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CASUALTY 2024 OUTLOOK

Emerging Risks *and* Ongoing Coverage Concerns

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Casualty insurance is an evolving landscape due to various economic, technological, and societal factors. Below, we explore the on-going topics that persist alongside the top emerging risks, shedding light on key challenges and opportunities for insureds in 2024.

Auto Liability

Due to continued frequency of large losses, driver shortages, reinsurance costs, and social/ economic inflation, the commercial auto market has struggled for much of the past decade. While 2021 was a bright spot with the combined ratio falling below 100, the commercial auto sector contributed $3.3 billion in underwriting losses in 2022 (1). As a result, rates hovered in the high single digits for most of 2023 and we began to see the reemergence of double-digit rate increases at the tail end of the year. Newfront expects this trend to continue into 2024 as insurers adjust for pre-pandemic claim volumes and nuclear verdicts.

Technology-Driven Liabilities

Technological advancements such as biometrics, AI and autonomous vehicles pose new challenges in terms of liability determination. Issues related to data breaches, cyber-attacks, and the interconnectivity of devices also add to the evolving risk landscape as insurers look to tighten language to address the overlap between General Liability, Auto Liability and Cyber coverage. Insureds should be prepared to detail internal protocols regarding data protection as part of the underwriting process this year.

Social Inflation and 3rd Party Litigation Funding

A complex US legal landscape, increased media influence and litigation funding have contributed to a substantial increase in claim severity beyond what is expected under typical economic inflation and claim trends. No longer a buzz word, social inflation has been a major factor in the rise of nuclear and super nuclear verdicts. From 2010- 2019, nuclear verdicts increased in both frequency and size with the median verdict increasing 27.5%, from $19.3M in 2010 to $24.6M in 2019, far outpacing inflation of 17.2% over the same period (3). Combined with the fact that third party litigation funding has become a multi-billion-dollar industry and a lack of meaningful tort reform, this phenomenon has transformed the retail and reinsurance markets, with insurers pushing higher attachment points and multiple years of rate increases while simultaneously reducing capacity deployment.

Key Coverage Concerns

PFAS

Growing concerns around the prevalence of PFAS (also known as “forever chemicals”) in fire suppression materials and consumer goods (i.e., non-stick cookware) and recent high-profile litigation involving ground water contamination (2) has led many insurers to broadly add language to address and limit their exposure to future losses. Insureds that have an inherent PFAS exposure in their operations should be prepared to quantify this and detail adherence to EPA guidelines as part of the underwriting submission.

Benzene

One of the 20 most widely used chemicals in the US, benzene poses an increased risk of blood disorders resulting from long term inhalation, ingestion, and direct skin contact. While benzene related litigation has been ongoing for years, several recent recalls have revealed elevated levels of benzene in commonly used consumer products such as sunscreen and aerosol antiperspirant, prompting insurers to question insureds’ use of the chemical in their manufacturing processes and add exclusionary language to address this when necessary.

Microplastics

Microplastics are tiny plastic particles persistent in both the environment and the human body. They form over time by breaking away from larger plastic materials and have also been made intentionally for certain consumer products (facial exfoliators for example.) Because microplastics disintegrate slowly over time, they remain in the environment for years and are known to cause allergic reactions and toxicity in the human body. While we are not yet seeing exclusionary language being brought forth to address microplastics, we expect insurers will ask questions relating to the intentional use of these materials in insureds products this year.

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Industry Insights

Real Estate

For those insureds operating in the Habitational space, frequency and severity of losses coupled with the general lack of market competition has led to multiple years of rate increases and restrictive coverage terms (related to Sexual Abuse, Assault & Battery, and Habitability), which is likely to continue through 2024. In the Retail, Office and Industrial spaces, vacancy rates, tenant mix and contractual obligations continue to be top of mind concerns for both incumbent and prospective insurers. On the Hospitality side, liquor liability and human trafficking are front and center. In all major asset classes, nuclear verdicts have layered on to an already challenging insurance environment.

Construction

Following enactment of the CHIPS Act and Inflation Reduction Act, spending related to large, multiyear projects has increased and the insurance market has responded. While the construction industry has not been insulated from rate increases or large losses, capacity and interest in both project based and non-project based business has steadily increased over the past year, particularly for middle market clients where several carriers have been vocal about their intent to gain market share this year. While competition is expected to remain steady, insureds will have to contend with labor skilled labor shortages and the impact on WC, jurisdictional issues related to large awards and auto rate increases as they keep up with pipelines and day to day operations.

Life Sciences

While the pandemic had catastrophic effects on many industries, it brought about accelerated digitalization, innovation in therapy development and dynamic clinical trial modeling, all of which will radically transform the life sciences sector in the coming years. As the need for new devices and pharmaceutical products increases, so do the risks associated with the pace of development. Product liability challenges related to existing consumer products such as benzene and acetaminophen as well as PFAS exposure in other pharma products and medical devices persist, with underwriters tightening policy language where necessary and looking for more robust underwriting information.

Technology

As government officials seek reinterpretation and reform of Section 230, the immunity granted to tech platforms related to free speech has come under fire. Should they be successful, this would shift the view of social media platforms from simply being publishers of online content to information content providers (4), the implications of which could dramatically change the liability landscape. While there is general agreement that reform is necessary, there is widespread debate over whether tech platforms should be held liable for any unintended consequences of their algorithms. We expect underwriters to monitor movement on reform closely and ask pointed questions around consumer protection.

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Newfront Solutions

Focus on Data Quality

Detailed, proactive submissions produce better results. Provide specifics on challenging exposures, highlight post loss insights, and emphasize risk mitigation efforts to underscore why you are a standout risk.

Understand The Options

Discuss the various solutions available to address coverage issues and potential gaps. Facilitate open communication with insurers to understand concerns early and outline a plan to address via program restructuring, use of captives or adding other lines of coverage (ex. Pollution, Product Recall.) Consider Excess limits to insulate your balance sheet and understand where Most Favored Venue language or affirmative Punitive Damage wraps can be of benefit in protecting against catastrophic loss.

Commit to Loss Control

Ensure your organization has robust and well documented safety and risk management protocols. Work with your claims advocate and loss control consultant to refine existing measures and identify areas of future opportunity to proactively manage claims activity.

Evaluate Program Alternatives

Striking the right balance between risk transfer and risk retention is key to hedging against market volatility. Ranging from simple to complex, there are many alternative structures that can be considered to maximize insurer interest, mitigate fixed costs, and meet your financial goals.

Engage a Strategic Partner

Newfront's comprehensive approach to Casualty risks goes beyond the basic purchase of insurance. We believe in using technology and forward-thinking analytics to support critical decisions while deploying the best claims and loss control resources to ensure your brand and balance sheet are well protected.

REFERENCES

[1] *AM Best's Market Segment Report: Pre-Pandemic Woes Return to US Commercial Auto Insurance Segment*

[2] *PFASwatersettlement.com - 3M and Dupont Public Water System Settlements and Statements*

[3] *Institute for Legal Reform - Nuclear Verdicts, Trends, Causes and Solutions*

[4] *National Association of Attorneys Generals - The Future of Section 230- What Does it Mean for Consumers*

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