposite effect by decreasing competition for Colorado citizens.

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### Other Notable Litigation From H1

Quickly rounding up several notable pieces of litigation from the first half of this year, we saw a top 20 security class action lawsuit and multiple insurers winning COVID-19 coverage cases.

Wells Fargo recently agreed to pay \$1B to settle a security class action suit that alleged the bank misrepresented its compliance with consent orders issued in 2018 following the fake customer account scandal. The plaintiffs alleged that after the consent orders were issued, the bank and its senior executives misrepresented their compliance and disregarded the consent order requirements. The \$1B settlement ranks in the top 20 largest US security class action settlements. The settlement is in addition to the \$1B fine Wells Fargo paid to federal banking regulators, customer class actions and other shareholder suits. In *Re Wells Fargo & Company Securities Litigation*, Case No. 20-cv-04494 (S.D.N.Y. 2020).

Insurers continue to win COVID-19 coverage cases, and now appeals, as the cases move their way through the appellate system. In one recent illustrative case, the Ninth Circuit agreed with AIG that a contaminant exclusion barred coverage for all claims related to COVID-19. The court found that the spreading of COVID-19 particles, including by expulsion from infected persons, fits squarely within the ordinary plain meaning of “dispersal” of a “virus.” The court

held that the plain language of the exclusion makes clear that coverage is barred if the claimed “loss or damage” has any causal connection to the dispersal of a virus. *TP Racing LLLP v. American Home Assurance Co*, Case No. 21-16910 (9th Cir. June 1, 2023).

In an interesting case regarding the push-pull between advancing technology and financial institutions, a JPMorgan Chase customer sued the bank over a Zelle glitch. Zelle, the digital-payment provider, had a technical issue that resulted in double-debiting from Chase accounts although the recipient only saw a single payment. The named plaintiff did not have enough funds in his Chase account to cover two withdrawals, causing an overdraft of his account.

The issue was fixed within thirty-six hours, but plaintiff still had to pay the overdraft charges. The purported class action complaint alleges that JPMorgan Chase is liable for its failure to implement protocols to detect such technical issues and the bank’s negligence caused the plaintiffs harm. *Stoll v. JPMorgan Chase Bank NA et al.*, Case No. 23-cv-04149 (E.D.N.Y. 2023).

Federal prosecutors recently charged six people in New York with pandemic relief loan fraud related to the Paycheck Protection Program (PPP). In total, the fraudulent PPP applications sought over \$14.7M from various financial institutions. The six defendants allegedly submitted 114 fraudulent PPP applications to various financial institutions, seeking loans for 56 different individuals. Thirty-nine of the applications were approved by the various financial institutions, resulting in disbursements totaling more than \$4.6M. All defendants are charged with conspiracy to commit wire fraud and two were charged with aggravated identity theft. *USA v. Walker*, Case No. 23-mh-04465 (S.D.N.Y. 2023).

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## What We're Watching For the Second Half of 2023

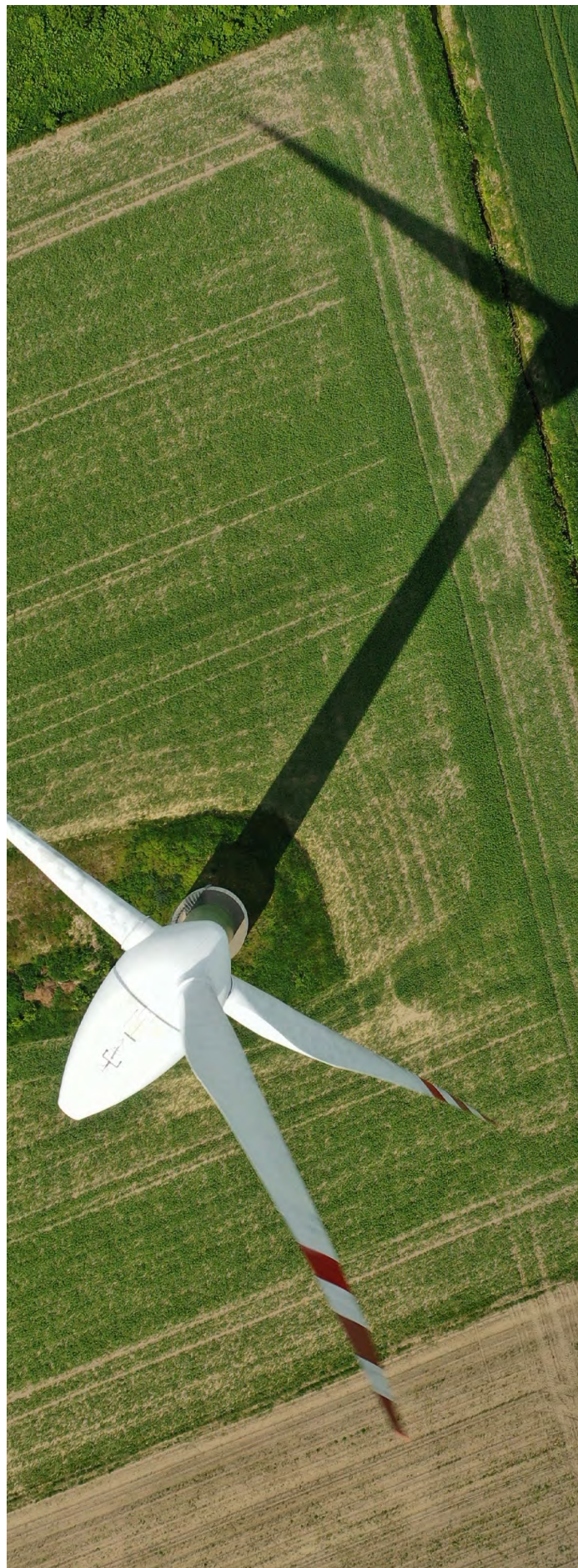
There are several notable cases and regulatory decisions that will likely be issued in the back half of this year. Here are the ones we're most closely watching.

Environmental, social and governance (ESG) is facing some backlash this year as ESG funds fail to produce results similar to their peers. A group of American Airlines employees filed suit against the airline and its investment advisors, alleging that:

Defendants have breached their ERISA fiduciary duties by investing millions of dollars of American Airlines employees' retirement savings with investment managers and investment funds that pursue leftist political agendas through ESG strategies, proxy voting and shareholder activism—activities which fail to satisfy these fiduciaries' statutory duties to maximize financial benefits in the sole interest of the plan participants.

The plan at issue is \$26B with over 100,000 participants. We will be watching this case closely as it questions ESG investments and prudent investing practices using ERISA. *Spence v. American Airlines Inc.*, Case No 4:23-cv-00552 (N.D. Tex 2023).

We will also be closely watching new cybersecurity proposals from the SEC regarding when firms must notify customers of breaches and regarding cybersecurity risk management. The rules will impact nearly every entity the SEC regulates, including investment advisers and funds, broker-dealers, clearing agencies, major security-based swap participants, the municipal securities rulemaking board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers and transfer agents. The SEC received a range of feedback on its cybersecurity proposals at the close of their comment period, ranging from criticism that they are too prescriptive and need further change to support for the rules and calls for tougher provisions.



# Cyber

In mid-June 2023, it was discovered that MOVEit, a well-known and popular secure file transfer system app, had been compromised over the Memorial Day weekend. Evidence suggests that the Russian-based group “ClOp” had discovered a systems vulnerability back in 2021 and had been secretly probing it for almost two years before executing the attack.

ClOp was able to exploit the vulnerability to download data from the app, including the exfiltration of personal identifiable information. Since then, numerous organizations directly impacted by the attack have received ransom demands. The bad actors have demanded their victims either pay the ransom or risk having ClOp publish the data, thus exposing the company for not taking enough care to protect sensitive information. Large companies affected by the incident include Shell Oil, Norton LifeLock, Ernst and Young, British Airways and Aer Lingus. That said, there does not appear to be a pattern of who has been victimized by the attack; if a company used MOVEit (or retained a vendor who used the program), then that sensitive information is vulnerable. Cyber insurance policies may provide coverage for costs incurred in conducting mandatory notifications to affected individuals.

There is a continuing trend that cyber breaches target small businesses. In fact, 46% of breaches affected companies with fewer than 1,000 employees. There are a few reasons for this. First, threat actors realize that unlike larger companies, small businesses are more likely to have little to no security protections, making them easier targets. They have also found that they can make the same amount of money by striking larger numbers of small businesses. Attacks on small

companies are unlikely to garner media attention. And small companies often fail to alert law enforcement, which lessens the possibility the threat actor will be caught.

Unfortunately, smaller businesses are less likely to maintain cyber coverage and less likely to sustain the expenses arising from a significant breach or extortion event. Sadly, many firms will simply go out of business.

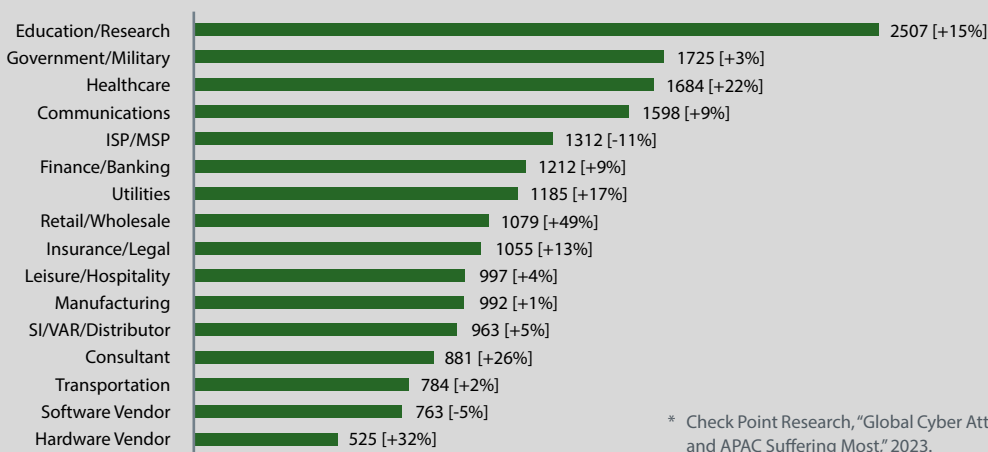
Multifactor authentication (MFA), is generally considered by cyber security experts to be a critical method of protection for businesses. Most cyber insurers refuse to write policies for business clients who fail to confirm they have MFA implemented.

We are now seeing an increase in attackers who are targeting and, in some cases, able to circumvent MFA. One method is to inundate the user with requests for authorization until fatigue sets in and the user approves the request simply to stop the barrage of codes. There are also instances where authentication codes sent by text are intercepted or the user is tricked into providing them via a social engineering scam. Companies should emphasize to their employees the importance of notifying IT security when they receive any suspicious and/or unsolicited messages.

Using an authenticator app loaded onto the user’s cellphone is recommended as an additional layer of protection. Such an app provides a constantly changing set of PINs that the user inputs before access is granted.

## Cyber Claims on the Rise in 2023\*

Global Average Weekly Cyber Attacks Per Industry (2022 Q1 Compared to 2023 Q1)



\* Check Point Research, “Global Cyber Attacks Continue to Rise with Africa and APAC Suffering Most,” 2023.

# Directors and Officers

## ESG at the Forefront of Corporate Litigation in 2023

Environmental, social and governance (ESG) has been a hot topic in the financial and business sectors in 2023. Companies have had to answer for pursuing such endeavors or been called to task for not properly executing them.

A California federal court held that a California statute requiring California-based corporations to have a minimum number of directors from designated under-represented groups violates the US Constitution's equal protection clause (*Alliance for Fair Board Recruitment, Plaintiff, v. Shirley N. Weber, in her official capacity as Secretary of State of the State of California, 2:21-cv-01951-JAM-AC (E.D. Cal. May. 16, 2023)*). The California Assembly Bill 979, signed into law in 2020, required public companies headquartered in California to have a minimum number of directors from designated groups that the legislature viewed as historically under represented. The number of directors required depended on the size of the corporation. Legislative and rule-based efforts to diversify corporate boards are not the only initiatives in that area. Internal and external pressures from shareholders, proxy advisors, investment banks, and other organizations and stakeholders have also sought to achieve that goal. Some institutional investors have pushed for board diversity, and some financial organizations have expressed reluctance to finance corporations that do not have sufficiently diverse boards. In addition, legal and business academics have noted the importance of board diversity as a way to improve corporate governance.

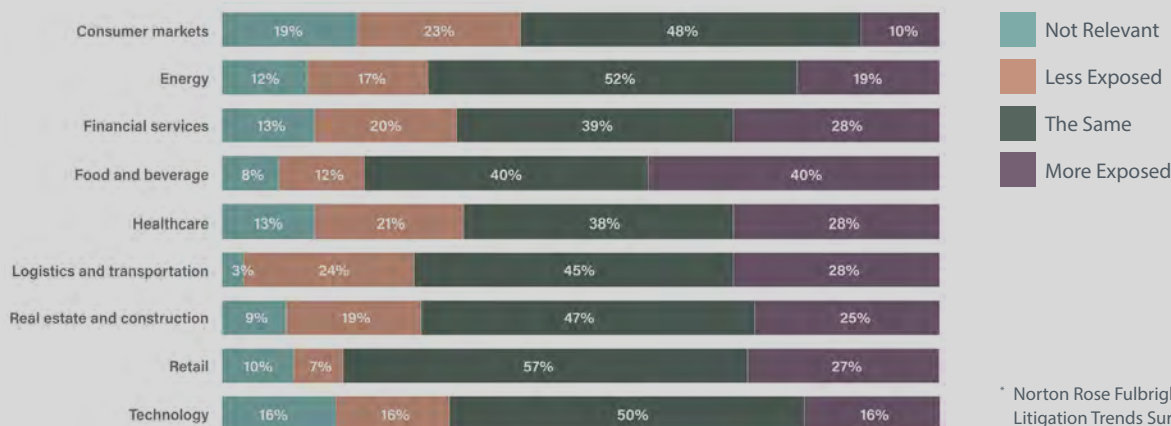
The California decision, which has since been appealed, is one of the latest developments arising from ESG-related endeavors, and despite the resistance the efforts have faced, we expect attention on board diversity will continue.

Over the past couple of years we have also seen businesses publicly tout that they were making progress on ESG goals. Recently, however, there has been a backlash against those that advance ESG. There have been a number of challenges to ESG requirements and endeavors, which have led companies to lower the volume on their ESG initiatives. This is now known as “greenhushing.”

Companies are concerned about trying to stay out of the ESG spotlight to avoid the publicity and scrutiny that may follow. This year, two major airlines were hit with ESG backlash lawsuits. In June 2023, an American Airlines pilot filed an ERISA class action (*Bryan Spence, et al v. American Airlines, Inc., et al, No. 4:2023cv00552 (N.D. Tex filed 6/2/2023)*). The lawsuit asserts that the defendants breached their fiduciary duties in violation of ERISA by investing millions of dollars of American Airlines employees’ retirement savings with investment managers and investment funds that pursue leftist political agendas through ESG strategies, proxy voting and shareholder activism—activities which fail to satisfy the fiduciaries’ statutory duties to maximize financial benefits in the sole interest of the plan participants.

Delta Airlines was hit with a purported class action lawsuit by a California resident who asserted that its claims of carbon neutrality are false and misleading. The suit is what’s known as a “greenwashing” lawsuit (*Mayanna Berrin, et al v. Delta Air Lines Inc., No. 2:2023cv04150 (N.D. CA filed 5/30/2023)*).

### Change in ESG Dispute Exposure Over the Next 12 Months\*



# Employment Practices Liability

The first half of 2023 saw continued expansion of pay equality, with the ongoing focus on pay transparency laws. Pay transparency laws have gained popularity over the last two years, beginning with Colorado’s Equal Pay Act in 2019.<sup>1</sup> Since then, a number of other states and cities have enacted similar iterations of Colorado’s act. California, Washington and Rhode Island all had laws that went into effect on January 1, 2023, with New York’s law going into effect in September 2023. The common theme is that employers are now required to list salary ranges on job postings and/or provide pay ranges to job applicants upon request. This will likely be a continuing trend for the second half of 2023. The map below shows which states have passed a version of pay transparency protections.<sup>2</sup>

Artificial intelligence (AI) is an ongoing hot topic, especially in the wake of generative AI systems such as ChatGPT, a natural-

language processing tool that uses AI technology to allow users to have human-like conversations with the chatbot. Since its launch, it has become one of the fastest-growing phenomena in modern technological advancements, and the chatbot’s use is becoming more widespread. Among people at work, 41% said they use the AI site to generate ideas and 20% use it to create content.<sup>3</sup> Its growth has sparked debates regarding the appropriate use in the business context and potential legal implications.

In the same vein, there is an increased awareness of the use of AI in human resources decision-making and the potential for discrimination and harassment, prompting the Equal Employment Opportunity Commission to release a technical guide, Assessing Adverse Impact on Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964.<sup>4</sup>



<sup>1</sup> States are leading the legal charge on the equal pay front. We are tracking the states that have pending legislation that would enhance equal pay protections in the state. We have also categorized the existing laws to help employers navigate their equal pay obligations. New York and California have recently enacted significant overhauls to equal pay legislation markedly increasing statutory protections. Seven states have incorporated some elements of major equal pay protections, such as statutorily changing what constitutes a “comparator group” or weakening employers defenses. Finally, twenty-seven states have enacted legislation with minor modifications to existing equal pay protections.

The Sixth Circuit Court of Appeals adopted a new standard required for a district court to facilitate notice of a Fair Labor Standards Act (FLSA) collective action to employees who were not originally parties to a suit. In *Brooke Clark, et al v. A&L Homecare and Training Center, LLC, et al*, the court rejected two long-standing approaches, *Lusardi* and *Swales*, and imposed a tougher standard: the preliminary injunction standard. The Sixth Circuit held that “for a district court to facilitate notice of an FLSA suit to other employees, the plaintiffs must show a ‘strong likelihood’ that those employees are similarly situated to the plaintiffs themselves.”

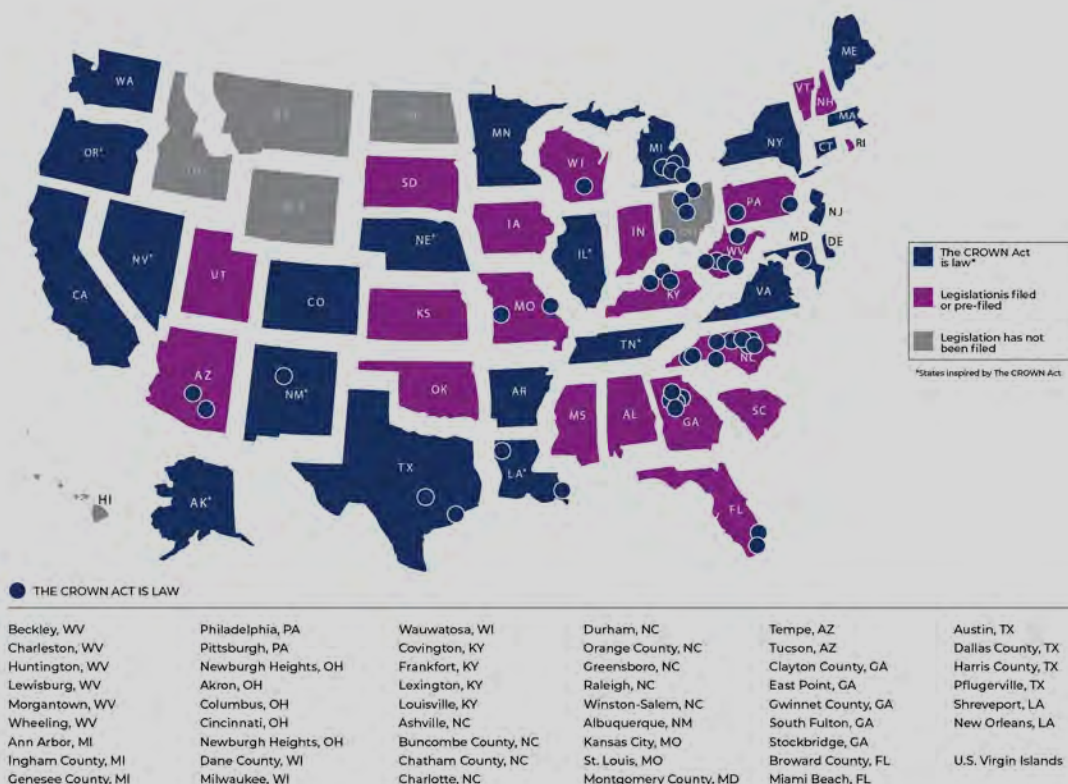
In the wake of the *Dobbs* decision, there has been an uptick in legislation regarding reproductive health, including coverage for abortions, contraceptives and infertility treatment.

California, New York and Rhode Island have expanded leave requirements, including paid family and bereavement leave.

