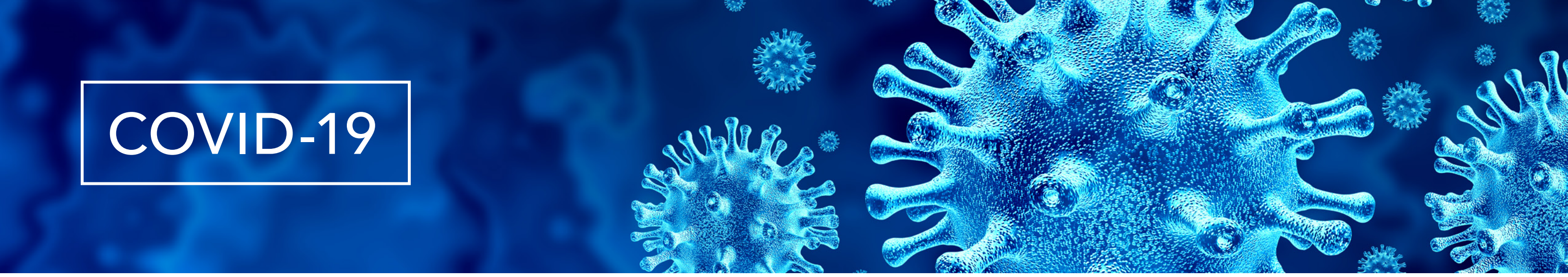
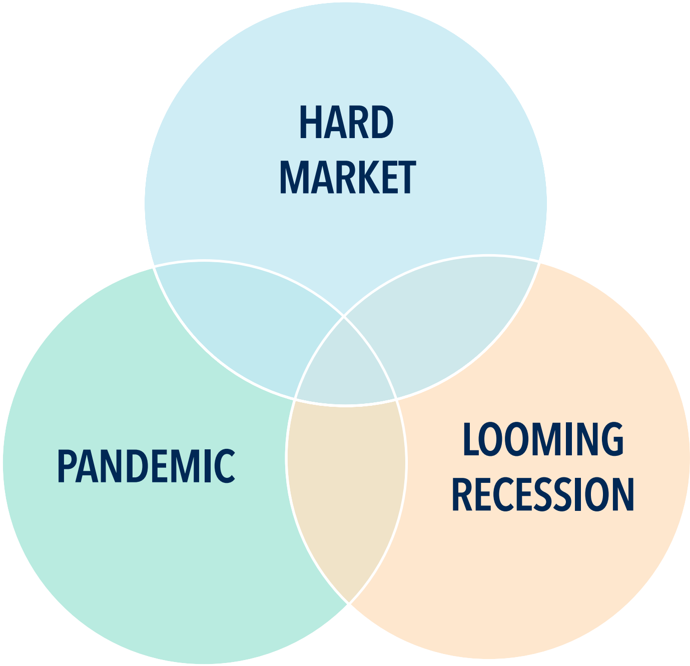


The 3 Factors Influencing Underwriter Responses



Many of the Professional and Executive Liability lines are experiencing premium increases. For instance, Public D&O Insurance is in a hard market – years of underpricing, coupled with significant losses due to the effect of social inflation, merger objection litigation and high frequency and severity of securities litigation have resulted in deteriorating underwriting results.

Over the years, the Public D&O market has experienced losses as companies have been hit with derivative class action and securities class action suits emanating from "events" (for instance, the #MeTooMovement, the California wildfires, and multiple privacy breach events). These are commonly referred to as "event-driven litigation." Unfortunately, we can now also categorize the pandemic as an "event" — and securities class actions have been filed and we expect more to follow.

Other than fueling event-driven litigation, the pandemic has served to further exacerbate the already hardening market. During 2020 first quarter announcements, insurance companies are estimating losses resulting from COVID-19 (please see side bar). Some of the estimates are staggering. Lloyd's of London recently estimated that industry-wide covered losses from the pandemic will exceed $100 billion, making it the largest insured loss event in history.

State orders on quarantining have stifled consumer consumption and have basically placed a stranglehold on commerce. The closure of businesses deemed non-essential has resulted in millions of our citizens being unemployed – wiping out a decade of employment gains. Additionally, the consequential rout in petroleum

COMPANY	COVID-19 LOSS COMPANY ESTIMATE, PRE-TAX
Allianz	$868M
Munich Re	$868M
Swiss Re	$476M
Markel	$325M
Zurich	$280M
AIG	$272M
Berkshire	$230M
Axis	$235M
Beazley	$170M
Everest	$150M
Arch (inc. Mortgage)	$87M
Travelers	$86M
WR Berkley	$66M
Hartford	$50M
Argo	$26M
CNA	$15M
Chubb	$13M
Hanover	$13M

Source: Company Reports, Inside P&C. Note: Different companies have taken different approaches to reserving for COVID-19 losses with some deferring more to Q2 = may not be directly comparable.

