Zurich Commercial Insurance
Customer and Broker Webinars 2021

Insurers and customers come to terms with hard liability market

With no end to the tightening market in sight, insurers are looking beyond rate increases for ways to write sustainable coverage.

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Insurers are focusing on coverage terms and conditions that can be adapted in a lingering hard casualty market to help ensure that customers continue to get the commercial liability insurance they need, a panel of Zurich experts agreed.

In a webinar moderated by Ron Davis, Zurich's Global Head of Customer Management, Commercial Insurance, panelists pointed out that insurers, risk managers and brokers are operating in a liability market marked by increasing losses, rising rates and shrinking capacity. Besides needed rate increases there is an increasing focus in adjusting terms and conditions of policies to reflect current and emerging exposure changes.

Tough market

Liability rates have risen significantly in the U.S. and more moderately and slower in other parts of the world since 2019, said Ralph Brand, Global Head of Casualty, Financial Lines and Cyber at Zurich. Commercial liability insurers – particularly those with portfolios in the U.S. - have been losing money for more than five years, he noted, "and, obviously, that is not a winning proposition."

A big driver in rising claims costs in the U.S. is "social inflation." "This is a phenomenon of the U.S. justice system for third-party bodily injury litigation that has led to a massive increase in valuations, resolutions, and verdicts for liability claims," Mr. Brand explained. "The subsequent impact on frequency and magnitude of large losses has been way, way above any common inflationary trends."

In response, insurers are strengthening reserves and considering the types of coverage terms and conditions that are needed to help provide sustainable solutions, Mr. Brand said. They are more often considering increases in attachment points for U.S. excess liability coverage on general liability and automobile risks, reducing lead umbrella and excess capacity or restricting appetite for certain exposures or high-risk classes.

Insurers have also tightened underwriting with regard to coverage triggers, defense costs and deductibles or self-insured retentions, the panelists pointed out.

Addressing terms and conditions is seen as "more sustainable than talking just about rates," said Mr. Brand, and Zurich is having discussions with customers on how best to do that.

Social inflation will continue

"There is no reason to believe the social inflation challenges we have seen in the U.S. are going to diminish," said Mr. Brand. "It is highly likely they will remain at a high level, potentially getting worse as no material change in the U.S. justice system, such as tort reform, is in sight. And while it is very pronounced in the U.S., we do see similar type trends in other parts of the world. There is a general global move towards stricter liability, more consumer protection and new laws and regulations that contribute to a tougher environment with more loss potential for all of us."

Social inflation is driven by large verdicts and settlements, the panelists agreed. "There does seem to be a very clear trend in U.S. liability for larger and larger verdicts," said Steve Bauer, Global Head of Casualty Claims and Coverage Council for Zurich. He pointed to industry figures that show verdicts above $10 million and those above $25 million nearly tripled between 2014 and 2018.

Median settlement amounts, meanwhile, more than doubled to $4 million from 2014 to 2019, he noted.

"Media coverage can normalize very large numbers for verdicts," said Mr. Bauer. At the same time, attorney advertising and litigation funding are "putting more money into the system on the plaintiffs' side," he added.

Litigation funding, which involves a third-party investor that helps fund legal action in return for a share of any settlement or judgment, is "a growth industry. We've seen a proliferation of these companies," said Mr. Bauer. Their backing tends to encourage litigation, he noted, and the companies have been particularly active in securities actions and directors and officers liability cases.

What can be done?

Zurich recommends several steps that customers can take during the hard market to help ensure that sustainable liability coverage is in place.

"The insurance market is going to be hard for some time," said Mr. Brand. Plan for it, he advised, when budgeting for insurance costs. "Determine your priorities. Is it price, terms and conditions or capacity that you need?" Answering those questions will help in communications with insurers.

"Consider whether you have an appetite for higher retentions," Mr. Brand suggested. "More and more, talks will be around terms and conditions that will ensure we have a sustainable setup going forward, which I think we all aim to have." Captives, self-insured retentions and deductibles are valid considerations, and not only during a hard market.

Risk managers can look for opportunities to improve the quality of risks, prevent and mitigate them by using additional internal and external analytics services, he advised.

"The hard market is tough for everyone," Mr. Brand emphasized. "It requires a lot more time from an underwriting perspective and your perspective," he told webinar participants, who can expect to be more closely involved with their insurers as current market conditions continue.

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