Policies against hair discrimination are receiving federal support. On March 18, 2023, the House passed the Creating a Respectful and Open World for Natural Hair Act (or CROWN Act) which protects individuals from discrimination over natural and protective hairstyles. The bill is currently before the Senate. To date, 22 states have signed the CROWN Act.<sup>5</sup>

Below is a map of the states that have passed the CROWN Act to date.<sup>6</sup>

- <sup>1</sup> Equal Pay For Equal Work Act | Colorado General Assembly
- <sup>2</sup> Updated Maps: States With Equal Pay Protections and Pending Equal Pay Legislation | Equal Pay Pulse (orrick.com)
- <sup>3</sup> How ChatGPT Is Catching On in America | WordFinder® (yourdictionary.com)
- <sup>4</sup> Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964 | U.S. Equal Employment Opportunity Commission (eoc.gov)
- <sup>5</sup> About — The Official CROWN Act (thecrownact.com)
- <sup>6</sup> Ibid



# Significant Coverage Litigation Decisions

According to the Rhode Island Supreme Court, context matters when reviewing policy language to determine coverage, especially policy exclusions (*Regan Heating & Air Conditioning v. Arbellia Protection Insurance Co.*, No. 2020-170-Appeal). In the case at issue, the insured accidentally caused 170 gallons of home heating oil to leak into its customer's basement, resulting in property damage. The insurance company denied the claim based on a pollution exclusion, and the insured sued for coverage.

In ruling in **favor** of the insured, the **court found** that while a substance such as heating oil **might be considered** a **pollutant** in one context, the fact that it is involved in a loss **does not** make it pollution.

The court determined that the insured could reasonably expect that such a loss as oil spilling into a customer's basement would be covered under its policy. Conversely, heating oil spilling into the ground would more likely be considered pollution. Ultimately, the context mattered.

In *BrightView Enterprise Solutions, LLC v. Farm Family Casualty Insurance Company*, No. 20cv7915 (EP) (AME), 2023 U.S. Dist. LEXIS 20764 (D.N.J. Feb. 7, 2023), the court ruled an insurance company's decision not to settle was unreasonable, and they may still be liable for bad faith even if the policyholder prevails at trial. The litigation involved three entities, all insured under the same policy. An employee of the company they were performing work for was injured and sued the three companies. The insurer initially agreed to defend and provide coverage for all three defendants up to its \$1M policy limit.

Prior to trial, the insurer offered only a fraction of the amount that was communicated to the policyholders and insurer on what it would take to settle the matter. Two of the insureds, after demanding the insurer settle the matter within policy limits, wound up settling out of court and reserved rights to seek recovery from the insurer. The remaining policyholder

was successful at trial in defeating the claim. Afterwards, the additional insureds filed a lawsuit against the insurer, asserting a bad faith breach of contract claim and seeking to recoup the settlement payment, among other damages. The insurer moved for summary judgment, arguing that there was no genuine dispute of material fact that they negotiated in good faith. The court disagreed, finding that the insurer's evaluation and negotiations were cursory and conducted without taking into account all the information at hand and, as such, those negotiations were in bad faith.

The Seventh Circuit upheld a lower court ruling that an insurance company was obligated to defend its insured against allegations that it violated the Illinois Biometric Information Privacy Act (BIPA), finding that the policy's broad catchall coverage exclusion provision is too ambiguous to be enforceable (*Citizens Insurance Co. of America v. Wynndalco Enterprises LLC et al.*, case number 22-2313, in the U.S. Court of Appeals for the Seventh Circuit).

The plaintiffs alleged the insured served as a vendor for artificial intelligence company Clearview AI to sell its database of more than 3 billion facial scans collected from social media in violation of BIPA. The insurance company denied coverage, relying on an exclusion in the policy that precluded coverage for violations of the Telephone Consumer Protection Act, the CAN-SPAM Act, the Fair Credit Reporting Act, and the Fair and Accurate Credit Transaction Act. They also relied on a catchall provision in the policy that read "any other laws, statutes, ordinances, or regulations, that address, prohibit or limit the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information."

The Seventh Circuit agreed with the lower court that, on its face, the catchall provision is "intractably ambiguous." The court further rejected the argument that the language encompassed statutes like BIPA, stating that it did not find that the aim of the exclusion was to not cover privacy claims.

A federal court rejected an insurance company's late notice defense, despite the policyholder's admissions the claim notice was not timely, because the insurance company failed to explicitly deny coverage on that ground (*Mave Hotel Investors LLC v. Certain Underwriters at Lloyd's London No. 21-cv-08743 (JSR)*, 2023 U.S. Dist. LEXIS 62718 (S.D.N.Y. Apr. 10, 2023)).

The dispute arose from a claim under a property policy for damage to hotel rooms. The insurer issued its final coverage position, denying coverage based on a wear-and-tear exclusion. Within the letter there was a general reservation of rights under the policy and at law to raise additional defenses as bars to coverage. In the subsequent coverage litigation that followed, the insurer filed a motion for summary judgment and included an argument that there should be coverage due to late notice. Countering their argument, the policyholder argued that the insurer had waived its right to raise late notice as a defense, as they had not cited such in their declination letter.

The court agreed that the insurer had waived its late notice defense by denying coverage on the basis of wear-and-tear but not late-notice. The court reasoned that at the time the final declination letter had been issued, the insurer had all the information they would have needed to be able to raise the notice issue and failed to do so.

# Specialty Spotlight

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## Construction

*Primary Casualty, Excess Casualty, Builders Risk, Surety, Subcontractor Default Insurance, Construction Professional, Wrap-ups (OCIP and CCIP)*



## Construction – H1 2023 Summary

The construction insurance and surety market continues to see exacerbation of existing challenges during the first half of 2023 while seeing the emergence of new challenges on the horizon. While these challenges remain, we see differentiated forms of capacity on the horizon.

- Similar to other industries and product lines, combined ratios are pushing underwriters to heavily scrutinize submissions, and there is increased competition between markets for best-in-class risk. It is more important than ever to ensure that all submissions are thorough, well-presented and timely. Carriers enhanced reviews are lengthening the entire project underwriting process.
- Construction projects have had exceedingly challenging times meeting project schedules due to supply chain disruptions and chronic labor shortages. Project policies underwritten as far back as 2019 are expiring, and clients are asking for lengthy and sometimes multiple extensions. Underwriters are becoming increasingly resistant to these extensions and sometimes replacement capacity may be required. It is important to get ahead of these extensions and prepare the owner for sticker shock when the premiums are quoted.
- Residential and wood-framed construction (for sale or rental) continues to be a significant challenge and still mostly an excess and surplus market play across property and casualty coverage lines. Colorado, Florida, California and New York continue to be especially challenging with a limited number of carriers open to writing the risk.
- Labor shortages in the construction industry are becoming an insurance concern. In 2022 the industry averaged 390,000 job openings per month, and it is estimated they need an additional 543,000 workers on top of normal hiring in 2023. This, coupled with an aging of the construction labor force — 20% of the labor force is age 55 and above — is putting pressure on the industry to hire new workers and get more people interested in the field. As noted above, this intersects with the insurance industry in project delays, but also in terms of workplace injuries. According to Travelers 2022 Injury Impact Report, employees in their first year of work account for 33% of all injuries. As the construction industry works to find new workers, it is important for carriers and the construction trades to work together to enhance safety through education and technology-based monitoring and wearables.

### Liability (Primary Casualty and Excess)

- The insurance marketplace through the first half of 2023 has unfolded as expected, with some stabilization of general liability rate increases coupled with workers' compensation rate decreases in 75% of the states. For the broader market, Fitch is projecting a combined ratio for 2023 of 100.4%, which is an improvement over the 102.5% rate in 2022. Unlike the construction and real estate industries, the raising Fed rate can benefit insurance companies by increasing yield on their bond portfolios and helping to offset combined ratios that exceed 100%. Unfortunately, those impacts will not be seen in the near term due to the longer-term horizon of the investments. Barring any exigent major loss events or unexpected US or global financial turmoil, we anticipate the continued stabilization of pricing for project risk over the next 12 months.
- Since 2020, carriers have voluntarily removed \$500M of excess capacity from the market. There have been new entrants to the market, and London and Bermuda are becoming more attractive and willing to attach at lower points to help fill in the gaps. However, for the near future we will be using up to twice the number of carriers to build out an excess tower as we did prior to 2020.
- Casualty product lines rate changes have varied considerably, with liability rates moderating from prior years to flat to 10%, auto rates generally increasing at 5% and workers' compensation seeing mostly flat renewals. Excess liability increases have moderated, but we continue to experience high volatility for clients exposed to states prone to nuclear verdicts.

### Builders risk

- The builders risk market continues to experience tremendous volatility for catastrophe-prone areas, with rate increases ranging from 5% – 40% or more on CAT-exposed areas. Given carrier appetites for diversification, we experienced a continued trend of layered programs for CAT exposure in H1 2023.

### Surety

- Surety pricing has largely remained static throughout the first half of 2023. Capacity remains abundant, but we do see a major focus on project bidding discipline given the volatile macroenvironment for construction companies.

### Subcontractor Default Insurance

- The market for subcontractor default insurance (SDI) remained largely flat throughout the first half of the year. Terms and capacity are stable.

We do see inflation having an impact on the claims cost escalation and will continue to monitor this trend throughout the second half of 2023.

### Professional Liability

- Project-specific construction professional liability for architects and engineers (A&E) remains one of the most difficult lines of insurance to place for the construction sector. Master program capacity remains available; however, underwriters continue to have a disciplined focus on evaluating design-build and other alternative delivery method exposures for both contractors and A&E firms. Clients are experiencing flat to 10% pricing increases.

### Wrap-ups

The project insurance sector is driven by the commercial real estate sector and the broader construction market; the better they perform, the more opportunities for our services.

The years of low interest rates were a boon to developers, but now they must adjust their deals to account for the higher lending rates. A project pro forma that penciled out great returns in early 2022 may no longer be workable in 2023. This has forced developers to reevaluate the size and scope of a project along with timing/scheduling and design considerations. These pressures are worsened by building component cost inflation and supply chain challenges. Some material lead times have doubled since before the pandemic. Accordingly, there is a concerted effort by owners and general contractors, who are also under pressure to maintain their fees, to aggressively pursue value engineering to reduce project costs.

The largest ongoing challenge to the real estate industry is the commercial office space apocalypse. COVID-19 pandemic accommodations shifted the standard of five days a week in the office to none or just a few days a week. Many are still working from home, and the office occupancy rates nationally have dropped from 97% to 47%. Class A office space in the most desirable locations has been more resilient, but reduced leasing places owners/developers in an exceedingly difficult financial position.

- The value of office space has dropped 25% since just last year, and 40% compared to pre-pandemic values.
- One of the largest public real estate companies in the world defaulted on two mortgages (\$784M) in Los Angeles and on a dozen properties around Washington, DC, in 2023. They handed the keys to the bank rather than attempt to refinance or otherwise resolve the default.

- Another major global developer defaulted on \$1.7B in mortgages on a portfolio of seven buildings in major cities across the United States in February 2023.
- Commercial real estate owners are facing repayment of \$1.5T in debt before the end of 2025. With property values down as much as 40% and a tightening of credit, there could be significant headwinds for property owners in the coming years.

While there have been commercial real estate and interest rate challenges, contractors have strong backlogs, and other sectors are bridging the challenges posed by office building decline. The decline for commercial real estate has been paralleled by increase in demand for residential properties. Demand for single-family homes still exceeds supply, despite rising mortgage interest rates, and home prices have seen a corresponding increase in value. Residential builders are flush with work and only hampered by an industrywide shortage of skilled labor. Cities with vacant office space are looking to rezone to allow conversion of vacant office space into residential buildings. These are complicated projects, but with support of local governments on zoning there should be a move upward in this type of conversion. California and New York have taken the extra step of issuing residential conversion grants to make the projects more attractive from a financial perspective.

The Infrastructure Investment Act has funded \$220B of infrastructure work to date and is authorized to fund \$1.5T through its five-year term. Though smaller, the CHIPS Act will support construction of US chip foundries and research and development facilities. So, despite the commercial real estate challenges, construction starts will be level with those in 2022, with spending also flat when adjusted for inflation – overall, a level outlook.

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## Construction – H2 2023 Outlook

Given interest rate increases, economic uncertainty and looming belt-tightening in commercial construction, we expect growth in the construction sector to be focused on supporting the energy transition, addressing the housing crisis through multifamily development, harnessing infrastructure funding and bolstering onshore manufacturing capacity (given the rise of geopolitical tensions).

Construction spending in many of these instances continues to remain focused in jurisdictions prone to high liability costs like New York, California, Texas, Colorado or states subject to high CAT exposure (flood, windstorm and wildfire).

With these considerations on the **horizon through year-end** and beyond, we expect a **continued focus** on underwriting discipline **across all product lines.**

While interest rate raises give the insurers some additional flexibility in underwriting performance in theory, the shear volatility of underwriting losses due to nuclear verdicts and catastrophe events leaves little room for error.

### **Builders risk**

Given property treaty renewals on June 1, we anticipate significant upward pressure on builders risk pricing and deductibles for Gulf Coast coastal construction projects. We also continue to see lower CAT limits being deployed, so insureds can anticipate layered programs with CAT rates increasing 20% – 100% in some instances.

### **Casualty**

Outside of nuclear verdicts, we see continued stability in most casualty markets, whether for corporate programs or projects specific, as rate escalation has moderated from what we have seen over the past few years. Those with heavy investments in risk controls are seeing benefits in their results. Given current trends, we anticipate flat to 10% increases on the horizon.

### **Surety**

Surety pricing has largely remained static throughout the first half of 2023. Capacity remains abundant, but we do see a major focus on project bidding discipline considering the volatile macroenvironment for construction companies.

### **Subcontractor Default Insurance**

The market for SDI will remain largely flat throughout the second half of the year. We are, however, on the lookout for what is anticipated to be an active default season, given the tightened credit cycle we are entering.

### **Construction Professional Liability**

We anticipate continued deterioration of market capacity for project-specific AE, given continued claims in this area performed well over 100%. Not uncommon to see rate online of 70% – 80% in some instances for design-build infrastructure projects.

We also anticipate that the following trends will be of increasing importance throughout the remainder of the year and beyond:

- **Technology:** We've continued to see the emergence of retail and wholesale insurers as well as MGAs looking to redefine their underwriting approach while providing

rate and/or deductible credit for a client's optimized use of project management or built-environment technology. We fully anticipate this trend to continue.

- **Data and Analytics:** Insureds with robust data, both claims and legacy exposure data, are best positioned to articulate lessons learned and to drive an optimized path forward.
- **Risk Financing:** With the cost of risk continuing to escalate, we continue to see the use of self-financing vehicles play a more prominent role not only in corporate renewal programs but also for adoption and application for project-specific vehicles.
- **Emergence of MGAs and Facilities:** The construction industry continues to see a proliferation of MGAs for a variety of product lines. We expect this trend to continue given the industries reliance on wholesale markets and difficult-to-place classes of business.

### **Wrap-ups**












There have been continued challenges in 2023 and additional developments which will have an impact on the project insurance marketplace moving forward.

- Nuclear verdicts continue to grow in magnitude and frequency. In April, one of the largest US apartment builders/developers/managers was hit with an \$860M verdict for a crane collapse in 2019 that resulted in a fatality and other injuries. Verdicts such as these, combined with medical inflation and normal inflation, are putting pressure on insurance carriers to continue rate increases.
- Florida continues to be one of the worst areas from an insurance litigation point of view. In a 10-year period, insurance companies paid \$51B in judgements, with 71% of that going to attorney fees and public adjustors (according to the Florida Office of Insurance Regulation). Fortunately, the Legislature recognized the challenges and recently passed legislation aimed at rectifying some of the issues.
  - The statute of repose was shortened from 10 years to 7 years.
  - Florida is now a comparative negligence state, so if you are 50% at fault you lose our ability in most situations to sue.

## Primary Casualty (WC, GL, Auto)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	General liability (GL) policies witnessed rate increases in the 5% range. Workers' compensation (WC) witnessed mostly flat renewals, with some rate reductions for policies with loss-sensitive structures, while auto liability rate moderation continued with rate targets at 5% – 6% increases. Loss experience will drive these rate increases up an additional 5% – 10% or more, depending on frequency and severity.	 0% to 15%+	Markets may seek rate across all profit centers to recoup some of the CAT-exposed property losses caused by Hurricane Ian. Certain markets were impacted worse than others. Expect loss pressures and hard market to continue due to inflation, supply chain and geopolitical risk.
 <b>Limits</b>		Limit deployment strategies remained constant throughout the quarter. Markets weaponizing lead umbrellas to win business that is highly sought after. Look to our 2023 forecast for more on what to expect from the excess markets in 2023.		Limits on the primary lines will remain consistent year over year. Most markets have implemented lower limit position strategies over the past 48 to 60 months. \$3M+ per occurrence limits in primary GL, are only offered on large retention programs or fully fronted programs where the retentions equal the limits. Most GL programs are designed with \$1M/2M or \$2M/4M primary layers.
 <b>Retentions</b>		Retention targets remained static on most programs. Carriers may offer minor rate reductions for larger retentions, especially for WC program.		Firms with adverse loss history may want to explore increased retentions to manage insurance costs, but large savings should not be expected unless retentions of \$150,000+ are implemented.
 <b>Coverage</b>		No major coverage changes in Q2. New York contractors continue to struggle with New York labor law claims. Wildfire exclusions and overall CAT peril exclusions are finding their way into renewals. Communicable disease exclusions should be reviewed and expected.		We continue to monitor coverage as markets absorb the large losses witnessed in the property lines. Indications lead us to believe no major changes will occur, but coverage is something that can change quickly, and minor changes can create major impact.
 <b>Carrier</b>		Q2 was stable, with ample market participation in all primary lines, with monoline auto liability being the only tough placement.		Policy holder surplus at end of Q4 2021 stood at \$1.053B, an all-time high. Insurance market continues to be healthy in Q2 2023 despite increased CAT activity. There are markets entering the primary space that are introducing technology-influenced pricing, which has been discussed but never realized. The pricing impacts of technology utilization is yet to be confirmed.
 <b>Claims</b>		The widespread labor shortages engulfing the construction industry, along with surging demand, have compelled contractors to resort to a younger, less experienced workforce. This shift is closely associated with an uptick in the frequency and severity of GL and WC claims. Moreover, the upward trajectory of payrolls within the industry due to inflation is escalating overall risk exposure, thereby leading to a consequential swell in WC premiums.		Firms that are focusing on safety, loss control, data analytics and construction technology should see a decrease in claim frequency and severity. By taking efforts designed to mitigate the total cost of risk, firms will put themselves in the best position to receive preferential program pricing.








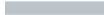




## Excess Casualty

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 15%	Excess underwriters continue to seek rate. There has been a slight change in that flat renewals are attainable on best-in-class risk. Marketing lead umbrella is recommended; excess tower typically follows lead strategy.	 0% to 15%	Forecasting small underwriting profit for 2022-2024, but inflation and geopolitical risk put pressure on excess capacity. The excess market continues to drive renewal rate increases. Average YOY rate increase for umbrella excess was roughly 7% entering Q4 of 2022. Nuclear verdicts and large losses in adjacent lines like property will continue to impact excess pricing throughout 2023.
 <b>Limits</b>		No major changes in Q2. There is increasing rhetoric that insurers are looking to reduce limits deployed or continue under a ventilated structure as a result of a rise in social inflation.		If markets transition to book underwriting to increase rate across product lines to recover for losses in the property line, limits will be one area they can manipulate risk profiles. We will be monitoring this closely as we enter Q3. Markets looking for rate may increase layer limit targets.
 <b>Retentions</b>		Continued pressure on increasing primary GL and auto liability retentions. Excess markets are looking for higher attachment points.		To try to increase premium dollars, some markets are using their total capacity in ventilated layers, expanding their layer limit deployment at higher attachment points. This trend is expected to continue.
 <b>Coverage</b>		Coverage remained constant throughout the quarter. Some carriers are switching from traditional A/B forms which limits follow-form coverage. It is important to review renewal forms and highlight potential changes.		No coverage changes expected. However, we will be monitoring this closely as reinsurance treaties have the potential to tighten terms and conditions.
 <b>Carrier</b>		Capacity and overall participation remained robust. Carriers are starting to exit unsupported umbrella excess programs.		We continue to monitor the alternative investment opportunities for capital. As interest rates rise, the risk-adjusted rate of return on alternative investments may become a factor that leads to a contraction of capacity.
 <b>Claims</b>		Nuclear verdicts, like the recent Texas jury award of \$860M in the Greystar case, continue to pierce excess and umbrella layers, thereby dramatically impacting rate pricing.		The rise in nuclear verdict values is projected to have a profound impact on the construction industry. This trend, rooted in the societal shift towards sympathy for plaintiffs and against corporations, stands to significantly inflate the cost of excess insurance. Consequently, construction companies will need to reassess their risk management strategies and insurance coverage plans.