CONNER STRONG & BUCKELEW

An economic downturn has arrived on the heels of the COVID-19 pandemic, and we have already begun to see companies with highly leveraged balance sheets file for bankruptcy protection. The increasing incidence of restructurings and bankruptcies will wreak havoc on many aspects of life in this country, including employment, investment returns and access to capital.

prices has placed further strains on the energy sector of the economy. In essence, the pandemic has resulted in a looming recession.

From the perspective of insurance underwriters, while the coupling of the hard market and pandemic have aggravated matters, the looming recession has catapulted insurance underwriting concerns. The possibility of many small businesses never opening their respective doors again has become a real possibility. And the possibility of companies defaulting on their debt and filing for bankruptcy has also become a significant concern.

The hard market (or hardening market for certain lines of business), pandemic and looming recession have shaped the underwriting community's response. It is practically universal that underwriters are asking COVID-19 related questions across all lines of insurance. Further, underwriters are being more selective in writing certain classes of business. For instance, some underwriters have already arrived at their quotas for hospitals and life science companies, and are not providing any more quotes for this year. The balance of this document details insurers' reactions to the pandemic in each of the financial insurance lines of business.

PUBLIC D&O

The hard market continues in this line of business. Besides the traditional assessment of risk factors and claims, revised underwriting guidelines with greater emphasis on liquidity and acceptable answers to COVID-19 questions have taken hold. Many carriers are willing to walk away if policyholders do not accept the terms, conditions and rate that they have quoted. You may expect the following:

- **Elevated premiums:** renewal increases may be as high as 30% to 50% on the primary, depending on the particulars of the risk. Excess layers will be priced at 70% or higher of the underlying price per million on lower layers, while higher layers may have the same price per million as the underlying layer;
- **Elevated retentions:** retentions have increased to record levels and there will likely be no difference between a non-securities, securities or merger objection retention;
- **Reduction in capacity:** Carriers remain focused on lowering their limits on any given risk;
- **Coverage:** removal or reduction of past enhancements such as Derivative Demand sub-limits on both primary and excess layers;
- Very few carriers have introduced a Communicable Disease, COVID-19 or other specific Pandemic exclusion, but rather, are relying on their Bodily Injury exclusion.

PRIVATE MANAGEMENT LIABILITY

For the purpose of this discussion, we will include a discussion on both D&O and Employment Practices Liability (EPL). Compared to prior years, there is now less competition for this line of business, with some carriers placing moratoriums on quoting new business. Most renewals are staying with the incumbent carrier as it has become significantly more difficult to secure competitive alternative quotes. COVID-19 questions are prevalent. You may expect the following:

- **Elevated retentions and premium:** not as dramatic as Public D&O, but there is an upward trend in both D&O and EPL;
- **Reduction in capacity:** Carriers attempting to lower their limits of liability on risks where they feel they are overweight on capacity;
- **Removal of enhancements:** Wage & Hour sub-limits and A-Side limits or sub-limits are being reduced or eliminated;
- **Restrictive terms:** Anti-trust, Communicable Disease, Creditor/Insolvency, Reduction in Force, Major Shareholder, FFCRA, Absolute Professional Liability and Past Acts exclusions may be added;
- **Industry underwriting:** Market conditions remain highly difficult for organizations in certain industries, such as those related to cryptocurrencies and cannabis – as well as for unicorns (companies with a $1 billion plus valuation). Underwriters are also being cautious in the life science, real estate, construction, healthcare, higher education, gaming, hospitality and energy sectors. Some carriers are non-renewing policyholders in these industries.

HEALTHCARE

Management Liability for healthcare related entities is largely viewed by underwriters as having unique risks due to, among other things, the highly regulated nature of the industry. The market for this class of business, and in particular, for hospitals and related industries, was already hard prior to the onset of the pandemic. Further, there are simply less carriers willing to entertain this class of business. You may expect the following:

- Many of the items discussed in the above section on Private Management Liability will apply, including COVID-19 questions;
- **EPL class action retentions:** Carriers adding higher EPL class action retentions for larger healthcare institutions for claims related to employee exposure to COVID-19;
- **Removal of enhancements:** Regulatory coverage and Anti-trust sub-limits are being reduced or eliminated. If Anti-trust coverage is maintained, Anti-trust retentions and co-insurance will likely increase;
- **Restrictive terms:** Failure to Maintain Insurance exclusion may be added.