## Builders risk

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10% (CAT 5% to 40%)	Wood-frame and CAT-exposed property continued to be very tough placements. A challenging winter season for areas not prone to winter conditions continues to strain construction property risks. Pricing on extensions continue to escalate. Pricing on non-CAT conventional construction-type exposures remained static.	 0% to 15%+	Pricing targets for CAT-exposed risks will drive the rate conversation throughout 2023. Fire-resistive non-CAT risks will see more competitive pricings as markets compete for these projects. Property markets will look to recoup their Q4 2022 and Q1 2023 losses by book underwriting, driving rate across all CAT-exposed property placements.
 <b>Limits</b>		Layer limits and deployment strategies remained constant. Saw continued restriction to all renovations.		Markets will look to adjust their exposure, especially on CAT risks. The effect on non-CAT-exposed risk is harder to predict. Structural and wood-frame renovations will continue to be difficult, with a strong focus on tech-based water flow and mitigation systems to procure coverage.
 <b>Retentions</b>		Attachment points are under pressure. CAT-peril and water-damage deductibles became more of a talking point in 2022 and continues in 2023.		With major storms making landfall in the continental US in five of the last six years and three to four major storms forecasted for 2023, CAT deductibles and program structures will continue to be volatile. Increases in value-at-risk-at-time-of-loss deductibles will be on the horizon as a result. Underwriters requesting an increase in water damage retentions will also be seen, however, tech-focused carriers are beginning to offer retention reductions with implementation of water flow detection.
 <b>Coverage</b>		Coverage remained consistent. Protective safeguards required to obtain coverage continued to take a predominant role in the underwriting process.		Markets that experienced large CAT losses throughout 2022 will continue to look to adjust their exposure profiles by contracting coverage. We expect this to be the case in CAT-exposed property and will monitor the non-CAT-exposed market throughout 2023. Protective safeguards are transitioning to policy warranties and can lead to restriction of coverage.
 <b>Carrier</b>		Builders risk market participants remained static. Markets continued to expand the implementation of technology utilization into their underwriting. Technology-influenced pricing, where packaged technology bundles and coverage were sold with the purpose of driving premium reductions, is an emerging product.		The slow development of property treaties has left the market in question. Standard market participants are less volatile, while the excess and surplus market may experience a more significant capacity change. Markets utilizing technology to influence pricing will expand. Markets have little capacity available for structural and wood-frame renovation projects.
 <b>Claims</b>		Fire and water losses continue to lead builders risk exposures from a frequency and severity perspective. Continued supply chain and labor shortage issues have caused an increased claims exposure with extended project delays and larger business interruption claims.		The escalating frequency and intensity of natural catastrophes are a paramount concern in the 2023 construction sector outlook. The continued utilization of risk registers, weather contingency plans, and technology are becoming the standard loss-control measures as markets look to contain builders risk perils.

# Surety

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 5%	Pricing targets remained static through H1 2023.	 0% to 5%	Pricing expectations are for the current rates to continue throughout 2023. Factors that may influence pricing towards the end of the year are tied to inflationary pressure, supply chain issues and the shortage of labor (low and high skill). As backlogs continue to grow, these factors become more taxing on balance sheets. Recent bank defaults will also place a greater strain on credit markets, which is likely to result in rate increases.
 <b>Capacity</b>		Capacity was abundant throughout the quarter.		Capacity may be constrained as a result of a looming liquidity crunch. Large contractors with strong balance sheets are positioned to leverage their financial strength, translating into opportunities.
 <b>Carrier</b>		The surety market remained well supported by major carriers. The top 25 – 50 regional and national surety carriers continued to drive growth and profitability in the post-pandemic environment, with underwriting terms, conditions and pricing metrics remaining stable across the spectrum of construction classes.		The surety market will continue to be supported by a vast number of participants, and carriers will continue to apply consistency to their various underwriting appetites throughout the next 12 months.
 <b>Claims</b>		H1 surety claim activity has been consistent, with similar frequency experienced throughout the country. However, the average claim amount has risen due to larger and more complex projects being undertaken.		Material cost escalation, inflation and labor shortages are impacting the frequency and severity of claims. These factors seem poised to persist and influence claim patterns throughout the remainder of 2023.











## Subcontractor Default Insurance

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0%	Pricing remained consistent based on risk profile. First-time buyers are looking at rates on par to slightly higher than buyers with existing programs and clean loss history.	 0%	The SDI market will continue to be supported by multiple carriers with abundant capacity. Rates will remain competitive on new business and renewals.
 <b>Limits</b>		Limits of \$25M – \$50M per loss remain available from multiple markets. Limits down to \$5M make sense in scenarios where jobs are bought out at smaller contract values per scope. Program structure should be designed to address the average contract value, and ulterior risk management tools (bonding, etc.) can be utilized to manage outliers as they arise.		Capacity in the market remains strong, with several markets actively writing SDI. This will continue unless there is a major event that leads to a market shift. SDI continues to migrate into the middle market of construction.
 <b>Retentions</b>		Retentions and copayment targets remained static.		We don't anticipate any major changes in retention or copayment strategies.
 <b>Coverage</b>		Coverage remained consistent.		As market participation continues to expand, preferential terms and conditions may become available.
 <b>Carrier</b>		The markets offering subcontractor default insurance (SDI) coverage remained the same.		Additional entrants to the space are anticipated to come online in the latter half of 2023. Currently six carriers in North American market.
 <b>Claims</b>		Claim activity remained static on the frequency side but had a slight uptick in severity as inflationary pressures influenced valuations. Supply chain delays and raw material cost escalations were the key contributing factors.		Claim severity will continue to creep up as inflationary pressure remains and increased labor costs factor in. We see increased labor costs affecting the market throughout 2023 and into early 2024.

## Construction Professional

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	Design-build delivery, large firm architects and engineers (A&E), and project-specific A&E experienced continued tightening pricing conditions in H1 2023.	 0% to 10%	Pricing target expectations for construction professional coverage will remain static. Firms with design-build and multifamily residential exposures will see the higher end of the price increase ranges over the next 12 months.
 <b>Limits</b>		Available capacity remained constant on master program placements and project-specific placements. Continued to see challenged capacity conditions in the project A&E market, allowing for the proliferation of alternative risk financing mechanisms.		Master program placements will continue to have abundant limit/capacity. With new market entrants, there will be sufficient capacity to meet the needs of project-specific placements through 2023, although markets may use lower capacity offering for large infrastructure and multifamily residential projects as a way to control risk in their portfolios.
 <b>Retentions</b>		Retention structures were largely unchanged.		Project-specific buyers will need to continue to retain more risk to access higher limits for large design/build civil works infrastructure projects, in particular large road/highway/bridge/tunnel projects.
 <b>Coverage</b>		Coverage remained consistent with continued focus on where to offer rectification coverage.		Markets may look to utilize coverage to control risk in the large infrastructure and complex project-specific space.
 <b>Carrier</b>		Carrier participation remains abundant with some London markets re-entering the large project market segment.		Market participation will continue to remain strong through 2023 with new participants entering the market.
 <b>Claims</b>		There has been a notable surge in design defects claims, particularly tied to intricate and large-scale construction projects. This situation is often compounded by scope creep, a phenomenon where contractors find themselves encroaching on design roles and where design experts delve into areas beyond their core competencies. Moreover, venturing into unfamiliar project types without the requisite expertise or experience has created an uptick in professional liability exposure.		Claim activity on multifamily residential projects and with projects utilizing design/build delivery methods will continue to be troublesome for the foreseeable future. Progressive design build is anticipated to help lower risk profile over time with design build projects. Modular construction and large design/build delivery methods will continue to be troublesome for the foreseeable future.

## Wrap-ups (OCIP and CCIP)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	<p>Primary GL rates for commercial risks are stable, and we have not seen any deviations year to date. Residential rates (rental or owned) vary significantly by state, with some locations such as FL, CA and CO being particularly impacted with swings of 10% or more. For programs including workers' compensation, rates, in general, are trending favorably across most of the country.</p>	 0% to 8%	<p>Generally, the commercial liability insurance marketplace is showing signs of stability, with commercial-grade projects continuing to be attractive. Projects in the more challenging sectors (residential, wood-frame) and locations will continue to face testing conditions. Pressure on combined ratios will continue into 2024 despite a favorable investment interest rate environment. Underwriters will continue to use greater scrutiny on all submissions.</p>
 <b>Limits</b>		<p>Limits for primary and excess layers continue to stay consistent across the country. However, it is generally taking longer to place excess layers with stricter underwriting guidelines, extending the timeline to negotiate and secure coverage.</p>		<p>Excess capacity should remain stable and consistent through 2024. Markets continue to underwrite heavily, so expect to invest additional lead time to ensure underwriters understand your risk to obtain best terms and conditions.</p>
 <b>Retentions</b>		<p>Available retention levels remain unchanged.</p>		<p>Retentions will continue to stay at current levels with pricing stabilization, although high-risk projects may see these trending higher.</p>
 <b>Coverage</b>		<p>While coverage is stable, risks in FL and CO continue to experience challenges – especially so for wood-framed construction and habitational. Carriers are being very selective regarding exposures in these states and are requiring strict adherence to underwriting requirements and diligent quality control/assurance programs.</p>		<p>Coverage challenges in certain states will continue. Florida modified their statute of repose and is now a comparative negligence state. This is a step in the right direction, but the benefits from this will be further down the road. Otherwise, expect relatively few changes to coverage.</p>
 <b>Carrier</b>		<p>While wrap carriers have generally remained consistent, there is increased competition for good risks with top-tier general contractors. There has been some limited pull back in appetite for rolling programs, but generally that is still an option with a demonstrated solid pipeline. The residential market in FL is still a problem, with few markets writing the risk – and when they do, pricing and capacity are an issue.</p>		<p>Except for residential, carrier participation is expected to remain consistent and growing due to the potential emergence of two additional carriers in the primary wrap-up marketplace. However, existing carriers are experiencing growth and profitability concerns due to macroeconomic and geopolitical challenges (e.g., potential of global recession, war in Ukraine and lingering COVID-19 challenges). These matters could cause disruption in late 2023 and into 2024.</p>
 <b>Claims</b>		<p>Claims for construction continue to escalate, headlined with an \$860M verdict in April 2023 against a real estate giant. The continued increase in complex construction projects have led to a corresponding increase in the frequency and severity of wrap-up claims. The rising trend of third-party funding and medical treatment liens has extended the life of claims, thereby increasing litigation costs and overall claim exposure.</p> <p>Claim values continued to escalate due to nuclear verdicts, labor shortages, medical inflation and completed operations. The continued increase in complex construction projects has led to a corresponding increase in the frequency and severity of wrap-up claims.</p>		<p>It is expected that nuclear verdicts, increased litigation costs, inflation and the rising cost of materials and labor will continue to impact claim exposure. Owners and contractors should be looking to place additional limits of coverage where appropriate.</p>

# Energy and Marine

*Property, Casualty, Power Generation, Marine*

## Energy – H1 2023 Summary

### Property

The market showed to be extremely fragmented during the first half of 2023. The energy sector experienced high loss activity at the end of 2022 which, coupled with treaty increases at the onset of 2023, left the market unstable. Carriers remain focused on inflation and lead times on crucial parts. Clients should ensure that their values are accurate as this is a priority during the renewal process. Uncertainty could taint a carrier's perception, which could lead to less favorable terms.

Property rates continue to rise, but the level of rise is dependent on various factors, with those accounts with adverse loss history, high natural-catastrophe exposure and open loss control recommendations experiencing the more severe increases. Rising inflation makes it harder to estimate the replacement cost of properties exposed to natural catastrophes, as it may differ from the reported value at the time of loss. Carriers are keen on reviewing valuations to help determine if the client has a grasp on replacement cost during this inflationary environment.

Renewals may be better for midstream accounts, as they have a lower risk profile and appeal to a wider market, especially those that are seeking physical damage only. Rate rises on midstream assets are varying as different sectors (upstream/downstream) can insure these risks. As lead times and political climates continue to deteriorate, many carriers are reviewing their current waiting periods for those with business interruption. Supply chain issues are starting to see relief, but there are too many external factors that could lead to a meaningful delay. Ongoing inflation, geopolitical uncertainty and even extreme weather can affect operations of supply chains.

Clients should **focus on mitigating** business interruption (BI) exposures by **having a plan** to address **long lead times**. Being **proactive** in purchasing **critical spares** could help **alleviate concerns** for underwriters.

### Casualty

The Russia-Ukraine war and rising inflationary pressures worldwide continue to have significant repercussions, resulting in heightened volatility in oil and gas prices. Interestingly, there is a growing emphasis on stabilizing the global energy supply as the energy transition gains traction. Moreover, a recent OPEC production cut indicates that both upstream and downstream energy activities are poised to increase in the near future. This development bodes well for the industry and presents potential opportunities for insurers to generate additional premium income. Reports indicate positive combined ratios for 2022, and capacity for 2023 seems to have stabilized compared to the previous year.

The insurance market typically follows a hard market cycle, characterized by stringent underwriting positions at the beginning of the year, which may be relaxed later to ensure sufficient premium income. This adjustment is aimed at meeting management's premium income targets and addressing the heightened costs of reinsurance treaties. As a result, there is a possibility that these tightening pressures will ease as the year progresses, barring any major catastrophic losses or unforeseen events.

Initial feedback from insurers regarding January 1 reinsurance renewals has been unfavorable. Treaty renewals have been impacted by losses stemming from various factors, including the events in Ukraine, overall claims inflation, increased catastrophic US nuclear verdicts and above-average global natural catastrophe losses in 2022. However, overall capacity for 2023 appears to be mostly stable, although the US market has experienced some reductions, leading to the closure of energy books by some insurers. While the impact of reinsurance costs on clean North American energy buyers is expected to be minimal, it is anticipated that rates for many programs will continue to trend positively in the first half of 2023.

### Upstream

During the second quarter of 2023, the upstream primary liability marketplace has experienced significant changes. The offshore market, in particular, has posed challenges in terms of primary liability and lead umbrella coverage. While there is optimism that these challenges may be resolved as

the year progresses, many offshore operators are actively seeking alternative options at this time. Replacement capacity is available, mostly in the London market, but retentions are facing pressure.

In contrast, the onshore market has an abundance of capacity, offering a wide range of options for general liability and lead umbrella policies. Buyers in this segment have multiple choices available, with capacity remaining in both the US and London markets throughout 2023. Ample excess liability coverage, for attachments above US \$25M – \$50M, is available for both onshore and offshore operators.

Overall, capacity in the US market has seen a reduction of approximately US \$80M – \$100M in 2023. However, buyers can still secure satisfactory overall excess liability limits. London and Bermuda capacity have remained relatively stable year-on-year, and renewal rate increases are expected to remain in the single digits during the first half of 2023. There is also the potential for slight reductions in renewal rates in the second half of the year.

#### **Oilfield Services**

The oilfield services segment continues to enjoy a surplus of capacity, even in the face of a growing number of “action-over” employee injury claims and concerning trends in large auto liability judgments in the US. Despite these challenges, there are no indications of reduced capacity in both the US and London markets. Insurers are seeking single-digit rate increases for profitable programs during renewals. With an abundance of capacity still available, many insurers are actively pursuing profitable programs as part of their marketing efforts, driven by increased new business budgets for 2023.

#### **Midstream & Downstream**

In the midstream and downstream segments, there have been a few significant losses over the past 12 months. However, the capacity has remained stable for the downstream sector and has actually increased for midstream companies during the same period. Risk-transfer attachment levels have remained consistent year on year. Additionally, there has been a slight increase in capacity for middle market midstream businesses through the US excess and surplus market. Despite the losses experienced by the sector, the market is still offering single-digit rate increases for profitable programs in 2023. This suggests that insurers are willing to provide coverage at reasonable rates for midstream and downstream companies that demonstrate strong risk profiles and profitability.

## **Power Generation – H1 2023 Summary**

#### **Property**

As renewals have been finalized in the first half of the year, the results remained fragmented. Carriers remained hyper focused on various items, including inflation, natural catastrophe, climate change and losses. Inflation continues to dominate the negotiations, with those clients who can justify their asset valuation obtaining better results. The property insurance market is continuing to face challenges due to inflation and natural catastrophes.

Property **reinsurance rates** are close to **20-year highs** in the January 2023 renewals season.

The increase in rates help support underwriter margins as they face rising claims due to high inflation and climate change. As carriers continue to follow strict underwriter guidelines, the reduction in capacity is impacting those with CAT-exposed assets, poor risk quality such as aging equipment, infrastructure, loss history, and those with outstanding loss control recommendations.

Carriers are looking to support clients with no BI coverage requirements. Additional scrutiny can be expected with those clients seeking this protection. Clients need to provide monthly breakdowns to help carriers understand the risks and to help avoid limitations to their recovery in the event of a loss. Given the lack of treaty protection, many carriers are looking to reduce their exposure on accounts with higher volatility. If clients have these account characteristics, it is best they engage with their carriers early to avoid less-than-desirable results.

#### **Casualty**

The power generation market continues to seek increase in the 10% range. The push for rate and premium increases are being driven by inflation and larger-than-expected jury verdicts. Until litigation funding can be reigned in, and additional tort reform can be implemented, underwriters will continue to price for the rising uncertainty that accompanies these drivers.

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## Energy – H2 2023 Outlook

### Property

As we enter hurricane season, many are keeping an eye on El Niño and its impact on the number of storms and their severity. El Niño typically suppresses Atlantic hurricane activity, but the ocean temperature is very warm in most areas, which can provide more fuel for hurricanes to form and intensify. If El Niño is strong or early, it could limit the hurricane activity. Markets are clearly hoping for a more benign hurricane season. Pricing in natural-catastrophe areas is being determined by reinsurance, which is creating less deployment of capacity. Continued climate change uncertainty and retrenching of capacity is creating tougher renewals for exposed assets.

Carriers are hitting their budgets due to years of ongoing rate rises, but as renewals get finalized, it is evident that the market continues to price and quote for their own interest, as treaty protections differ drastically. Those clients who consider themselves a partner rather than an annual chore have more willingness from carriers to resolve issues. Markets will continue to be fragmented, so it is important to start dialogue early so both parties can reach an amicable renewal outcome. Given the inflationary environment, carriers are interested in examining valuations to ascertain if the client possesses an accurate knowledge of their replacement cost.

### Casualty

The primary liability capacity has maintained stability, and many insurers have set ambitious goals for acquiring new business in the fiscal year 2023. Buyers with clean loss records are benefiting from highly favorable results during marketing efforts, and incumbent insurers are open to favorable early renewal negotiations. Auto liability rates are experiencing mid-to-high single-digit increases, while workers' compensation rates remain steady to slightly decreasing. General liability rates for most segments are within the single-digit range.

Excess liability capacity saw an increase in 2022 and has remained relatively stable in 2023. Although concerns about loss severity persist, and challenges may arise in the lead umbrella space, the pricing volatility seen in previous years has diminished. We anticipate pricing trends to continue similarly to 2022, with most buyers encountering single-digit rate increases.

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## Power Generation – H2 2023 Outlook

### Property

As we enter windstorm season, it's important to note that after three years of La Niña phase, which has led to West Coast drought and wildfires and several windstorms in the US, El Niño is expected to emerge in the second half of 2023. This could lead to a calmer windstorm season, but it has the potential to increase rain in certain places and less rain in others. Climate patterns continue to be complex and difficult to predict.

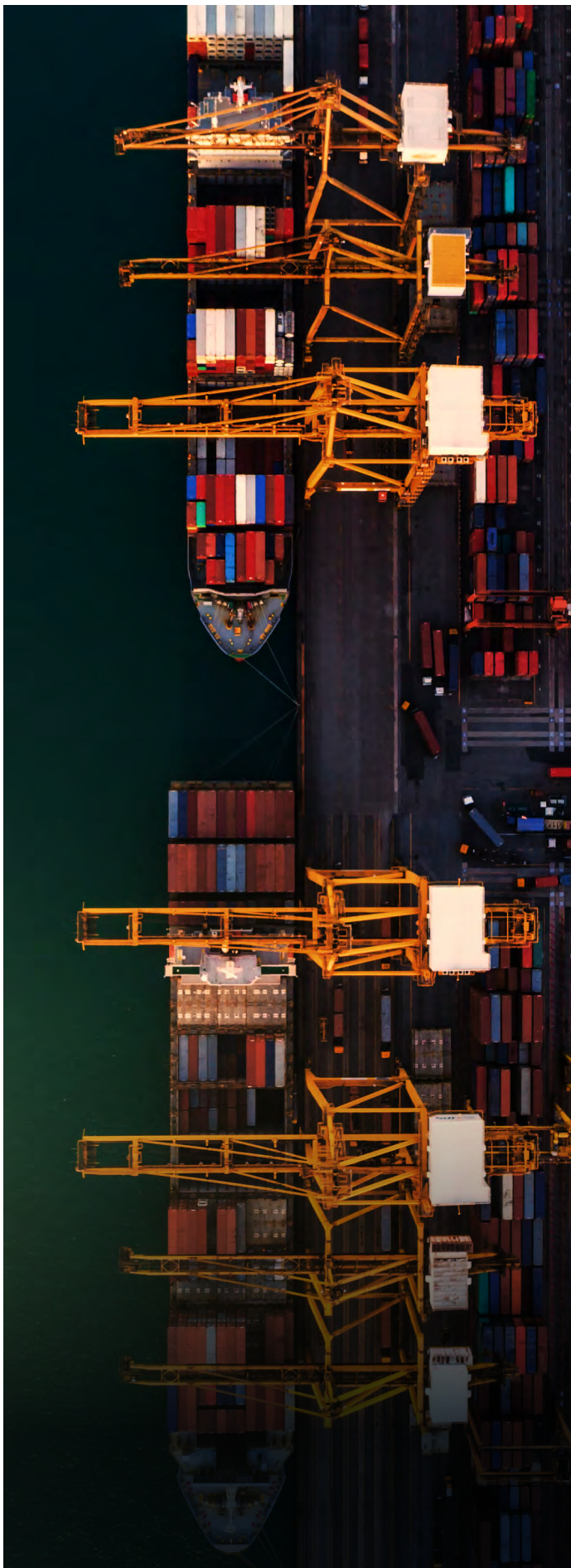
Carriers have been able to increase their earnings by imposing larger rate increases. As the second half of the renewal season takes off, many carriers can be more selective on who they choose to insure. Clients that have a preferred risk should expect competition, which could lead to broader terms and favorable rates. In contrast, those with assets that are more challenging need to ensure that they are properly being showcased during the entire year. Carriers are more willing to work through issues with those who see themselves as a partner rather than an annual duty.