FINANCIAL INSTITUTIONS

The Financial Institution space encompasses a varying number of classes of business, including, Banks, Insurance Companies, Private Equity, Venture Capital, Asset Management, Hedge Funds, Non-Bank Consumer Finance and firms that offer a combination of the classes. Generally speaking, FI policyholders are facing higher premiums and retentions with carriers paying attention to limit capacity. Of note, the Non-Bank Consumer Finance sector, which has always been challenging, is experiencing a particularly hard market. There is limited capacity available which leads to higher premiums, retentions and restrictive terms and conditions. Further, carriers are reluctant to quote (or taking extreme actions on renewals) on financial institutions that are heavily invested in portions of the energy sector or in companies that have been materially affected by the pandemic. COVID-19 questions are prevalent.

REPRESENTATIONS & WARRANTIES

Given the limited amount of M&A transactions, the activity in the R&W insurance space is similarly limited. Open deals are on hold and there have been minimal new transactions seeking coverage. Eventually, the R&W market will return, and COVID-19 will be an additional underwriting issue. We anticipate that carriers will include COVID-19 as a "Heightened Risk", with the possibility that it may be excluded from coverage.

CYBER

Prior to the pandemic, carriers were already seeking 10% to 20% rate increases on middle market and large companies. Carriers were also becoming more careful with regard to managing their limit deployment. The small business segment remains competitive with policyholders renewing flat to a 5% premium increase. Coverage remains robust, and there have been no changes to terms and conditions. As in the other lines of insurance, COVID-19 questions are emerging, and most underwriters are paying attention to the following:

- We are seeing additional underwriting scrutiny regarding the use (or lack thereof) of multifactor authentication for remote access and the types and frequency of backups that an organization is utilizing;
- Due to budget constraints as a result of the pandemic and looming recession, underwriters are asking additional questions about the ability of IT departments to fund additional security measures;
- Underwriters are focusing on whether an organization's IT/Security Team is expected to be fully staffed/funded to pre-COVID19 levels for the duration of the COVID-19 outbreak – and if not, underwriters are questioning how the policyholder will maintain effective cyber security measures going forward.

ERRORS AND OMISSIONS

There are several lines of Errors and Omissions (E&O) liability. We will address some of the larger classes below, but please reach out to your Account Executive to discuss E&O issues specific to other particular lines of business.

MISCELLANEOUS PROFESSIONAL LIABILITY

- We are seeing rate increases, but they are largely dependent on the class of business;
- Some carriers are adding Communicable Disease exclusions;
- Carriers are increasingly unwilling to extend or increase limits mid-term for current policyholders, especially when the policyholder's class of business is susceptible to COVID-19 issues, or if they are adding a COVID-19 related service to their professional services;
- The market is hardening for those policyholders in the following industries – Franchisor E&O, Real Estate E&O, Collection Agents E&O, Travel Agents E&O and most companies involved in the travel and hospitality sectors. Carriers are cautious about Property Managers that have senior living facilities within their portfolio.

ARCHITECTS & ENGINEERS

- Premium increases are emerging, but remain inconsistent;
- The market remains competitive, with the exception of certain classes of business (Structural Engineers, Geotechnical Engineers and Land Surveyors);
- Some carriers have instituted a moratorium on quoting companies providing services to the residential/condominium industry;
- We expect those companies in the oil & gas industry to see more rigorous underwriting and potentially higher premiums and more restrictive terms.

LAWYERS PROFESSIONAL LIABILITY

- Premium increases are emerging, but remain inconsistent;
- Retentions are increasing;
- Carriers are being judicious with their use of capacity;
- Carriers will focus on the effect the looming recession has had, and/or will have on the practice, and then price the risk and change the terms accordingly.

MEDICAL PROFESSIONAL LIABILITY

This segment remains in a hardening market with few participating carriers and limited capacity. Tragically, an alarmingly large proportion of the COVID-19 related deaths occurred in nursing homes and have resulted in a growing wave of lawsuits and regulatory investigations. Further, statewide stay-at-home requirements for non-essential businesses have financially crippled dental practices, rehab centers, chiropractors, medi-spas and elective surgical operations. Unlike some of the other lines of insurance discussed above, Communicable Disease exclusions have already been attached to many existing policies, and if not already attached, will very likely be added at renewal. Further, as with most lines of insurance, at minimum, expect COVID-19 questions, or more likely, a supplemental application that will need to be completed and accepted before carriers provide quotations.

CONNER STRONG & BUCKELEW

A MESSAGE FROM CONNER STRONG & BUCKELEW

The above is only a general discussion of the COVID-19 issues for the various financial insurance lines. We recognize that each policyholder's risk profile is different, and when we approach the market, we will highlight the merits of each particular risk.

As always, our resolve is to do everything within our control to present viable options whenever possible and to make the process of securing professional, executive and transactional liability insurance as efficient and effective as possible.