### Casualty

With the Texas Court of Appeals affirming the Blake, et al. v. Werner Enterprises jury verdict of \$90M, the casualty market is recognizing that award in its pricing approach. We expect underwriters to continue their disciplined approach and expect rates to increase by 5% – 10%, generally speaking.

On individual casualty lines, accounts with **large auto exposures** will see greater pricing pressures and expect **increase** in the **10% – 20%** range.

The workers' compensation market will continue to be competitive, and buyers should expect some relief in the pricing here. The general liability market will see increases in the 5% – 10% range. The excess liability market will be seeking increases similar to the general liability trend in the lower and middle levels. The upper excess liability pricing will trend in the 0% – 5% range.



## Marine – H1 2023 Summary and H2 2023 Outlook

- Cargo rates are stabilizing. Capacity has increased, with the market being very favorable to innovative placements regarding stock. The one note of caution is coverage in the Caribbean. Product moving or static in this region has rates that are very different than the rest of the world. Black Sea shipments, Persian Gulf movements and passage through the Taiwan Straits are seeing war rates rising.
- Hull and machinery rates are seeing rises in line with inflation. The market, both domestically and internationally, is stabilizing with adequate capacity.
- Protection and indemnity rates continue to rise above inflation levels. Protection and indemnity (P&I) clubs have seen their reinsurance rates rise, which have been passed along to their members. Fixed P&I placements are tracking with the clubs in premium rises following inflation.
- Shoreside property rates are still rising higher than inflation with severe capacity restrictions. CAT-exposed property along shoreline are seeing rates increase dramatically, with capacity being reduced.
- Marine liability rates have stabilized on the primary layers; however, excess placement rates are rising above inflation, with capability being reduced and more carriers needed to cover the higher limits.
- Fire/explosion is now the most expensive driver of claims activity. And at a time of rising exposures and inflation, cargo damage is the most frequent cause of loss. This follows an increase in both attritional and high-value claims.
- Fires onboard vessels are the number one cause of marine insurance losses by value, with mis-declared or non-declaration of dangerous cargoes an issue.
- Inflation is compounding existing trends, driving higher claims severity. Higher prices for steel and spare parts and rising labor costs are impacting hull repair and machinery breakdown claims.
- Damaged goods, including cargo, is the most frequent cause of claims, with temperature variation, theft of cargo and inadequate shipping containers areas of concern.
- Several factors are increasing the risk of fires at sea and on land. Decarbonization is leading to new types of cargo being transported on vessels, such as electric vehicles (EVs) and battery-powered goods. Potentially highly flammable lithium-ion batteries pose a growing risk for container shipping and car carriers. This battery market is expected to grow by over 30% annually over the next decade.
- One of the main hazards of lithium-ion batteries is thermal runaway, a rapid self-heating fire that can cause an explosion. The main causes of these fires are substandard manufacturing or damaged battery cells or devices over-charging and short circuiting. Fires in EVs with lithium-ion batteries are difficult to extinguish and capable of spontaneously reigniting. Most ships lack suitable firefighting capabilities while at sea.








## Marine

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	Pricing on hull and machinery is trending upwards alongside inflationary pressures (about 5% – 8%). Protection and indemnity and excess limit pricing are seeing rate increases in the 10% range. Cargo premiums increasing 5% – 10%. Marine property up 10% with loss limit policies becoming the trend.	 0% to 13%	We will see continued pressure on rates due to claims activity and inflation. New capacity entering the marine market is going to place pressure on underwriters to continue requiring rate increase.
 <b>Limits</b>		Overall excess limits have been climbing over the last five years due to large jury awards and costs of excess limits. Those trends are slowing, if not stopped.		We will continue to see reduction in excess limit, with increasing rates. Expect increased frequency of high-limit placements via quota share to adjust to carrier capacity.
 <b>Retentions</b>		Increasing retentions as a mechanism to offset premiums has been the model in the marine market for the past five years. This trend is still on the uptick, as the market continues to offer higher retentions with minimal changes in premium.		We anticipate increased pressure on retentions going forward, with minimal change in premiums.
 <b>Coverage</b>		Terms and conditions are remaining stable for hull and machinery, as well as protection and indemnity. Quota share policies for hull and machinery is now common.  Excess liability carriers are reducing their exposures by reducing limits.  Cargo is seeing restrictions and tighter coverage on strikes, riots and civil commotion due to the ongoing Russia-Ukraine war. CAT exposures are being reduced and capped.		Terms and conditions should remain stable on marine coverages, with ongoing cargo sanctions and restrictions as the overseas conflict continues.
 <b>Carrier</b>		Capacity is beginning to increase with the entrance of new insurance carriers into the marketplace. This added capacity has not had its intended effect on reducing premiums.		We will continue to see capacity increase throughout the marketplace.  Cargo carriers will also review year-end losses and claims activity and will adjust their preferred risk appetites accordingly.
 <b>Claims</b>		Hull and machinery frequency has remained steady, but severity has increased due to the size and complexity of vessels. Protection and indemnity claims are increasing in severity.  Cargo claims are being impacted by mis-declared bills of lading and battery-related claims, causing high-impact claims.		Claims are likely to continue to increase in frequency and severity. Underwriters will make rate adjustments accordingly.

## Energy and Power Generation – Property

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	Market remained defragmented. Rate rises minimal for preferred risks. Retrenching of capacity is occurring in natural-catastrophe exposed accounts, which are leading to larger rate rises. Budgets are being made due to ongoing years of rate rises and inflated replacement cost values.	 0% to 10%	Budgets may be close to being achieved, so there is no incentive to reduce rate. Accounts with low risk will have better results.
 <b>Limits</b>		Physical damage-only accounts are in hot pursuit. Time element extensions of coverages should expect to see more scrutiny.		Limits will remain stable throughout the remainder of the year. natural-catastrophe exposed accounts may see a push to reduce limits.
 <b>Retentions</b>		Focus remains on rate versus increasing retentions.		Continued focus will remain on rates versus looking to push retentions.
 <b>Coverage</b>		Supply chain starting to ease, but business interruption continues to be a challenge for carriers given the volatility. Limitations to monthly caps and periods of indemnity will continue as underwriters seek to reduce volatility.		If supply chain issues continue to show improvement, then BI scrutiny may ease but will not increase limits or broaden terms.
 <b>Carrier</b>		ESG impact may force carriers to reduce their support of certain occupancies, but there is sufficient capacity to insure those risks.		Remainder of the year is expected to remain stable with no new significant capacity being added.
 <b>Claims</b>		There have been a few claims to the industry but nothing significant to impact the current underwriting guidelines.		Currently no losses with large BI impacts in the first half to impact reserves for 2023.

## Energy and Power Generation – Casualty

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 5% to 10%	We are seeing moderate rate increases contingent upon individual loss experience.	 5% to 15%	The general liability market will see increases in the 5% – 10% range. The excess liability market will be seeking increases similar to the general liability trend in the lower and middle levels. The upper excess liability pricing will trend in the 0% – 5% range. Accounts with large auto exposures will see greater pricing pressures and expect increase in the 10% – 20% range.
 <b>Limits</b>		Casualty capacity has plateaued and stabilized.		Capacity should remain at current levels throughout the rest of the year, barring any catastrophic loss.
 <b>Retentions</b>	 	We continue to see upward pressure to increase retentions, particularly in the auto space. This is due to large claim payouts that continue to disrupt loss ratios.	 	Inflation continues to be a concern, which is highlighting that retentions may not be sufficient throughout 2023.
 <b>Coverage</b>	 	General liability markets are scrutinizing their policy forms to ensure wildfire is excluded and pollution coverage is picked up in the environmental market.	 	Markets are focused on coverage review and coverage restrictions, along with an ever-hardening environmental, social and governance stance (ESG).
 <b>Carrier</b>		Little to no change in the current market environment.		Clients could eventually benefit from the entrance of new carriers, but no anticipated changes benefitting insureds.
 <b>Claims</b>	 	The Texas Court of Appeals affirmed the Blake, et al. v. Werner Enterprises jury verdict of \$90M. The casualty market is recognizing that award in its pricing approach.	 	The push for rate and premium increases are being driven by inflation and larger-than-expected jury verdicts. Until litigation funding can be reigned in and additional tort reform can be implemented, underwriters will continue to price for the rising uncertainty that accompanies these drivers.

# Environmental

*Contractors Pollution Liability, Site Pollution Liability*

## Environmental – H1 2023 Summary

Interest rate creep continued through the first half of 2023, which resulted in more volatility. As a result, commercial debt remained difficult to come by. This uncertainty propels opportunities for purchasers to pump the brakes and reevaluate pro formas.

Emerging contaminants remain problematic as insurers and insureds are becoming painfully aware of their impacts on society. Many insurers are blanketly restricting coverage without exception. These exclusions are now extending beyond the environmental insurance world and beginning to impact other lines of coverage as well.

We also saw a major carrier pull back on offering mold coverage in the habitational space. While we don't anticipate this being a market trend, it is something to take note of.

Premium increases are **holding steady** at anywhere from **5% – 10%**, depending on the type of **environmental** insurance coverage.

Insurers will continue to place greater emphasis on shorter policy terms for certain classes of operational risk as we go into 2023. Longer policy terms remain available for transactional policies.

## Environmental – H2 2023 Outlook

Emerging contaminants continue to be an issue for the environmental insurance industry. Certain classes of business are seeing much broader exclusions than they had in previous years, and we expect this to be the new normal. Underwriters are still underwriting each deal; however, their flexibility is limited.









We do recommend that clients who are not purchasing environmental coverage and who operate in a space that may be pulled into the emerging contaminant issue consider purchasing the coverage now. We anticipate that it will be more difficult to place the coverage if you haven't had it before.

While the environmental insurance market has enjoyed a relatively soft market over the last few years, that is beginning to change. Rates are increasing more than 10% in some classes of business, and we expect this to continue for the remainder of the year. Markets continue to gravitate towards shorter policy terms for certain classes of risk, such as habitational; however, longer terms are still available for a price.

## Contractors Pollution Liability (CPL)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 5% to 10%	Abundant capacity continues to pressure rates downward. Practice policies are experiencing slight increases, ranging from 3% – 5% on average.	 5% to 10%	We expect the rate on CPL to increase anywhere between 5% – 10% over the next 12 months.
 <b>Limits</b>		Limits remain abundant, with most carriers offering up to \$25M in the aggregate.		We expect limit and capacity to remain strong, as this product is desirable for carriers.
 <b>Retentions</b>		A wide range of retention levels are available. Lower retentions are available through online portals for practice policies.	 	Retentions remain stable for practice policies. We are beginning to see a slight uptick in retention levels for project-specific policies.
 <b>Coverage</b>		Coverage remains broad for CPL; however, there is discussion of applying exclusions associated with emerging contaminants to CPL policies. Exclusive coverages remain available to NFP, including delay expense which results from work stoppage caused by known or unknown pollution events.		There is greater likelihood of carriers pulling back coverage associated with emerging contaminants.
 <b>Carrier</b>		No new entrants into the marketplace; however, CPL coverage remains a desirable product for carriers, given the favorable loss ratios.		We do not foresee any markets exiting the CPL space, as it remains very profitable.
 <b>Claims</b>		Claim frequency has leveled off for the time being.		We expect that claim frequency will continue to increase over the next 12 months with project restarts and more contractor activity.

## Site Pollution Liability (PLL)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 3% to 10%	<p>Renewal policies continue to see modest increases in pricing.</p> <p>Transactional placements are experiencing an uptick in pricing when meaningful coverage is provided.</p>	 5% to 10%	<p>Markets will continue to approach business selectively and will actively pursue low-risk/low-premium placements, which will have a downward pressure on renewals. Market interest for long-term transaction placement is decreasing, causing upward pricing pressure.</p>
 <b>Limits</b>		<p>Ample limits are available for most risks. There is abundant capacity in the marketplace with new carrier entrants. Heavily contaminated sites posed for redevelopment have ample but smaller market interest. Quota share arrangements provide most limits for complex placements.</p>		<p>Availability of limits is expected to increase for shorter-term placements — five years or less, for example. Arranging higher limits for long-term placements will become increasingly difficult.</p>
 <b>Retentions</b>		<p>Retentions have remained generally static. Less challenging risks have smaller retentions. More complex remediation and redevelopment risks are north of \$100,000 per pollution event.</p>		<p>Less environmentally exposed risks are not seeing changes in retentions. Other, more complex risks, such as redevelopments, are being challenged by carriers to accept higher retentions.</p>
 <b>Coverage</b>		<p>Restrictions associated with PFOA/PFAS/PFOS continue to be an issue. Underwriters are still applying them as needed; however, we expect them to become more widespread.</p>		<p>Handling remediation coverage knowns versus unknowns and crafting coverage accordingly is becoming increasingly difficult. We continue to see increasing focus on excluding all expenses within the boundaries of remedial action work plans. Broader coverage remains for purchasers of brownfields.</p>
 <b>Carrier</b>		<p>No new entrants into the marketplace in H1, and no carriers have exited.</p>		<p>No significant changes expected in the next 12 months.</p>
 <b>Claims</b>		<p>Claims activity associated with emerging contaminants continues. Damages to the environment and environmental justice initiatives continue to trend upwards, and claims associated with indoor air quality issues remain steady.</p>		<p>Claims activity is gradually increasing.</p>

# Financial Institutions

*Commercial Banks, Investment Management, Insurance Companies, Loan Portfolio*

## Financial Institutions – H1 2023 Summary

Financial institutions faced a volatile first half of the year as they faced challenges on multiple fronts. Rising interest rates, cryptocurrency instability, surging inflation, ESG (environmental, social and governance) pushback and increased regulatory pressures would be enough to strain the financial industry during any period. Layered on top of those pressures, however, was the collapse of Silicon Valley Bank (SVB), Signature Bank and First Republic Bank. These failures sent shockwaves through the industry, with the long-term ramifications still to be determined.

Throughout these events, the financial institutions (FI) insurance market experienced rapidly softening conditions in fits and starts. Due to increased competition, FI insurance initially trended toward a softening market during the first part of 2023, with the first significant decreases in almost five years (most notably on excess layers). New capacity drove falling rates and even retentions, with increases in limits and (in some cases) coverage enhancements. Volatility in the banking space slowed that trend notably in the second quarter.

We anticipate the SEC will issue landmark rules and decisions regarding both cybersecurity and cryptocurrency in the back half of 2023, which could permanently alter how those risks are dealt with by the FI industry. However, new carrier capacity is still impactful, and we expect the market will remain stable to soft for the remainder of the year.

### Banking

For banks, financial lines pricing started experiencing their first decrease in pricing at the end of last year, the first decrease since Q1 2018. That trend continued in 2023 as increased competition led to softening of the market. Multiple new entrants in the space drove rate, at times dramatically.

Directors and officers and bankers professional liability, the historical drivers of pricing, stabilized and, in fact, decreased as the FI space moved out of the hard market.

The increased competition also led to an overall stabilization of retentions and a return of carriers' willingness to write larger limit policies after several years of retrenching, albeit with additional underwriting scrutiny. During the hard market, several notable carriers that had occupied primary positions in the bank market took a more conservative stance on quoting new business. This diminished carrier appetite put a strain on underwriting bandwidth. This was countered by multiple new carriers entering the space, leading to an overall increase in competition with some newer entrants opportunistically increasing exposure to primary risk. Excess capacity was very competitive prior to SVB.

That said, the volatility in the banking sector driven by the collapse of SVB, Signature and First Republic has caused insurers to once again rein in pricing and rate as the industry waits to see the resulting regulatory and litigation response. Inflated cyber liability premiums have kept average rates elevated for an additional two quarters but also seem to have stabilized.

Bankers professional liability, employment practices liability insurance and directors and officers claims remain the loss leaders in the commercial bank space. Fiduciary liability claims have also been on the rise, especially ERISA suits related to bank employee stock ownership plans. Financial institutions bond claims are some of the most frequent claims, especially related to computer systems fraud (e.g., diverted wire transfers), forgery and unauthorized signature.

### Investment Management

The investment management space continues to be an area of focus for most markets and demand for these risks remains strong. Softening market conditions started at the tail end of 2022 and continued through the first half of 2023.

Although pricing continues to be favorable for most risks, certain pockets of the market are still experiencing elevated premiums, including advisers with investments in commercial real estate, cryptocurrencies, cannabis and psychedelics.

Increased carrier competition has led to very favorable terms for well-positioned asset managers. This includes increased limits and participation, with markets that previously reduced capacity now looking to increase participation and willing to offer ventilated capacity on larger towers. Retentions initially held firm as pricing softened. However, retentions are also starting to drift lower, especially in the alternative asset management space. Coverage can be enhanced, and carriers are more willing to negotiate terms than they have been in the past few years. Additional markets are starting to enter the primary space and compete with their own expansive forms. This should further put pressure on pricing and enhance overall competition.

Regulatory risks in this area remain elevated, and we see an increase in enforcement actions taken against investment managers. ESG funds and managers are starting to undergo some pressure as ESG fund returns lag behind their peers. Subadvisory relationships also are a focus of the plaintiff's bar. Cyber risks related to investment managers' protection of their clients' personally identifiable information and the record-keeping practices of asset managers are additional areas of focus.

### Insurance Company

In the insurance company space, market conditions also continued to move in a more favorable direction throughout the first half of 2023. Insurance company risk generally does not see the same pricing swings as other classes of FI due to the smaller appetite for these risks, particularly with regards to primary insurance company professional liability (ICPL). As such, there was not quite the same rapid price deterioration in the insurance company market. The commercial insurance market faces growing concerns over economic uncertainty and geopolitical headwinds, with increasing sensitivity to issues arising from opioids, climate change, AI and inflation.

Nevertheless, due to increased competition, carriers are more willing to entertain insurance company risks than they were a year ago. The excess market is relatively saturated with carriers, with few new significant entrants expanding into the insurance company space. ICPL coverage continues to be a barrier to entry for many markets.

While insurtechs continue to be challenging for many markets, the softening market has led to more general interest from carriers in writing primary and excess. Insurtechs who are well positioned and differentiate themselves from the pack have seen the greatest results in the market. Those that can articulate their vision, including regarding AI, and plan to profitability have seen increased interest from the industry. Retentions have remained relatively stable for our insurance company clients. We have also been able to negotiate better terms and conditions, as markets are now more willing to make concessions than they have been for some time.

Inflation, both fiscal and social, is an area of real concern for insurance companies. Even as the supply chain issues improve, inflation remains elevated, as does the severity of claims as replacement costs soar. Social inflation and defense costs also significantly impact insurers across the board as settlement values continue to rise.

The recent **\$1B Wells Fargo** settlement is among the **twenty largest all-time US securities class action settlements**.

### Loan Portfolio

Over the past several years, lenders have benefitted from stable pricing on both real estate and auto coverages. However, recent changes in the market are expected to lead to rising rates and rising insurance premiums. These include primary carriers pulling out of catastrophic-prone states, the increasing cost of cars and repairs, and the rising cost of rebuilding homes.

- Cost of residential insurance is increasing in many states as primary carriers are exiting the market. This is due to several factors, including the fact that the cost of rebuilding homes has increased significantly in recent years due in part to the rising cost of materials and labor.
- Increasing frequency and severity of natural disasters are also driving up the cost of insurance. States that are particularly vulnerable to natural disasters, including hurricanes, wildfires and earthquakes, are seeing the most significant increases in premiums.

All of these factors have also led to an increase in the cost of claims as insurers are paying higher amounts to resolve claims, which further drive up premiums.

On the auto side, the average price of a new car in the United States has increased by more than 10% in the past year. This is due to several factors, including chip shortage and ongoing supply chain disruptions. As the price of cars increases, so does the value of the collateral that lenders are protecting with lenders single interest. The cost of repairs has likewise been increasing due to the rising cost of labor and the increasing complexity of vehicles. As the cost of repairs increases, so does the potential liability for lenders. This means that lenders need to charge higher premiums to cover their potential losses.

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## Financial Institutions – H2 2023 Outlook

FI insurance is largely taking a wait-and-see approach to any continued fallout from SVB, Signature and First Republic, whether it be from increased regulatory scrutiny, tightening lending standards and practices, or consumer actions. Nonetheless, due to increased carrier appetite in the FI insurance industry, the market will inherently become more competitive. Banks with strong financial performance and favorable recent loss history will look to distinguish themselves from the rest of the pack and benefit from overall insurer competition. Capacity should resemble pre-COVID-19 conditions within the next 12 months, and securing excess positions is expected to continue to be highly competitive. Some key sublimits will likely remain restricted as some specific types of claims continue to exhibit higher frequency.

For asset managers, we expect continued pressure on pricing. A number of new entrants have joined the marketplace recently and are eager to build their books. Excess investment management deals are of particular interest to these carriers, and programs should continue to see downward pressure on pricing. Economic volatility and increased regulatory scrutiny may stop the downward momentum.

For insurance companies, we expect pricing decreases to accelerate the rest of this year to more closely resemble what we have seen elsewhere in the financial lines space. As the market continues to soften, we anticipate that FI underwriters will look to increase their insurance company portfolio and deploy additional limits in this space.

For loan portfolio coverage, the trend of rising insurance premiums is expected to continue. The factors driving this upward trend are not going away anytime soon. As a result, borrowers and lenders should be prepared for higher costs.

We do not expect high claims activity to dissipate anytime soon. The change in the US House majority could lessen regulatory pressure; however, in the meantime, regulatory scrutiny continues. The SEC is expected to release major cybersecurity rules that will dramatically alter the cyber landscape for FIs. The depth and breadth of those rules will be major indicators of the future the SEC envisions for itself.

The SEC also significantly escalated its pressure on the cryptocurrency industry with recent actions against Coinbase and Binance Holdings, the largest crypto exchange in the US and the world's biggest crypto platform, respectively. Whether the SEC is successful in those crypto actions and whether Congress responds will certainly shape the back half of the year. Shareholder activism campaigns have increased and appear to only be heating up headed into the summer. Finally, economic volatility is likely to contribute to increased private litigation as it does during any major economic downturn.

## Commercial Banks

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -10% to 10%	<p>Average financial lines pricing started experiencing their first decrease in pricing at the end of last year, the first decrease since Q1 2018. Directors and officers and bankers professional liability have traditionally been the main drivers in overall pricing, and both appear to have stabilized in 2023. That said, the volatility in the banking sector driven by the collapse of Silicon Valley Bank (SVB) and First Republic has caused insurers to once again rein in pricing. Inflated cyber liability premiums have kept average rates elevated for an additional two quarters but also seem to have stabilized.</p>	 -5% to 5%	<p>Bank insurance is largely taking a wait-and-see approach to any continued fallout from SVB, whether it be from increased regulatory scrutiny, tightening lending standards and practices, or consumer actions. Banks with strong financial performance and favorable recent loss history can hope to distinguish themselves from the rest of the pack. Nonetheless, due to increased carrier appetite in the commercial bank space, the market will inherently become more competitive.</p>
 <b>Limits</b>		<p>We are starting to see a return of carriers' willingness to write larger limit policies after a couple of years of retrenching, albeit with additional underwriting scrutiny. Some key sublimits remain prohibitively low (e.g., social engineering fraud on the financial institutions (FI) bond) as claims frequency remains an issue.</p>		<p>We expect this trend to continue into next year. Capacity should resemble pre-COVID-19 conditions within the next 12 months, and securing excess positions is expected to become highly competitive between carriers. Some key sublimits will likely remain restricted as some specific types of claims continue to exhibit higher frequency.</p>
 <b>Retentions</b>		<p>Retentions have stabilized in correlation with recent pricing trends but have not yet triggered any notable decreases. However, increased competition is leading to softening of the market in 2023. This will generate a more competitive atmosphere, which should allow for the negotiation of lower retentions. However, we do not expect decreases significant enough to match pre-COVID-19 levels.</p>		<p>Retentions are expected to stay relatively static. We anticipate most banks will push for pricing relief over reductions in retentions. Furthermore, most carriers' minimum retentions (which have increased over the last three years) will not see any discernable decreases.</p>
 <b>Coverage</b>		<p>Coverage and terms have remained relatively consistent since Q2 2020. We are just now exiting a period of sustained hard-market conditions and, as a result, the market has not been receptive to significant coverage expansion. A lack of primary appetite in some instances has also contributed to tightening of terms over the past few years.</p>		<p>Most carriers are still reluctant to provide enhanced coverage terms and conditions due to the potential increase in public and private litigation.</p>
 <b>Carrier</b>		<p>Since Q2 2020, several notable carriers that have occupied primary positions in the bank market have taken a more conservative stance on quoting new business. This diminished carrier appetite has put a strain on underwriting bandwidth. This was met with multiple new carriers entering the space, which has led to an overall increase in competition with some newer entrants have taken the opportunity to increase exposure to primary risk. Excess capacity was very competitive prior to SVB.</p>		<p>Volatility in the market has led to a reshuffling of the carrier mix on many bank programs over the last several years. The more conservative carriers are expected to shift focus and pursue lead positions (especially on strong risks) over the next 12 months. We expect excess capacity to continue to expand.</p>
 <b>Claims</b>		<p>Bankers professional liability, employment practices liability and directors and officers claims remain the loss leaders in the commercial bank space, while fiduciary liability claims have also been on the rise (ERISA suits related to bank employee stock ownership plans). FI bond claims related to computer systems fraud (e.g., diverted wire transfers), forgery and unauthorized signature have also been on the rise.</p>		<p>Overall claims activity has remained elevated when compared to prior market cycles. Any anticipated claims spike post-SVB has not yet materialized. Tighter regulatory and internal controls, as well as a decline in mergers and acquisitions activity, should cause a reduction in cyber fraud losses (FI bond) and minority shareholder suits (directors and officers) but the full impact may not be realized until 2024.</p>


















## Investment Management

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -10% to 0%	Softening market conditions continued through the first half of 2023. The investment management space continues to be an area of focus for most markets, and demand for these risks remains strong. Pricing continues to be favorable for most risks, although underwriters remain concerned about certain pockets of the market, such as commercial real estate, cryptocurrencies, cannabis and psychedelics investments.	 -10% to -5%	We expect continued pressure on pricing. A number of new entrants have joined the marketplace recently and are eager to build their books. Excess investment management deals are of particular interest to these carriers, and programs should continue to see downward pressure on pricing. Economic volatility may stop the downward momentum, however.
 <b>Limits</b>		Carriers have been willing to increase limits on programs thus far this year. Markets are now looking to increase participation on programs where they had previously reduced capacity and are much more willing to offer ventilated capacity on larger towers.		We expect this trend to continue although, in many cases, carriers are reaching maximum capacity on individual risks already. With pricing expected to continue to drift lower, we do expect to see carriers more willing to deploy expanded limits across their books of business.
 <b>Retentions</b>		Retentions initially stayed relatively stagnant as pricing started to soften, but we are now seeing markets get much more aggressive with retentions, particularly in the alternative asset management space.		We expect to see potential continued reductions in retentions as competition continues to increase. Other than on programs where retentions are unusually high, there is not much more room for them to fall further.
 <b>Coverage</b>		Markets are much more willing to negotiate coverage terms and to provide expanded coverage than they have been for a couple of years.		We expect insurers to continue to provide expansive terms and conditions and for certain carriers to look to provide new and innovative coverages in order to differentiate themselves in a crowded marketplace.
 <b>Carrier</b>		The market is relatively saturated with carriers, particularly in the asset management space. We are seeing more markets come out with primary forms, which should only exacerbate competitive pressures.		We do not anticipate any new capacity to come online in the next 12 months. Market conditions are no longer favorable to new entrants, particularly in the very competitive investment management space.
 <b>Claims</b>		Regulatory risk remains elevated, and we see a continued increase in enforcement actions taken against investment managers. In addition, environmental, social and governance-focused investors are starting to see some pressure from clients as returns lag. Subadvisory relationships also remain a focus of the plaintiff's bar as they look to bring excessive fee actions. Cyber risks related to investment managers' protection of their clients' personally identifiable information is yet another area of concern.		We do not expect high claims activity to dissipate anytime soon. The change in US House majority could lessen regulatory pressure; however, in the meantime, regulatory investigations continue and plaintiffs' attorneys are likely to continue to focus on the investment management space. Economic volatility and potential decrease in returns are also likely to contribute to increased private litigation.

## Insurance Companies

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -5% to 5%	Market conditions continued to move in a favorable direction throughout the first half of 2023. Insurance company risks did not see the same rapid price deterioration that was experienced in other areas of financial lines, as there is somewhat less appetite for these risks, particularly regarding insurance company professional liability (ICPL).	 -10% to 0%	We would expect pricing decreases in the insurance company space to accelerate in the next twelve months to catch up with the remainder of financial lines coverages.
 <b>Limits</b>		Carriers are more willing to entertain insurance company risks than they were a year ago. While insurtechs continue to be challenging for many markets, the softening market has led to a more general interest from carriers in writing primary and excess.		As market conditions remain soft or weaken further, we expect FI underwriters to look to have more appetite for insurance company risks and to continue to deploy additional limits.
 <b>Retentions</b>		Retentions have remained relatively stable for our insurance company clients. Carriers are not looking to push retentions higher.		We expect there may start to be some downward pressure on retentions as competition for certain risks heats up. Demand remains lesser in the insurance company space than for other FI risks, however, so retentions may not experience the same reductions that we are seeing elsewhere.
 <b>Coverage</b>		On well-positioned risks and those risks that are otherwise perceived as more desirable by insurers, we have been able to negotiate better terms and conditions. Markets are much more willing to make concessions than they have been for some time.		It is likely that carriers will continue to provide more expansive terms as we move through the next twelve months. Generally, insurers are expected to continue to remain competitive in order to maintain their capacity.
 <b>Carrier</b>		The market is relatively saturated with carriers, and there are not any new significant entrants expanding into the insurance company space. The ICPL coverage continues to be a barrier to entry for many.		ICPL remains a difficult category. Unless pricing and retentions start rising, we do not anticipate additional markets focusing on building their insurance company books relative to other classes of risks.
 <b>Claims</b>		Inflation, both fiscal and social, is an area of real concern for insurance companies. Even as the supply chain issues improve, inflation remains elevated, and the severity of claims remains very elevated as replacement costs soar. Social inflation and defense costs also significantly impact insurers across the board as settlements continue to rise.		It is not expected that there will be any letup in the frequency and severity of claims in the near future. Bad faith damages are trending up as well, so the outlook for profitability for carriers in the insurance company space is not likely to improve over the coming 12 months.

## Loan Portfolio – Lenders Single Interest, Mortgage Impairment, Mortgage Hazard

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 5% to 10%	<p>Pricing on both the auto and real estate portfolio is trending upwards with primary carriers pulling out of states like Florida on the residential side and the cost to repair increasing on the auto side. Mortgage impairment rates continue to remain stable while mortgage hazard rates start to see a slight increase. Lenders single interest rates are seeing an increase as delinquencies continue to rise along with the values of collaterals.</p>	 5% to 10%	<p>Moderate rate increases will continue on the real estate side as the market starts to adjust for the primary markets, catastrophic events and potential economic recession. Auto rates will continue to see rates increase as well as losses continue to increase with the rise in delinquencies.</p>
 <b>Limits</b>		<p>Mortgage hazard property maximum amounts of insurance up to \$5MM are typically available.</p> <p>Mortgage hazard liability limits of \$1MM per occurrence / \$2MM annual aggregate are typically available. Loan portfolios are analyzed and adjusted for proper limits that fit the portfolio.</p> <p>Lenders single interest limits sit at \$100k limit per collateral type while the amount financed can exceed this limit.</p>		<p>No changes foreseen.</p>
 <b>Retentions</b>		<p>Mortgage hazard property and flood deductibles remained stable, with deductibles ranging from \$1K to \$10K typically being available, and higher deductibles being available depending on the Insured's size and risk appetite.</p> <p>Lenders single interest typically runs at a \$0 deductible but with the rising cost of collateral/repair, we have seen these deductibles range from \$0 to \$10k.</p>		<p>No changes foreseen.</p>
 <b>Coverage</b>		<p>Coverage availability and terms remained stable.</p>		<p>No changes foreseen.</p>
 <b>Carrier</b>		<p>Insurer interest in mortgage hazard and mortgage impairment remains strong, especially as they evaluate investor schedules. Insurer interest on the auto side has diminished with the high cost of collateral, opportunities are being evaluated in more detail with restrictive coverages.</p>		<p>Carrier interest will continue to remain stable on mortgage related coverages. Carrier appetites are reactive to loss trends on the auto side. With no sign of slowing claim frequency and severity, we appetitive and rates to adjust accordingly.</p>
 <b>Claims</b>		<p>Real estate claims frequency and severity continue to remain stable. Auto claims have seen an increase on physical damage due to the high cost of replacement parts. Skip claims continue to be an issue as there has been a decrease in find rates from our skip tracers due to an industry wide staffing shortage.</p>		<p>Real estate claims will continue to remain stable while auto claims are likely to continue to increase in frequency and severity.</p>

# Legal Practice

*Lawyers Professional Liability (E&O), Cyber for Law Firms, Employment Practices for Law Firms, Management Lines for Law Firms (D&O, Fiduciary and Crime)*

## Legal Practice – H1 2023 Summary

Lines of business specific to the practice and the business of law continued to stabilize and even soften during H1 2023. Rates and overall changes in the cyber market have also begun to flatten, if not soften, during this time. The market for lawyers professional liability (LPL) and employment practices liability (EPL) continues to get more competitive, it seems, with each passing week.

### Lawyers Professional Liability (E&O)

The LPL market continued to soften in H1 2023. While carriers are still in need of rate, the influx of additional capacity into the market has prevented them from achieving that rate need. Our clients are continuing to average relatively flat rate renewals from a primary layer perspective. The excess market has seen the greatest increase in competition during the first half of 2023. This expansion in capacity has continued to have a strong influence in downward rate pressure.

Risk capacity **remained steady**, with few carriers **willing** to offer more than **\$5M primary limits** on any one firm.

Market capacity continues to increase within the LPL space, with Euclid being the latest managing general agent (MGA) to enter the space. Continued underwriting personnel changes have also led to a competitive marketplace.

Carriers and law firms alike have their attention on artificial intelligence (AI). With ChatGPT being thrust into the mainstream, carriers and law firms are working hard to develop policies, procedures and regulations pertaining to the use and risks associated with this technology. ChatGPT and other forms of AI will undoubtedly remain a main topic of conversation for years to come.

### Cyber for Law Firms

As with the broader cyber market, the cyber market for law firms continues to soften, with price increases ranging from 10% to over 50%. Higher price increases should be expected in firms that handle higher-than-average amounts of personally identifiable information (PII) or information protected by HIPAA, as well as firms that have had breaches or ransomware claims in the past. Increased ransomware claims and breaches targeting law firms have made this a less attractive class historically. Underwriting has become stricter, as most carriers are requiring multifactor authentication and offline backup systems with limited personnel access. Increased retentions and lower available limits are also common.

### Employment Practices for Law Firms

Law firms continue to see increasing rates in the employment practices liability market, with rate increases from 5% – 10%. As the workforce continues the return-to-work phase of COVID-19, it will be interesting to see if claims frequency rises. Reduced limits on primary, particularly in historically problematic states such as CA, NY and NJ, are common. Increased retentions are often common in these states as well.

### Other Management Lines for Law Firms (D&O, Fiduciary and Crime)

Limits and retention structures are being closely monitored to ensure sharing of the risk. Social engineering and business email compromise are also generating claims activity in these segments. Pricing increases continue to range from 0% – 10%.

## Legal Practice – H2 2023 Outlook

### Lawyers Professional Liability (E&O)

We expect the LPL market to remain competitive in H2 2023. As newer carriers become established and newer MGAs gain their footing, we anticipate a continued competitive landscape for H2. One trend we will watch closely is just how competitive the excess market can continue to be. In H1, the excess market was as competitive as ever; thus, it will be interesting to see if that trend continues in H2. The evolution of AI will continue to be a major focus from the underwriting community.

### Cyber for Law Firms

The cyber market in H2 will look very similar to H1. With the substantial rate increases that were prevalent over the last few years continuing to subside, we anticipate a smooth H2 for law firms. Underwriting will remain stringent, as most carriers are requiring multifactor authentication and offline backup systems with limited personnel access. Increased retentions and lower available limits will also persist.

### Employment Practices for Law Firms



For H2, rates in the employment practices liability market will continue in the 5% – 10% range just as they did in H1. Reduced limits on primary, particularly in historically problematic states such as CA, NY and NJ, will remain, along with increased retentions.

### Other Management Lines for Law Firms (D&O, Fiduciary and Crime)

Carriers will remain focused on limit and retention strategies heading into H2. Pricing in H2 is expected to remain in the 0% – 10% range.



## Lawyers Professional Liability (E&O)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 3%	<p>Overall rates have continued to flatten, if not soften, during the first half of 2023. Rates continue to vary greatly, depending on the size, location and specialty of the firm. Small firms and middle market law firms are seeing flat renewals. Larger firms that do not specialize or that specialize in higher-risk areas of practice, such as estate probate and trust, collection, high-end corporate and family law, are seeing slight increases.</p>	 0% to 3%	<p>Pricing is expected to continue to soften during the remainder of 2023. Increased capacity has helped lead to a healthy market environment.</p>
 <b>Limits</b>		<p>Most carriers are capping primary limits at \$5M, with a few still willing to offer \$10M. Quota share options continue to rise in popularity. Excess limits are still widely available up to \$10M in capacity, depending on attachment point.</p>		<p>A conservative approach to primary limits is expected to continue, as is the increased utilization of quota shares to manage carrier risk.</p>
 <b>Retentions</b>		<p>Carriers have increasingly focused on matching the size of the retention with revenues and size of firm, particularly in the middle market to large firm space.</p>		<p>More carriers are expected to shift their focus to revenue and attorney count to determine adequate retention for firms.</p>
 <b>Coverage</b>		<p>Coverages for this line of insurance have remained relatively stable throughout the first half of 2023. Some carriers continue to increase add-in coverages, with low sublimits (subpoena, crisis management) becoming standard.</p>		<p>Increased exclusions related to silent cyber and social engineering are expected as these claims continue to rise.</p>
 <b>Carrier</b>		<p>Market capacity continues to increase within the lawyers professional liability space, with new carriers entering the space.</p>		<p>Many carriers that entered the market to take advantage of hardening cyber and directors and officers prices are beginning to explore professional lines. We expect more carriers to enter this segment in 2023.</p>
 <b>Claims</b>		<p>Severity of claims continues to rise, driven by higher defense costs and larger deals with more sophisticated clients. Frequency has stabilized or decreased due to the slowdown in litigation and related areas.</p>		<p>Carriers are expecting an increase in the number of claims as a result of a possible economic downturn. Severity of claims is expected to continue to increase.</p>














## Cyber for Law Firms

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 10% to 50%	As law firms were increasingly targeted by hackers seeking ransoms or otherwise causing havoc in systems, rates increased substantially to account for the increased exposure. The increases range from 10% to more than 50%.	 10% to 20%	Pricing is starting to stabilize due to the large increases that were given out last year. However, claims activity is still an issue, so carriers are continuing to take rate. Increases of 10% - 20% are expected.
 <b>Limits</b>		Many carriers decreased limits available on primary or refused to increase limits to meet law firm demands. This resulted in the need for more participants to meet client demand for limits.		We expect carriers to continue to manage limit capacity, particularly on primary.
 <b>Retentions</b>		Upward pressure on retentions continues, particularly when firms lack requisite controls or have experienced claims activity.		Retentions will continue to rise, as will requirements for coinsurance or other risk-sharing techniques.
 <b>Coverage</b>		Ransomware coverage is closely scrutinized and often sublimited or eliminated. Multifactor authentication is a standard requirement for coverage, and firms unwilling or unable to implement this requirement will see reduced coverage.		Continued mandatory requirements for multifactor authentication, backups, encryption, etc. is expected for all size firms. Endpoint detection and response is highly encouraged for adequate coverage.
 <b>Carrier</b>		Underwriting guidelines tightening and a reduced carrier appetite for the class of business was common as activity targeting law firms became more common.		Expect continued emphasis on minimum requirements for data security and cyber controls. Law firms continue to be a less desirable class of business as cyber carriers continue to tighten underwriting guidelines and requirements.
 <b>Claims</b>		Increased ransomware and social engineering claims against law firms continue to become public. Several hacking incidents involving large firms heightened concerns about increased claims.		Claims activity is expected to continue to increase, and the cost of investigation and remediation is expected to continue to rise.

## Employment Practices for Law Firms

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 5% to 10%	Rates have stabilized, but claims activity (discrimination, wage disparagement, deprivation of career opportunities, etc.) and growth still warrant rate increases.	 5% to 10%	Carriers will continue to issue increases based on claims activity and firm growth.
 <b>Limits</b>		Carrier requirements for limits have not changed.		Carrier requirements for limits will continue to stay consistent.
 <b>Retentions</b>		Retentions are increasing, particularly in difficult geographical areas (CA, NY and NJ).		Retentions are likely to continue to increase in certain geographical areas (CA, NY, and NJ).
 <b>Coverage</b>		Carriers without specific law firm-targeted forms are pulling back on coverages, such as failure to make partner. Other restrictions in coverage, including sublimits for wage and hour claims, are becoming more prevalent.		Continued focus on reducing or eliminating coverage for trending loss leaders.
 <b>Carrier</b>		There is still a limited number of carriers that will write employment practices liability coverage for law firms.		The same limited number of carriers will continue to offer EPL coverage for law firms.
 <b>Claims</b>		Claims frequency and severity are still on the rise due to discrimination, wage disparagement, deprivation of carrier opportunities, etc.		Law firms will continue to experience claims relating to discrimination, disparagement, wage, etc.

## Management Lines for Law Firms (D&O, Fiduciary and Crime)

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	Pricing increases in these lines of business have begun to stabilize, but concerns remain due to cyber crime issues.	 0% to 10%	Primary rates should continue to stabilize, as adjustments were previously made. Economic conditions could push rates further upward.
 <b>Limits</b>		Carriers have focused on managing limits capacity and ventilating exposures in the large law firm segment, which is where we see most of the demand for these coverages.		No change in limits expected after previous adjustments, though we may see sublimits implemented more in certain areas.
 <b>Retentions</b>		Carriers continue to monitor retention adequacy and take corrective action where needed, particularly where employee count is high and policies/procedures are not fully implemented.		Retentions will continue to be monitored, particularly where there are past claims or where policies/processes are inadequate.
 <b>Coverage</b>		Directors and officers liability for law firms remains stable, and adjustments that were made following Dewey failure are common. Still, some adjustments are being made in fiduciary and crime where sublimits and exclusions are being implemented to address increase in claims related to cyber crime and excessive fee litigation (fiduciary).		Coverage expansion is not anticipated.
 <b>Carrier</b>		The market has continued to stabilize in the first quarter of 2023, with no real shifts in participants or appetites.		Market is expected to remain relatively stable, with no real shifts in participants or appetites.
 <b>Claims</b>		Cyber crime (social engineering, funds transfer fraud, etc.) have resulted in increased claims counts and severity in these lines.		Severity is expected to increase in these lines, as projected settlements and related defense costs are expected to rise. Cyber crime claims will continue to be prevalent.

# Life Sciences

## Product Liability

### Life Sciences – H1 2023 Summary

We are observing rate stabilization in the marketplace. New program and carrier participation are putting competitive pressure on carriers, accounting for the change in pricing behavior. The underwriting knowledge and experience is contributing to the pro-consumer rates, as they have been conservative in their response to external factors.

Invasive products, the **pain management** sector, **senior care** and **hospitals** are experiencing **harder market** conditions based on their individual experience.

Here are the top drivers shaping the industry:

1. *Advancements in precision medicine:* Precision medicine involves tailoring medical treatments and interventions to individual patients based on their genetic makeup, lifestyle and environmental factors. In 2023, we can expect continued progress in genomics, biomarker research and personalized therapies. This approach has the potential to improve treatment outcomes and minimize adverse effects.
2. *Increased focus on digital health and telemedicine:* The COVID-19 pandemic accelerated the adoption of telemedicine and digital health solutions. In 2023, we can expect further integration of technology into healthcare, including remote patient monitoring, virtual consultations and AI-powered diagnostic tools. These innovations can improve access to care, enhance patient experience and increase efficiency.
3. *Growth in artificial intelligence (AI) and machine learning (ML) applications:* AI and ML technologies are poised to have a significant impact on healthcare and life sciences. These technologies can assist in medical analysis, drug discovery, predictive analytics and patient risk assessment. In 2023, we may see increased use of AI and ML algorithms in healthcare decision-making and clinical practice.
4. *Expansion of value-based care models:* The US healthcare system is shifting towards value-based care models, which prioritize the quality and outcomes of healthcare services over the quantity of services provided. In 2023, there may be further efforts to transition from fee-for-service reimbursement to payment models that reward positive patient outcomes and cost-effectiveness.
5. *Emphasis on mental health and well-being:* The importance of mental health and well-being has gained recognition in recent years. In 2023, we can expect increased investment in mental health services, expanded access to care and a focus on destigmatizing mental health conditions. Integrating mental health into primary care settings and leveraging digital mental health platforms may also become more prevalent.
6. *Continued growth in biotechnology and gene therapy:* The field of biotechnology and gene therapy is rapidly evolving, with promising advancements in areas such as gene editing, cell-based therapies and regenerative medicine. In 2023, we may witness further breakthroughs in these areas, with potential new treatments for genetic disorders, cancers and other complex diseases.



## Life Sciences – H2 2023 Outlook

We are forecasting rate increases to remain flat, with some segments experiencing decreases in the range of -5% – 0%. Emerging industry segments are encouraging new MGA participation and increasing carrier capacity. Nuanced claims are projected to plague the industry, such as the recent pixel-tracking claims. Abuse and molestation, opioids and cyber coverage will continue to have significant headwinds. Continued softening of the market is anticipated through the remainder of the year with the expanding carrier appetites.

In the second half of 2023, we expect to see:

1. *Increased demand for specialized coverage:* The life science industry is constantly evolving, with advancements in biotechnology, pharmaceuticals and medical devices. This has led to greater need for specialized insurance coverage tailored to the unique risks associated with these sectors.
2. *More common use of risk assessments and stricter underwriting:* Insurance companies are placing greater emphasis on risk assessment and underwriting in the life science and healthcare sectors. Given the complex nature of life science research and development, insurers are anticipated to continue the practice of working closely with industry experts to evaluate risks associated with clinical trials, product liability, intellectual property and regulatory compliance.
3. *Greater collaboration between insurers and life science companies:* Insurers are likely to collaborate more closely with life science companies to understand their specific needs and develop customized insurance solutions. This collaboration can help insurers better assess risks, offer appropriate coverage and provide risk management services tailored to the life science industry.
4. *Additional regulatory changes and heightened compliance:* Life science companies are subject to various regulatory requirements and compliance standards. Insurance policies will need to adapt to changes in regulations and ensure compliance with evolving legal frameworks. Insurers may offer services to help life science companies navigate these complex regulatory landscapes.

## Product Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -5% to 5%	Pricing continues to stabilize in Q1, largely driven by an increase in competition and capacity.	 -5% to 0%	Most markets will continue to offer competitive premiums.
 <b>Limits</b>		Limits are strategically available for most risks in this marketplace when aligned with appropriate insurance partners. Carrier specialization will continue.		We expect limit and capacity to increase as clients are better positioned to purchase extra limits. Anticipated carrier specialization and new product development to support expanded limits.
 <b>Retentions</b>		Retentions have remained static, with some subsegments observing increases due to loss trends and exposures.		We anticipate retentions to remain stable, and we expect current trends to continue for the next 12 months.
 <b>Coverage</b>		Strategic exclusions and provisions are being added to policies. Restrictions around services and specified operations are being implemented.		Availability of relatively broad coverage will continue to be accessible over the course of the next 12 months.
 <b>Carrier</b>		New carriers and managing general agents have entered the space with a focus on certain subsegments of the industry. All are looking for premium growth.		Continued market expansion and competition are anticipated for the next 12 months.
 <b>Claims</b>		Claims activity has remained flat; however, life science business continues to be challenging with the proclivity for class action lawsuits.		Large class actions will continue to be a threat to life sciences accounts, with large settlements driving litigation and complex claims scenarios.

# Management, Cyber and Professional Liability

*Public Company D&O, Private and Not for Profit Company D&O, General Partnership, Fiduciary, Employment Practices, Cyber*

## Management, Cyber and Professional Liability – H1 2023 Summary

The market continued to improve for policyholders in the first half of 2023 across all product lines and segments within the management, cyber and professional liability (MCPL) lines of business. When there is the continued supply of capital and less transactions (M&A, IPOs, special purpose acquisition companies (SPACs), etc.) the marketplace becomes increasingly competitive and puts downward pressure on pricing and retentions. This was most acute in public directors and officers (D&O) as a result of this over-supply against lower demand activity. We continued to see these trends play out in cyber and other key lines within the MCPL lines of business.

Key trends we saw in H1 2023 in the management and professional liability lines of business are as follows:

- Competition is being fueled by expanding insurer interest and the emergence of new players in the D&O market. Although the introduction of new markets is helping to drive down rates, new entrants on average are facing difficulties in growing their businesses against budget. In cases where it is viable, established insurers are aggressively striving to retain their clients by offering attractive terms which only exacerbates the pricing and retention reductions for good risk profiles.
- The decline in transactional activity (such as traditional IPOs, SPAC IPOs and de-SPACs) compared to 2022, has had a negative impact on premium budget goals for 2023. As a result, there is a noticeable trend of increasingly aggressive pricing for excess coverage to offset these budgetary shortfalls.
- According to Cornerstone, the number of new securities class action filings has decreased each year from 2019 to 2022. In 2023 year to date, there are currently 108 new federal securities class action suits filed, which is a drop from the 2019 to 2021 cases filed. This decline was primarily driven by fewer merger-objection and Rule 10b-5 cases being filed in 2023.
- Employment practices liability coverage remained stable for the first half of 2023, and we expect the same for the remainder of the year. Most clients have addressed and are adjusting to each insurer's expectations on addressing Biometric Information Protection Act (BIPA). There has not been a notable rise in COVID-19-related exclusions. Carriers continue to harbor concerns regarding potential surges in claims due to issues related to workers returning to the office, especially in states where litigation has already ensued. For the remainder of the year, we expect stabilized rate increases in the marketplace and flattening between primary and excess increases. Furthermore, the fears of waves of COVID-19-related employment claims never materialized as expected. Social inflation and higher counsel rates along with increased settlements and verdicts, largely in single plaintiff claims, continue to be of significant concern for carriers and their combined ratio in this line of coverage.
- Fiduciary liability, excessive fee litigation is still the major and primary concern for insurers. It is anticipated that fiduciary liability insurers will continue to manage capacity while increasing both rate and retentions due to this exposure. This is likely to be seen and addressed for clients with plan assets of less than \$1B.

### Cyber

The cyber landscape was driven by two key areas in the first half of the year: a resurgence in ransomware claims and the war exclusion.

The war exclusion is an exclusion in property and casualty policies that exempts insurers from being held accountable for losses or damages caused by foreign war attacks. How a "war" is defined under the cyber policy has been up for interpretation for several years, with most policies offering a "cyber terrorism" carveback to address incidents politically motivated but not necessarily part of a declared war. In an attempt to silence this debate, effective March 2023, the Lloyds of London market required all participating cyber syndicate carriers to include affirmative language defining cyber war and adding an exclusion to all policies. Whether this has allowed for more clarity or simply caused more confusion is still up for debate.

However, one thing is clear: clients can expect changes to the war language on their policies and should be prepared to discuss their options with their broker.

At the end of 2022 we saw a significant decrease in ransomware, allowing carriers to take a momentary breath and allowing new markets to enter the cyber insurance space. That lull seems to have ended with a spike in ransomware claims.

For the **first half** of the year, NFP reported **18% of claims** involving **ransomware** and almost **half** attributed to a **network breach**.

In addition, ransomware attacks exploiting zero-day vulnerabilities in popular software programs, such as MOVEit, have taken headlines, further exasperating the cadence of ransomware.

In short, cyber market changes continue to be driven by concerns around systemic risk and ransomware. Clients should continue to closely review terms with their brokers and focus on showcasing their cyber security hygiene in order to obtain the best coverage.

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## Management, Cyber and Professional Liability – H2 2023 Outlook

We expect more of the same for the second half of 2023 for the MCPL lines of business. However, given some of the economic headwinds we are seeing now and that are expected, we think more bankruptcies/restructurings will take place potentially in the second half of 2023. We think those companies will face more pricing pressure. Similarly, certain industries such as digital assets, cannabis and other emerging industries won't see the same reductions as some other policyholders that are not in those industries.

Regarding the other key MCPL lines of business (employment practices and fiduciary liability) our prediction for the remainder of 2023 is more stability and fewer increases unless the policyholder has a challenged risk profile or has had recent loss history.

## Public Company Directors and Officers Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -20% to 0%	Rates continue to fall from prior year and prior quarter given the abundance of capacity in the marketplace for publicly traded D&O. We expect rates to continue this trend for the remainder of 2023.	 -20% to 0%	As we stated in the beginning of the year, we expect continued pressure on pricing, given the abundant capacity effect and the reduction in securities class action filings. The continued slowdown in the IPO and SPAC market has put pressure on carriers' year-over-year growth budgets, and competition has increased across the entirety of the public D&O market.
 <b>Limits</b>		Similar to our expectations at the beginning of the year, insurance carriers have been maintaining their average limits deployed for over two years. For the first half of 2023, we did see limit tranches increase, with expiring tranches of \$2.5M moving to \$5M and \$5M moving to \$10M after major reductions in limit during the hard market cycle. Carriers are still limiting capacity in certain industries, especially on difficult risk profiles such as digital assets, cannabis, IPOs and SPACs.		Like we saw in the first half of 2023, we expect carriers to maintain and, in some cases, increase their capacity over the next 12 months, using the "more limit, potentially more premium" philosophy.
 <b>Retentions</b>		We are starting to see more decreases on retentions given the competitive marketplace.		We expect to see potential reductions in retentions as the competition continues to increase and intensify like we saw in the first half of 2023. Certain risk exposures and industry classes will still see higher retention levels, such as IPOs, SPACs, digital assets and cannabis.
 <b>Coverage</b>		Breadth of coverage is stable in comparison to prior year and quarters.		Barring any unexpected event-driven occurrences, we expect the breadth and scope of coverage to remain unchanged. We expect appetite for coverage expansion, considering the new capacity trying to get market share.
 <b>Carrier</b>		Capacity continues to be abundant in the public D&O market, which continues to put downward pressure on pricing and retentions. New entrants chasing deals is driving this trend.		The entry of new capacity into the excess market will result in the introduction or reshuffling of carriers onto multilayered programs.
 <b>Claims</b>		We have seen a decrease in the past two years in federal securities class actions. So far in 2023 there have been 42 subsidiary controlled affiliation (SCA) filings, which is down over 2022 filings at this time. With the recent banking crisis, we will be keeping an eye on the SCA filing trends through 2023.		We expect claims volume to increase in connection with increased SEC scrutiny, new regulations in the Insider Trading Prohibition Act and continued focus on environmental, social and governance. The number of SCAs at this point are at 108, which would intimate an increase over full year 2022 if this trend continues. Uncertainty in the economy has the potential to lead to increased stock market volatility and bankruptcies.









## Private and Not for Profit Company Directors and Officers Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -10% to 0%	<p>The private and nonprofit company sectors continued to improve in the first quarter. Pricing adjustments continue to be made directly in response to events related to industry sector, loss history, financial position and regulatory factors. The length of the hard market and increased competition is having an impact on the overall market. We have also seen new entrants enter the market — notably insurtech companies that will continue to increase the pressure on overall rates. However, for financially distressed risks and risks in certain industries (such as cannabis, digital assets, etc.), above-average rate increases and higher retentions still exist.</p>	 -10% to 0%	<p>Pricing will continue to improve for the remainder of 2023, given the amount of capacity in the marketplace for clients with good risk profiles. Given current and predicted economic conditions, we expect to see a rise in bankruptcies and restructurings in this segment. For those latter risks, they will see higher pricing and higher retentions.</p>
 <b>Limits</b>		<p>Carriers continue to maintain limit capacity. We are seeing stabilization due to corrective action taken over the last 24 months during the hard market. The more challenged the risk profile, the less limit that client will be offered.</p>		<p>Similar to the publicly traded segment, we do expect carriers to increase limits (e.g., \$5M to \$10M) for those companies with strong risk profiles given the pricing economics we are seeing in this space.</p>
 <b>Retentions</b>		<p>We saw carriers generally maintain their retention levels, but in some cases there were some decreases throughout the quarter.</p>		<p>We expect to see retentions remain the same and, in some cases, decrease given new capacity interested in writing more business.</p>
 <b>Coverage</b>		<p>The retraction of coverage terms is trending towards leveling. Portfolio corrections appear to be plateauing for preferred risks. High-risk industries and emerging industries are still seeing more restrictions and exclusions being put on their programs.</p>		<p>Trend continues toward maintaining the status quo. We expect appetite for coverage expansion, considering the new capacity trying to get market share.</p>
 <b>Carrier</b>		<p>We continue to see the emergence of new market capacity in the private company sector. The post-pandemic appetite for established business with less than \$100M in revenues is becoming a carrier focus.</p>		<p>Similar to the first half of 2023, the emergence of new capital will be driven by technology and API enablement. We will begin to see significant efficiencies and increased competition as carriers strive to be first to market with technology.</p>
 <b>Claims</b>		<p>Claims volume remains flat, while defense costs and other claims elements are in an upward trajectory, which is increasing overall claims activity and expense trends.</p>		<p>Claims volume remains flat, while defense costs and other claims elements are in an upward trajectory, which is increasing overall claims activity and expense trends. Given the current and expected macro environment, we do expect more claims as a result of bankruptcies.</p>


## General Partnership Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -5% to 5%	<p>The GPL market for insureds with no losses or significant fundraising has stabilized with most insureds seeing flat to moderate rate increases and a select minority achieving decreases in Q2. Excess layers continues to show diminished rate pressure due in part to an increase in excess only market capacity.</p>	 -5% to 0%	<p>We expect rate increases to continue to come down over the balance of the year as the market continues to levels off.</p>
 <b>Limits</b>		<p>Capacity still remains strong within the GPL marketplace. The market of insurers willing to write primary is still limited but broad enough to generate steady competition. Insurers continue to push to maintain strict capacity management and are generally unwilling to offer more than \$5M on new programs. Existing towers are able to maintain \$10M tranches.</p>		<p>We have not seen reason to believe that limits profiles are increasing for carriers.</p>
 <b>Retentions</b>		<p>Retentions have generally remained stable year over year with some GPs seeing material increases in response to significant fundraising or claims activity. EPL Retentions are being raised by some carriers to be in line with GPL retentions in response to an increase in material EPL litigation at the GP level.</p>		<p>We have not seen reason to believe that retentions will increase materially.</p>
 <b>Coverage</b>		<p>Breadth of coverage is stable in comparison to Q2 2022 with a focus on broadening regulatory and investigations coverage. Carriers are looking to address their employment practices related exposure by increasing retentions.</p>		<p>Subject to an unexpected event driven occurrences we expect the breadth and scope of coverage to remain unchanged.</p>
 <b>Carrier</b>		<p>The market of primary insurers in the US remains stable. New excess capacity has entered the market but has not materially impacted pricing.</p>		<p>New capacity is expected to enter the excess market which will result in the introduction or reshuffling of carriers onto multi-layered programs.</p>
 <b>Claims</b>		<p>We continue to monitor the rule changes the SEC proposed last year for private fund advisors. Most notably the rule prohibiting the advisor or its affiliates from seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund.</p>		<p>If the economy were to enter a recession as some expect we anticipate claims relating to portfolio company bankruptcies to increase. If this results in claims across the PE sector as a whole it may affect the overall rate and retention environment.</p>




## Fiduciary Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	<p>Fiduciary liability rates continued to stabilize as we went through the anniversary (renewals) of the larger correction taken to address excessive fee litigation. Insurance carriers are focused on plans with assets greater than \$100M, where previously the threshold was much higher. Employee stock ownership plans will see even greater rate increases along with those that have challenged risk profiles.</p>	 0% to 10%	<p>Markets will continue to monitor developments and trends with excessive fee litigation and other exposures that are challenging their profitability. Size of plan assets is a key factor that will impact pricing. Employee stock ownership plans and those companies with challenged risk profiles will continue to see even greater rate increases.</p>
 <b>Limits</b>		<p>Given the reduction in limits during the hard market, we're starting to see a stabilization, particularly on programs that have seen structure changes over the past year. We are still seeing carriers reduce capacity on programs that still have higher limits (\$10M+), even in historically consistent and solid client relationships, given the claims environment (especially excessive fee litigation) for this line of coverage.</p>		<p>We think the limits for fiduciary liability will remain stable for the rest of the year.</p>
 <b>Retentions</b>		<p>Carriers are, for the most part, maintaining their retentions substantially due to the claims environment mostly being driven by excessive fee litigation. In the first quarter we did see some modest increases on the excessive fee/class action retentions.</p>		<p>We expect retention levels to remain stable for the rest of the year.</p>
 <b>Coverage</b>		<p>Carriers are trying to reduce their potential exposure to these excessive fee and expense claims. This is usually attempted or achieved by adding a sublimit, separate retention or coinsurance, and by using exclusionary wording for these claims.</p>		<p>We expect this trend to continue toward more restrictive policy wordings and coverages based on all the recent claims activity.</p>
 <b>Carrier</b>		<p>There is no expectation of a shift in market leadership among the carriers.</p>		<p>There is no expectation of a shift in market leadership among the carriers.</p>
 <b>Claims</b>		<p>We saw some positive trends on the ERISA litigation front that started in 2022, which we expect will continue. Courts have begun to push back against conclusory allegations in the aforementioned excessive fee cases and have rejected suits that compare administrative fees without also comparing the services rendered for those fees. Although this a positive development, there has been no letup in case filings, and plaintiffs continue to develop theories of liability. Also, evolving plan-related cyber exposures and new Department of Labor enforcement initiatives keep us concerned.</p>		<p>We expect more of the same as it relates to the first half of 2023 commentary for the remainder of the year. Given the push for higher retentions to address the excessive fee litigation trend, we feel this has helped the industry mitigate their claim exposure and expect that trend to continue.</p>

## Employment Practices Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 10%	<p>Employment practices liability has remained relatively stable in the first half of 2023. Concerns over reductions in force (RIF) as a result of current economic conditions have not yet materialized like we initially thought might happen. Carriers are closely watching return-to-office and the state of the economy that could potentially lead to future claims. California exposure continues to be a challenge for the industry with much higher retentions and pricing than any other state.</p>	 0% to 10%	<p>Markets will continue to monitor the news and economic trends and will adjust accordingly. The expected and projected market conditions may lead to RIFs in the future and impact the claims environment.</p>
 <b>Limits</b>		<p>Limits remained stable in the first half of 2023.</p>		<p>We have not seen a reason to believe that limits are increasing for carriers.</p>
 <b>Retentions</b>		<p>Carriers are and will continue to make adjustments on a state basis (NY, NJ, and CA) and risk-specific basis primarily influenced by legislation and loss trends.</p>		<p>We continue to expect a consistent monitoring of regulatory trends resulting in retention adjustment to persist throughout the year, especially if claim activity picks up in the next 12 months due to return-to-work vaccination issues and potential RIFs.</p>
 <b>Coverage</b>		<p>We continued to see event-driven restrictions being introduced (Biometric Information Privacy Act, or BIPA) in response to COVID-19 (in IL). Carriers are beginning to present uniformity in approach as well as restricting the scope of coverage countrywide.</p>		<p>We expect this trend to continue for the rest of year and into 2024 toward more restrictive policy wordings and coverages based on state and industry.</p>
 <b>Carrier</b>		<p>There is no expectation of a shift in market leadership among the carriers. We do, however, expect to see a slight uptick in capacity, especially with carriers that offer employment practices liability insurance as a blended product with the D&amp;O liability.</p>		<p>Some developing appetites are likely to emerge as carriers see opportunity to gain market share and utilize efficient technology in the SME space.</p>
 <b>Claims</b>		<p>There has been increased volume in connection with employee claims and third-party discrimination claims. Vaccine hesitancy has resulted in some employees being suspended or not reinstated, and they are challenging these decisions. Defense costs and other elements are in an upward trajectory, which is increasing overall claims activity and expense trends.</p>		<p>Return-to-work endeavors may clash with a workforce that has quickly become accustomed to work-from-home arrangements, and accommodations to work remotely may spawn more claims. We expect claims volume under the Fair Labor Standards Act and wage and hour statutes to continue to increase.</p>

# Cyber

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -10% to 5%	<p>Ransomware events have seen an uptick in frequency from the slowdown of previous quarters. Business email compromise continues to be a severe loss driver, and network compromises remain frequent. "Ransomware as a service" is a continued issue and thus small and medium enterprises, particularly those that have not put investment into their cyber security hygiene, continued to experience ransomware throughout the quarter. Clients that have implemented proper controls to reduce these events have experienced flat to decreased pricing. Clients lacking proper controls continue to face challenges regarding price and capacity.</p>	 -10% to 5%	<p>Ransomware, privacy regulation (e.g., BIPA and Video Privacy Protection Act), and systemic and supply chain cyber risk continue to be at the forefront of claims and actuary concerns. Rates are expected to scale back for those insureds that experienced rate corrections in 2022 and have invested in appropriate cyber controls. Carriers will continue to seek rate at a primary level, but at far lower rates than the previous year. While we have seen decreases in pricing driven by market competition, ransomware claims have begun to increase again. The increase in claims frequency is a reminder that even with premium reduction opportunities, the cyber market has not yet reentered a "soft market."</p>
 <b>Limits</b>		<p>Most carriers continue to monitor aggregate risk by maintaining \$5M max capacity offerings per client; however, clients with strong cyber security controls are seeing more opportunities to take advantage of larger capacity offerings, up to \$10M. Sublimits should be expected for dependent business interruption, particularly triggered by a system failure. Carriers criticize dependent business interruption as a coverage area lacking proper underwriting and are therefore scaling back. Sublimits or coinsurance may be applied to ransomware-related loss when cyber controls are not optimal.</p>		<p>We expect this trend to continue throughout 2023. Carriers will continue to strategically deploy capacity for accounts that maintain favorable cyber hygiene. Cyber extortion and ransomware limits will continue to be sublimited, with a potential coinsurance for high-risk industries or if controls are not optimal. Clients who want to mitigate decreases to dependent business interruption should prepare to demonstrate strategic initiatives to mitigate vendor dependency and risk.</p>
 <b>Retentions</b>		<p>The market has stabilized, leaving retentions secure. Clients that can showcase more investments to cyber hygiene may be able to take advantage of reduced retentions.</p>		<p>Given the new entrants into the cyber market and after two years of a hard market, we expect retentions to stay the same and have some downward movement throughout the year.</p>
 <b>Coverage</b>		<p>Carriers continued to reduce or exclude ransomware coverage when controls are not favorable. Many carriers are looking to address aggregation concerns by amending policy language. Notable changes were seen for all Lloyds of London syndicate carriers that are now mandated to include affirmative cyber war exclusionary language. Media and Biometrics Information Privacy Act (BIPA) concerns seem to have temporarily taken a backseat to bigger concerns around potential causes for widespread loss. Web tracking exclusions have also become common on policies.</p>		<p>Trend continues toward more restrictive policy wordings and coverages, especially around ransomware and systemic events. Clients will need to focus more on cyber hygiene controls (particularly multifactor authentication, endpoint detection and response, email filtering, secured/tested backups and privileged access management solutions), as well as media and biometric information handling to gain coverage. We expect continued focus on war exclusion language and other trending litigation.</p>
 <b>Carrier</b>		<p>Carriers continue to make cyber security hygiene a key component to offering coverage; however, increased players in the market have provided clients with optimal controls more opportunities to save money in the market. Coverage will be paired down when controls are lacking. Multifactor authentication, endpoint detection and response and backups are critical components in the underwriting process. More carriers have made investments to offering clients assistance on implementing key controls and rectifying vulnerabilities as a means to drive better risks across their portfolio.</p>		<p>Carriers will emphasize the requirement for quality ransomware and cybersecurity controls. Use of noninvasive scans (Bitsight, SecurityScorecard and Cyence) during the underwriting process will continue, and questions about findings and potential issues (e.g., open ports) will need to be remediated. Additional questions around vendor management, business continuity plans and employee training will continue to be part of the underwriting process. We expect to see an increase in capacity due to additional carriers entering the market.</p>
 <b>Claims</b>		<p>Significant increase in frequency and severity of cyber claims, especially ransomware, continued. The Movelt vulnerability drove many of the ransomware and data breach claims seen in the second quarter. Social engineering and financial fraud claims continue to target companies in all industries. A resurgence in privacy litigation has begun with claims related to violation of the Video Privacy Protection Act for pixel tracking on many Meta-based websites.</p>		<p>Cyber claims activity is expected to continue to increase. The impact of large or headline cyber events will impact carrier capacity and underwriting changes well into 2023. The continued work-from-home environment and return to work will continue to test cyber infrastructure across various industries, leading to increased claims activity. However, with our continued dependence on technology, it's hard to tell what the next thing will be.</p>

# Private Equity

R&W Insurance

## Private Equity – H1 2023 Summary

Following a normalized 2022, representations and warranties (R&W) submission flow has slowed in 2023 and is trending closely to times prior to 2021. While submissions still remain higher from a historical basis, 2023 has seen a continued moderation in submission flow. Both rate online and retentions have leveled off and even come down somewhat to be more reflective of the first half of 2021.

Premiums have **continued to moderate** and have even **decreased** somewhat in 2023 with **~2.5% – 3.5% rate** online as an average.

Larger deals of over \$1B will see primary rates closer to 4.0%, but with excess; blended rates are closer to the 2.75% – 3.25% range. Claims frequency and severity have increased over the past few years and have continued to do so in 2023. This seems to potentially support rate increases over time; however, we have not seen that materialize in 2023. Appetite across the industry is broad, but smaller transactions (under \$50M in enterprise value), in particular, have become easier to insure. There are a couple newer markets that opened in early 2023 that are trying to focus on smaller limit deals (under \$50M in enterprise value), which continues to drive this trend.

2023 has seen a decrease in demand as anticipated with the current debt and rate environment. In fact, 2023 has not seen activity stability in comparison to 2021 and 2022. While some R&W insurers have made strides to add capacity and underwriting staff to address increased demand for R&W policies, that growth has not materialized. It will be interesting to see if activity increases in the second half of 2023 or if the current interest rate environment will continue to dampen activity.

## Private Equity – H2 2023 Outlook

If the trends we have seen in early 2023 continue, the outlook for R&W insurance in 2023 will likely be tempered by the current interest rate environment. The current debt market is pushing firms to do smaller transactions and fewer of them. Until there is moderation in interest rates, we do not see this trend changing considerably in 2023. With the reduction of overall deal activity, there will be competitive pressure on the insurers to write enough business to support their internal needs.

With these competitive pressures, we do not see premiums and retentions increasing in 2023. We will likely see them continue to slowly decrease until the market normalizes. While some markets have and will continue to try to hold the line on rates and retentions, there are a number of markets willing to continue to drive pricing and retentions down as they try to get market share.

There was one new R&W insurer in 2023, and it would not surprise us to see a similar trend for the remainder of 2023. While not at the torrid pace of Q4 2022, there remains a considerable market for those looking to establish a new line of insurance for their portfolio.

## R&W Insurance

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -15% to -10%	<p>The R&amp;W insurance market remained soft in Q2 2023. While pricing varied from market to market, overall pricing for a customary policy decreased somewhat since Q4 2022. Rates are as low as they have been in several years.</p>		<p>While pricing over the next 12 months will depend on the health and level of activity of the broader economy and mergers and acquisitions market, we would expect premiums to remain somewhat flat in 2023. We would expect to see flat rates with some possible rate moderation to continue throughout 2023.</p>
 <b>Limits</b>		<p>While insurance carriers have been more cautious on the primary limit offerings, there has been no significant change to the limits being offered by most carriers. Most primary R&amp;W carriers can offer a \$30M limit policy for any particular transaction.</p>		<p>We do not have reason to believe that carrier limit profiles will change.</p>
 <b>Retentions</b>		<p>Initial retentions on R&amp;W policies have softened considerably in 2023. We are seeing ones as low as .50% on larger (over \$200M in enterprise value). Smaller transactions are seeing moderation as well, with .70% being seen on one under \$100M in enterprise value. As well, some carriers have increased their minimum retention thresholds for smaller transactions.</p>		<p>We do not have reason to believe that policy retentions will change materially. Policy retentions have remained stable on R&amp;W insurance in recent years.</p>
 <b>Coverage</b>		<p>As a general matter, breadth of coverage has been stable in 2023. One coverage area that has come into focus in 2023 is the specific "fraud" remedy language in the policy. Many insurers are not willing to negotiate on this point, and it has become a factor in deciding who to use as the insurer on a particular transaction.</p>		<p>We do not have reason to believe that policy coverage will change materially over the next 12 months.</p>
 <b>Carrier</b>		<p>The Volante facility is now up and running as of Q2 2023. As of Q2 2023 there are now 27 domestic carriers.</p>		<p>Balance Partners opened a new facility in 2022, as did Volante in 2023. We find it likely that there could be additional entrants in 2023.</p>
 <b>Claims</b>		<p>Over the past several years, R&amp;W insurance claim severity and frequency has increased steadily. Some markets report a slight increase in claim frequency, while others report that frequency has not changed materially. Severity has continued to increase as well, particularly on large transactions.</p>		<p>We do not have reason to believe that claims volume or severity will change significantly over the next 12 months.</p>

# Real Estate

*Auto Liability, General Liability, Workers' Compensation, Umbrella Liability, Property*

## Casualty – H1 2023 Summary

If H1 2023 presented any relief in the casualty marketplace, it was largely only in comparison to the cratering of the property market. Clients have reluctantly acclimatized to difficult casualty conditions for the past three renewal cycles, but now many clients are facing unrelenting premium increases, capacity cuts and adverse policy terms and conditions for both property and casualty.

This has put tremendous pressure on brokers to find creative, cost-cutting solutions wherever possible to balance out property increases while still battling to contain casualty rate increases and coverage reductions. Clients are frustrated with years of limited options to the point of not only cutting limits but also having to accept adverse exclusions simply to bind affordable renewal programs.

Favorable real estate occupancies (offices, industrial warehouses and retail to a lesser degree) with good losses continue to attract the best options as insurers want to add well-performing risks to their portfolios. Early negotiations for minimal rate increase (<10%) and, in rare occurrences, flat rates, are possible for the best-performing accounts as underwriters strive to keep competitors at bay. Notably, despite market participation for these types of accounts, incumbent markets still hold a very strong advantage, with very few, if any, competitors providing quotes compelling enough for insureds to make a switch. For these desirable accounts, the primary casualty marketplace has largely settled into a stabilized, standard renewal rate of 10% – 15% increases being viewed as acceptable, although far from favorable given the many prior years of ratcheting correction.

Results for hospitality accounts vary widely, dependent upon the class of hotel, location, use of the facilities and availability of significant workers' compensation premium to round out the casualty program. Business class or upscale traditional-use hotels with favorable loss history are experiencing stable renewals, given market competition, interest and the ability to garner at least options for leverage against incumbent markets.

Budget motels, even while being used traditionally, struggle to find coverage in the admitted market outside of small, package markets. And even then, coverage is largely dependent on age, location and, of course, losses. More hotels are being converted to house immigrant populations, as the contracts for distancing/quarantine uses related to COVID-19 come to an end. Hotel owners participating in these alternative options have realized the advantages of consistent, 100% occupancy in exchange for limited services provided. However, no admitted insurers will knowingly provide coverage in these situations, necessitating non-admitted coverage often with significant deductibles and very restricted coverage terms and conditions.

Habitational risks are facing new and strong headwinds, which is very troubling after already being battered for the past several years. Nowhere is this more starkly evident than in NY, where even the few relatively reliable markets have begun to withdraw capacity. A nonrenewal of primary general liability and/or lead excess layer for a NY habitational risk is the absolutely worst position in which a client can land, with very few options and renewal premium increases of up to 200%.

Six months ago, nonrenewals **seemed** to be **slowing**, but now they seem to be **increasing** for **habitational-heavy, alternative-use** hospitality or poorly performing accounts.

Even regional insurers that have historically provided stable coverage to longtime insureds are now scrutinizing renewals closely as significant loss activity impacting overall books are eroding profitable performance, introducing an element of uncertainty about renewals that in the past were automatic and predictable.

There continue to be very few admitted markets that will write new habitational business, and those are underwriting very strictly, generally looking only for newer construction, low-rise buildings, and steering clear of problematic jurisdictions such as NY, GA and FL. Mid-rise, older frame buildings (especially

if non-sprinklered) and those with significant subsidized housing and/or poor loss history generally find only non-admitted market interest, with very significant self-insured retentions and restrictive terms. Crime scores remain a critical underwriting criterion, with declinations, restricted coverage or coverage sublimits resulting; simply the use of armed security at any location is generally cause for an admitted market to walk away.

Even non-admitted markets that have for the past couple of years collected very large premiums for habitational and/or otherwise troubled accounts are walking away from renewals — if not straight-up nonrenewing, then providing extremely high quotes (+150% – 200% of expiring) at the last minute, backing brokers and insureds into corners from which there are extremely few favorable options.

Defensively, brokers must work harder to find options for insureds, especially in situations of nonrenewed coverage since:

- Finding an admitted market willing to write a varied portfolio in its entirety is nearly impossible unless all the assets are superior and the losses few. Insureds may have to trade the efficiency of a consolidated program for several standalone placements.
- Insureds accustomed to readily available guaranteed cost coverage at reasonable premiums are now having to consider various deductible/self-insured retention options to obtain affordable premiums.
- Ever-increasing premiums have become unsustainable for many clients to the point that many must consider accepting adverse exclusions or reducing total limits of insurance purchased.
- Timely, thorough, quality submissions are absolutely critical, including enough lead time for in-person underwriter meetings and upfront loss control visits to better sell the client to interested markets.

Underwriter workloads remain extremely heavy, both from incessant broker marketing and general economic labor shortages. Engaging underwriters is critical for success, and the tools for doing so include:

- providing thorough applications/submissions, with all needed exposure and loss information upfront.
- providing guidance on goals, defining realistic pricing/coverage parameters.
- pushing for loss control and/or client engagement in order to move the submission from an abstract unknown to relationship.

Concerted underwriting continues with focus on crime scores within city blocks; detailed updates on large, open claims; more questions about security (armed/unarmed); requests for third-party contracts, etc.

Exclusions are the preferred method of dealing with the potential of any catastrophic loss potential or uncontrolled exposure, generally without much negotiation. The more information that can be provided about an insured's internal training, policies and protocol around high-profile risk areas such as abuse/molestation, human trafficking, etc., the more leverage for potential softening or removal of certain exclusions.

Adverse coverage restrictions, depending on occupancy and/or risk profile:

- Assault/battery
- Cannabis or controlled substances
- Habitability
- Animals/pets
- Firearms
- Sexual molestation/misconduct
- Human trafficking
- Discrimination
- Contractor-related, particularly NY
- Sidewalk liability (NY)
- Vermin

Territorial challenges continue outside of NY, most notably with FL and GA. Markets are withdrawing from broad swathes of these states, taking a much closer look at adverse jurisdictional climates and accepting only limited or no exposure in these areas. Finding a home for a single location in a challenged geography, especially with poor losses, is now nearly entirely a non-admitted placement.

Insurers continue to expand into the marketplace of developing single-family homes for long-term rentals. While there are several programs specific to single-family homes, overall traditional insurers seem to struggle with underwriting/writing for this type of habitational risk, citing more difficulties for consistent risk management and loss control/mitigation than traditional multifamily residential properties.

The lead umbrella/excess liability market continues to be challenging, as factors that have caused the working layer to expand beyond the primary general liability (social inflation; claims severity/frequency; and trends around wrongful

eviction, assault/battery, sexual abuse/molestation and human trafficking) cause restriction of capacity, nonrenewals and often significant premium increases.

Well-performing accounts with favorable occupancies such as offices, retail and mixed-use have the best renewal results, especially if the lead umbrella is provided by the primary casualty insurer. Excess liability incumbents generally are offering renewal pricing based only on proportional increases from the primary layer. Many insurers are attracted to the \$15M excess \$10M layer for nonresidential risks, offering substantial premium savings while providing adequate distance from the new claims working layer of between \$1M – \$5M.

However, renewals for habitational risks remain challenging, with incumbent lead umbrella insurers commanding (and retaining) healthy rate increases.

Nonrenewals of lead umbrellas remain the most problematic situation for all insureds, with very few admitted unsupported excess insurer options. Premiums to replace nonrenewed lead layers are still often very significant, and virtually no insurers are deploying more than \$10M of new lead umbrella capacity. Habitational risks in a nonrenewal situation very often must use three insurers to achieve the first \$10M of excess coverage at very steep and opportunistic pricing, often with adverse exclusions.

High excess capacity remains abundant, but not consistent, until the \$25M attachment point.

The workers' compensation market continues to be competitive at this point, particularly if adding ballast to larger accounts. Ample capacity and favorable pricing continues — single-digit increases/decreases for insureds with positive loss experience. Labor shortages resulting in lack of staff/experience, especially in the hospitality sector, may well signal the end of this exceptionally favorable market for workers' compensation.

Automobile liability rates for real estate are continuing to have increases, although generally 10% or less, as insureds in this sector generally do not have large owned-auto exposure. If they do, most fleets tend to be private passenger vehicles and/or light trucks used locally for general maintenance. This line of business is not normally a significant premium consideration for the real estate sector. Some insurers have begun to look for significantly larger physical damage deductibles for highly valued vehicles due to escalating costs of car repair/replacement.

## Property – H1 2023 Summary

In the last quarterly update, we were beginning to see the effects of January 1 treaty renewals with carriers, as price increases and capacity cutbacks were trickling down to the insured. Further into the second quarter, those increases have only intensified after April 1 treaty renewals, and we are seeing some of the hardest market conditions we have seen in decades.

Soft occupancy accounts, such as those comprised of primarily Class A highly protected office buildings, as well as those performing with few or no losses and no CAT, saw rate increases in the 10% – 20% range. Similar to last quarter, underwriters continued to pull back on the broad coverage terms and conditions normally expected for softer occupancies, even for accounts with excellent loss history.

Conversely, accounts such as those with adverse loss activity, less desirable occupancy class (e.g., habitational and hospitality) or significant exposure in natural catastrophe-prone geographical areas are seeing large premium increases in excess of 30% and heightened restriction of terms and conditions, and that could worsen over the next quarter, depending on how active the Atlantic hurricane season is. High claims activity from other climate-related losses such wildfires, flooding and hurricanes has continued to impact capacity, retentions and pricing throughout Q2. Some carriers are now imposing 10% – 15% named windstorm deductibles in Florida, where the traditional deductible there is typically 5%.

Valuation, as well as water-related losses, continue to be at the forefront of key concerns highlighted by markets. Benchmarking data, high labor costs and supply chain issues coupled with significant loss creep have been cited as critical reasons for underwriters to identify underreported values. To help offset this, margin clauses and coinsurance subjectivities continue to be the norm, particularly in the habitational occupancy class or accounts that continue to push lower valuations. Every insured will be expected to trend replacement cost values upwards to keep on par with inflation, and if it is not done, carriers will do that on their own. Higher and separate water damage deductibles are also widely used on loss-sensitive accounts; underwriters are advocating loss control initiatives, both physical and human-element, as a measure to help insureds control this exposure.

## Casualty – H2 2023 Outlook

The current market conditions show no particularly positive trends for the next quarter, unfortunately:




- While there has been some new non-admitted capital entering the excess liability marketplace, deployment has been cautious and spotty at this point.
- Regional insurers have begun the type of scrutiny and pruning process that the national insurers began two years ago, with markedly less capacity offered and more nonrenewals than seen in the past.
- Specialized programs or risk purchasing groups continue to write business but remain exceedingly narrow, demanding and particular in terms of acceptable risk profile and increased number of insurer-specific applications and required data.
- While favorable occupancy/well-performing insureds are experiencing at least reasonably predictable renewals at this point, any complex, habitational or budget hospitality real estate risks are still very much in jeopardy of +15% rate increases or nonrenewals of primary or lead umbrellas.
- Underwriters and support staff are overwhelmed and fatigued and must now work strictly to calendar time frame with little ability to provide quotes well in advance of expiration. Renewal pricing is often released no more than two weeks or less before the expiration date, often without optionality due to lack of time. Post-binding activities (making last minute changes, obtaining binders, invoices, etc.) are taking 7 to 10 days to complete, creating further backlog. Client frustration with last minute proposals/binding is high; however, brokers do not have leverage over the underwriters' workload challenges. There is a constant tension between waiting for a potential better alternative versus binding coverage early.
- Setting clear and uncompromising expectations for clients, well ahead of the renewal, is imperative as the market conditions (especially for habitational risks) continue to shift.

## Property – H2 2023 Outlook

The 2023 property market seems to change weekly at this point, so predicting what will happen next quarter is anyone's guess. What can be said about the remainder of 2023 with somewhat certainty is the following:

- Property rate increases are showing no signs of slowing down from what the first half of 2023 yielded.
- Valuation will continue to remain in the forefront of all underwriter's minds.
- With the recent revision upwards of the 2023 Atlantic Hurricane Season, all eyes will be watching each and every storm system very closely.
- Florida wind capacity will remain difficult to place and very expensive. Whether an insured sees their wind deductible increased from 5% will be account dependent.

















## Auto

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 5% to 15%	Real estate clients' owned-auto exposure generally is limited to private passenger vehicles and light trucks used for local maintenance purposes. Hospitality is the exception, with shuttle vans often used for guest transportation. Renewal rates have stabilized between 5% – 15% for well-performing accounts, with insureds accepting these results as the ongoing norm.	 5% to 15%	Moderate rate increases will continue over the next 12 months. Hotel shuttle van exposures present significant risk for potentially catastrophic claims and will continue to be carefully underwritten, particularly around staffing/experience of drivers. Shuttle routes providing 24/7 service and/or that transport guests to nearby attractions other than simply the airport are subject to greater scrutiny.
 <b>Limits</b>		The combined single limit of \$1M remains standard for automobile liability. Umbrella markets requiring an attachment point of \$2M/\$4M/\$4M may be problematic for some auto liability carriers and necessitate the placement of a buffer layer for umbrella/excess liability placement.		Trend of requiring \$2M/\$4M/\$4M attachment points from the umbrella market is still far from becoming the new norm, although a useful tool in providing ventilation for otherwise interested carriers. Significant fleet exposure will limit the number of carriers willing to provide lead umbrella or low excess layers.
 <b>Retentions</b>		Physical damage deductibles and premiums continue to steadily increase as the cost of repair/replacing automobiles continues to rise. Some insurance carriers routinely are quoting with \$5,000 deductibles. Retentions for automobile liability are not common for real estate clients due to light fleet exposure and limited vehicle usage.		No widespread change expected in the next 12 months.
 <b>Coverage</b>		Automobile coverages are largely statutorily driven, but there are extensive broadening endorsements available which vary from carrier to carrier. Since most serious claims arise from third-party bodily injury scenarios, coverage enhancement endorsements are not generally difficult to obtain.		Availability of reasonably broad automobile liability and physical damage coverages are anticipated to continue over the next 12 months.
 <b>Carrier</b>		Obtaining commercial auto coverages is not difficult in conjunction with general liability and/or workers' compensation support. However, if monoline automobile coverage is needed, or for clients with adverse loss experience or other risk peculiarities, monoline automobile liability markets are severely restricted. Small regional carriers may still provide options through non-admitted markets and/or traditional direct writers such as Progressive and State Farm.		Monoline auto markets will continue to be scarce due to the lack of additional casualty premium needed to balance the potential for severe losses.
 <b>Claims</b>		The automobile liability claims continue to present very significant exposure to carriers, as severe claims can result from a single occurrence, both from owned- and non-owned auto exposure. Distracted and/or stressed driving continue to contribute considerably to accidents, and hospitality risks with guest shuttle vans carry the risk of multiple passenger injuries.		Flat-to-reduced rates are not anticipated in the foreseeable future, given the inherent danger and potential for severe losses that driving presents overall across industries.



## General Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 0% to 25%	<p>Relatively stable renewals are now possible for insureds with well-performing office/retail/industrial portfolios, with 0% – 10% increases. Hospitality accounts with favorable loss history do likewise, depending on the class of hotel; outside-door motels generally face more challenges. Well-performing habitational accounts with stable carrier partners see generally higher percentage increases, up to 15%, with poorly performing risks continuing to experience 30%+ increases. Nonrenewed habitational accounts continued to experience significant increases of 30% – 50% and higher, with very few participating markets.</p>	 0% to 25%	<p>Well-performing non-habitational/hospitality accounts will continue to experience reasonable market interest, providing options and leverage over the next quarter. Incumbents still retain considerable advantage and occasionally will seek to negotiate a renewal well in advance to keep the risk out of market. Nonrenewed habitational and/or middle-of-the-road or alternative-use hospitality accounts will continue to struggle to find meaningful options.</p>
 <b>Limits</b>		<p>\$1M/\$2M/\$2M remained the standard limit offering. Per-location aggregate limits have stabilized, usually with policy caps. Sublimiting assault/battery and/or sexual abuse/molestation (as opposed to remaining silent) or including defense within the limits become more common, particularly for habitational/hospitality risks.</p>		<p>Umbrella carriers requiring a \$2M/\$4M/\$4M attachment are not anticipated to increase. The trend toward limiting overall capacity for more problematic occupancies, whether deployed via expansive aggregate limits and/or curtailing exposure to sexual abuse/molestation or assault/battery will continue. Blanket use of restrictive endorsements regardless of occupancy should lighten.</p>
 <b>Retentions</b>		<p>Significant casualty retentions for real estate are still utilized mainly by larger accounts with the financial ability and risk management wherewithal to manage risk, or cases of poor loss performance. Higher retentions regardless of loss experience are being deployed for habitational risks and/or alternative use in hospitality.</p>		<p>Retentions are expected to remain heavily dependent on class of business and/or loss history, although in general first-dollar coverage options continue to diminish as insurance carriers struggle to stabilize healthy profitability margins. Small retentions of \$10,000 – \$15,000 are becoming more common tools to engage insured participation in managing risk.</p>
 <b>Coverage</b>		<p>Adverse exclusions (communicable disease, abuse/molestation, assault/battery, NY labor law, human trafficking, etc.) remain widespread, particularly for habitational and hospitality risks. Negotiation to remove certain exclusions is possible only in highly competitive situations and/or for an increase in premium. Removal of geographically driven exclusions in some classes of business (e.g., New York City), are nearly impossible to achieve.</p>		<p>Reducing coverage via exclusions, driven primarily by class of business, crime score or specific loss profiles, is expected to be a continuing trend with little negotiating ability, particularly for those real estate occupancy classes that continue to suffer such type losses, mainly habitational and/or hospitality.</p>
 <b>Carrier</b>		<p>Carriers have not significantly changed appetite, seeking new business opportunities mainly in favorable office/retail/mixed-use occupancies. Best-in-class hospitality operations are also of interest for many carriers, but Class B establishments are not favored. Neither are any hotels with alternative use. Carriers for habitational risks continue to constrict, especially for the larger middle market size portfolios and older garden-style/frame construction. At this point, nonrenewed habitational accounts are nearly universally finding replacement coverage only in the nonadmitted marketplace.</p>		<p>While there has been some new carrier capacity entering the market, these tend to be very specific in appetite. Overall, primary market options have not significantly expanded and are not anticipated to do so soon, especially for the more difficult occupancies.</p>
 <b>Claims</b>		<p>General liability claims and carrier-combined ratios are continuing to be driven by adverse litigation trends exacerbated by long-term inadequate pricing. Concern over potential high payouts for violent crimes or catastrophic “deep-pockets” losses for which the insured is tapped to participate continue to drive underwriting focus.</p>		<p>While carriers continue to deploy capital for well-performing, favorable classes of real estate business, generating limited competition for some insureds, claim frequency and severity of settlements continue to increase, dampening robust recovery overall.</p>

## Workers' Compensation

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 -1% to 10%	<p>The workers' compensation market has remained stable over the past few years, subject to state of operation, industry and loss experience. There are signs of slight market cooling recently, but not to the point of establishing a trend just yet.</p>	 -1% to 10%	<p>We anticipate the potential of rate increases due to uptick in claims driven by labor shortages, particularly in the hospitality sector. Continuing inadequate staffing with less skilled employees will lead, over time, into increased workers' compensation losses and premiums.</p>
 <b>Limits</b>		<p>Workers' compensation limits are statutory, so not defined by the broker or carrier. The standard limit of \$1M for the employer's liability component of coverage has remained available without issue.</p>		<p>No changes foreseen.</p>
 <b>Retentions</b>		<p>Guaranteed cost workers' compensation policies remain common in the real estate sector and widely accessible. Larger and more sophisticated clients with the interest and ability to control claims costs by utilizing strong risk management practices continue to pursue large retention programs. Hybrid or structured programs (Sompo, Strategic Comp) are also attractive options that provide certainty in ultimate cost while providing potential for return premium during well-performing years.</p>		<p>No changes foreseen.</p>
 <b>Coverage</b>		<p>Workers' compensation coverages are standard regardless of carrier, with few broadening endorsements (e.g., blanket waiver of subrogation and voluntary compensation). Coverages for workplace-related injuries and loss of income are set by state statute, and exclusions are common across the marketplace. There have been no significant coverage changes or trends developing over the last 12 months.</p>		<p>No changes foreseen.</p>
 <b>Carrier</b>		<p>Insurer interest in workers' compensation remains strong, with some carriers looking to lead with sizeable workers' compensation exposures/premiums in the real estate sector to bolster the often more-challenging general liability performance.</p>		<p>Workers' compensation remains largely a profitable line of business, and we anticipate continued strong carrier support for the foreseeable future despite a potential increase in claims activity over the next 12 months.</p>
 <b>Claims</b>		<p>Retail and business/leisure travel have long recovered and/or continue to increase post-pandemic, with claims activity by now approaching prior normal claims levels for these occupancies. Increased claims may result from labor shortages and lack of training in many service-related occupancies.</p>		<p>Labor shortages of experienced hospitality workers may contribute to an increase in claims. Linger questions around working remotely and safe return to work will continue, creating potential for increased claims activity.</p>

# Umbrella Liability

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 10% to 50%	<p>For incumbent markets willing to renew, lead umbrella placements have settled into relatively stable pricing, with normal increases of 5% – 10%. Commercial risks (retail, office and light industrial) have the lowest increases and most stability. Nonrenewed lead umbrella placements (unsupported habitational and/or poorly performing risks) lead to severe pricing correction. Flat lead umbrella pricing is not yet occurring; the best renewal result might be a 5% – 7% rate increase. Carriers often disregard underlying pricing as a benchmark of what its own capacity should cost, and price accordingly. For stable renewals, 10% increases are the norm; for nonrenewed accounts, 50%+ is typical.</p>	 10% to 50%+	<p>Competition for lead umbrella options of all classes will remain limited as this layer is perceived as a working layer and underwritten conservatively. Insurer options for habitational risks are anticipated to remain extremely limited, with correspondingly opportunistically high premiums. Increasing competition excess of \$10M or \$15M will contribute to continuing competition and providing some pricing relief in upper excess layers.</p>
 <b>Limits</b>		<p>Providing primary limits of \$2M/\$4M/\$4M is somewhat helpful, but primary carriers that provide lead umbrella coverage of any limit provide considerable advantage in the marketplace. Habitational and poorly performing risks are experiencing splintering of once-intact lead \$10M umbrella layers into two or three carriers, which drives up the cost of the overall excess tower considerably. Carriers carefully consider and often curtail total capacity offered depending on class; \$25M layers are deployed only for the most favorable of insureds. After two-plus years of upward spiraling costs, insureds have already reduced overall tower limits as much as they are prudently able. Purchasing additional limits is still price-prohibitive. Providing per-location aggregate limits beyond the lead umbrella is not typical.</p>		<p>We expect current trends to continue for the next 12 months with increased capacity and competition occurring in the higher excess layers. After several renewal cycles of significant pricing increases, obtaining decreases of any level in the excess tower is a welcome development but not anticipated to be dramatic.</p>
 <b>Retentions</b>		<p>Minimal standard retentions still apply. Carrier pricing not impacted heavily with primary retention increases.</p>		<p>We expect current trends to continue for the next 12 months.</p>
 <b>Coverage</b>		<p>Most adverse exclusions are being driven by occupancy, insured-specific loss history, crime scores, etc. Human trafficking exclusion remains a deep concern for hospitality risks, but exclusion is still not universal. Assault/battery and sexual abuse/molestation exclusions are widespread for habitational risks and, to a lesser degree, hospitality. We are seeing carrier flexibility depending on excess attachment point. Communicable disease exclusions are now expected on all renewals.</p>		<p>Coverage restrictions will persist throughout the next year. Formal safety and risk management plans around assault, sexual abuse and human trafficking are key in negotiating exclusion removal. Account-specific claims, including violence and bodily injury, will drive introduction of new exclusions.</p>
 <b>Carrier</b>		<p>Carriers revise appetite, capacity and attachment point regularly, although lead umbrella limits for new business opportunities are deployed very cautiously. Generally, lead umbrellas provided by the primary general liability carrier are nearly universally more competitive than unsupported carrier pricing. Risk purchasing groups continue to be exceedingly selective with renewals and new business; however, they continue to offer very competitive options when interested in an account. Reliance on crime scores as an underwriting tool and guideline is becoming frequent.</p>		<p>Carrier appetites are reactive to loss trends. With no sign of slowing claim frequency and severity, we expect the current course to persist through the year. In areas where appetite is static, we anticipate capacity to fluctuate.</p>
 <b>Claims</b>		<p>Two major claim trends continue to contribute to current market pressures:</p> <ol style="list-style-type: none"> <li>1) Social inflation drives rising claim payouts, loss ratios and insurance costs.</li> <li>2) Significant increase in claim severity, settlement awards and verdicts.</li> </ol>		<p>Claim trends will continue through the next 12 months, especially with the use of litigation financing.</p>

## Property

METRICS	H1 2023 YOY Change	H1 2023 COMMENTARY	12 MONTH FORECAST	12 MONTH FORECAST COMMENTARY
 <b>Pricing</b>	 15% to 20%	<p>Accounts with little to no CAT exposure and an attractive loss history are currently seeing rate increases around the 15% – 20% mark. Conversely, less desirable occupancy classes, less profitable accounts and those located in states prone to higher losses (FL, LA, MS, TX) are seeing pricing conditions pushed more (35%+). If CAT-heavy and relying on a single carrier placement that is nonrenewing, rates are easily doubling. Florida heavy accounts are especially bearing the brunt of these large increases.</p>	 30% to 50%	<p>2022 property losses are expected to top over \$120B. Meanwhile, January 1 and April 1 treaty renewals had the outcome that markets were expecting (and dreading): rate increases topping 30%, capacity lowered and attachment points increased. Accounts with CAT-heavy portfolios, tougher occupancies like multifamily and adverse loss histories are going to be the most challenged, with potential rate increases starting upwards of 50%. We believe this trend will continue through most of the year and could worsen with a more active wind season. Carriers are also pushing back on rate matrixes, so as not to commit their CAT aggregates to unknown locations.</p>
 <b>Limits</b>		<p>While overall policy limits have seen little change over the prior year, this quarter again saw named windstorm limits on accounts with Tier 1 wind exposure, especially in FL, being heavily scrutinized, and, in a lot of cases, reduced or not completely filled out. Contingent business interruption values for certain account types (e.g., retail) continue seeing a more detailed underwriting review due to supply chain issues.</p>		<p>We will continue to see named windstorm limits, specifically in FL and TX, lowered, especially on programs that previously relied on a single carrier writing 100% of their exposure, like AmRisc or Velocity. Named windstorm limits purchased by clients will likely depend on pricing, with more clients deciding not to purchase full policy limits for wind. Expect scrutiny on contingent business interruption values to continue until local/national/international supply chain resolutions are found.</p>
 <b>Retentions</b>		<p>As insureds have now gone through multiple renewals in a prolonged turbulent market, underwriters in general have a better level of comfort with current retentions, having seen them revised in previous renewals. However, pressure for new/higher water damage deductibles on accounts with water-related loss activity is still evident, as is adequacy of retentions for insureds with heavy convective storm exposure. Even accounts without water-related losses are experiencing carriers pushing higher deductibles, which are company mandated. Wind deductibles on CAT-heavy accounts are creeping up higher than 5%.</p>		<p>We expect to see the push for higher retentions on accounts with loss experience to continue during 2023. In addition, clients with locations in FL can possibly expect to see the traditional 5% named windstorm deductible increased to 7.5% – 10%.</p>
 <b>Coverage</b>		<p>In general, most renewals saw no/little change to coverage terms and conditions. However, accounts with supply chain exposure are being more closely examined for business interruption and/or contingent business interruption values. Residential accounts are still subject to valuation concerns. If not already, many are seeing coinsurance and/or margin clause subjectivities being pushed by underwriters where such apprehension exists.</p>		<p>Supply chain issues, labor shortages and improper valuations are making underwriters pay closer attention to certifying reported replacement cost and business interruption/contingent business interruption exposure. This could result in corrective measures being forced, if not already in place. Accounts with no such issues/risk exposure can expect little to no change.</p>
 <b>Carrier</b>		<p>While overall capacity seemed to be robust in previous quarters, we continued to see significant numbers of carriers shrinking their lines due to recent reinsurance renewals and the devastating effects of Hurricane Ian. Prolonged challenges continued to exist in higher-loss-prone states (TX and FL, emphasis on FL), which may now require a shared/layered program solution rather than a traditional single-carrier approach. AmRisc and Velocity, while not exiting the marketplace, are reevaluating their CAT books and decreasing capacity, increasing premium substantially or both.</p>		<p>With Hurricane Ian and January 1 treaty renewals behind us, the potential for carriers to exit the property marketplace has passed in Q2. But with July 1 treaty renewals coming up, there very well could be some carriers choosing to exit the marketplace. We have seen a few carriers exit the retail property marketplace in favor of the excess and surplus marketplace, where smaller lines are more common.</p>
 <b>Claims</b>		<p>Carrier claims advocacy continues to be challenged, a lot of which can be attributed to increasing loss estimates and reported losses from previous loss events (i.e., loss creep).</p>		<p>This trend is expected to continue, which is why underwriters are continuing to heavily target accounts and certain occupancy classes where significant concerns exist around low/poor valuation.</p>

Meet the Specialists

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