



Construction

Insurance Marketplace Realities 2021

Key takeaway

The economic downturn caused by COVID-19 has resulted in many contractors forecasting lower exposure bases; sales, payrolls, contract revenue, vehicle count, etc., but as exposures decline, carriers are raising rates at an increasing pace to grow or at least maintain overall premium. Effective use of analytical tools will be critical to driving sound risk management decisions.

Rate prediction

General liability: +5% to +20%

Auto liability and physical damage: +5% to +15

Workers compensation: Flat to +5%

Umbrella: (lead): +50% to +100%

Excess: +50 to 150% (or more)

Project-specific builders risk: +5% to +15%

Master builders risk/contractors block programs (renewable business):
+10% to +20%

Professional liability: Flat to +10%

Contractors pollution liability: Flat to +10%

Project-specific/controlled insurance programs: +5% to +15%; +10% to +25%
for excess

Subcontractor default insurance: +5% to +10%

Construction risk managers should consider several proactive steps.

- Utilize analytical tools to evaluate efficacy of current program structure.
- Prepare for continued increases in insurance pricing. Evaluate adequacy of insurance charges embedded within bids and contracts.
- Consider alternative risk transfer (ART) program structures: begin discussions regarding viability very early, as much as a year prior to renewal, as utilization of ART structures may involve a lengthy educational process for internal stakeholders, owners and insurance carrier partners.
- Continue to develop and strengthen relationships with incumbent insurance carriers. Take time to develop new relationships. Off-cycle market meetings with incumbents as well as potential alternative carriers are valuable.

- Begin the renewal process a minimum of 180 days prior to program expiration.
- Work in conjunction with your insurance broker to develop comprehensive and accurate renewal data.
- Evaluate project schedules related to project placements. If a project has been delayed for any reason and will require the extension of an insurance placement, begin this process as early as possible. Project extensions have become challenging to obtain and can be quite costly.

General liability (GL)

The market for construction general liability continues to trend upward. However, while for several years carriers have signaled GL as the “next auto,” drastic rate increases have not always materialized.

- Certain industry groups are experiencing notable difficulties. Specifically, contractors engaged in street and road operations as well as those in construction of habitational exposures are faced with an extremely challenging market.
- Submission activity continues to rise as many contractors seek marketplace alternatives. Carriers are being highly selective on new business, and often incumbent programs remain most competitive, despite marketing efforts.
 - If a marketing effort is part of the renewal strategy, ensure ample time and access to information from the onset. New carriers require extensive underwriting data and significant lead time.

- Loss control visits have gone virtual in many cases, so preparation for these discussions in advance is key
 - get the right people on the line or on the video with supplementary documentation to facilitate a more productive underwriting dialogue.
- Apart from looking to raise rates, markets are reconsidering terms and conditions more than ever. Securing coverage “per expiring” is no longer a given, as even in-force wordings face intense scrutiny from incumbents.
 - Broad form named insured wording provisions, excess of wrap for both difference in limits and difference in conditions coverage, and unlimited per-project/per-location aggregates have been challenging to maintain.
- The impact of COVID-19 is still a question mark for construction GL. This topic remains top of mind as markets want to understand jobsite infection risk, current safety protocols and any effects on schedule and work pipeline.

Auto liability

Commercial auto remains one of the most challenging lines for insureds, with persistent rate increases and program structure changes.

- While commercial auto rates continue to rise, percentage increases are smaller. Carriers have slowly, over the past several years, rightsized their commercial auto books. That said, carriers are going to want to continue to keep rates adequate for current loss trends and loss projections.
- Auto physical damage pricing continues to rise, often more quickly than auto liability rate increases. Comprehensive and collision claims can escalate quickly due to increased technology in vehicles.

- More claims are being litigated, with verdict outcomes often in seven or eight figures. High-value verdicts mainly stem from traumatic brain injury claims (TBI), negligent entrustment/driver selection, distracted driving and the influence of social inflation in the courtroom. A rise in third-party litigation finance is further encouraging lawsuits. Nuclear verdicts for liability have become startlingly common, especially in auto liability cases. The fear of large verdicts is driving higher settlements as well.
- Auto concerns are not just relevant to practice programs. In controlled insurance programs or project-specific policies, contractors on site are generally responsible for providing comprehensive automobile liability insurance. While coverage can usually be provided by the contractor’s practice policy, hired and non-owned coverage is increasingly not included, or limits are inadequate. In these scenarios, we recommend adding the coverage into a project CIP.

Workers compensation

While most construction firms have encountered a flattening of workers compensation rate reductions and premium offsets, the line continues to run well for most insureds and carriers.

- Although results are described as positive in the aggregate, there are signals that construction could encounter difficulty ahead.
 - The National Council on Compensation Insurance’s (NCCI) [estimate](#) of the 2019 workers compensation combined ratio is 87, putting the result under 90 for the third year in a row.

- Average wages and overall employment have been increasing for construction, the fastest-growing individual economic sector (NCCI State of the Line 2019). The challenge of attracting and retaining construction workers persists, and the impact of COVID-19 remains to be seen.
- Lost-time claim frequency has been decreasing steadily for nearly 20 years, except during the Great Recession (2008-09). However, accident year 2018 showed a relatively modest 1% decrease in frequency.
- If contractors are forced to rely on less experienced employees, who are more likely to sustain injuries, we could see deterioration in results ahead.
- Markets are still demonstrating a broad appetite for workers compensation construction opportunities, but program complexity continues to grow.
- Carrier interest and competitiveness are markedly increased when workers compensation is included in the submission. The best renewal outcomes are obtained when a primary casualty carrier writes all three lines of primary coverage. Workers compensation remains the most attractive of the three primary casualty lines of business.
- However, exceptions remain for certain states, namely California, Florida, New Jersey and New York, where workers compensation is not viewed favorably by underwriters. In New York, underwriters are especially guarded due to labor laws.
- Those exploring alternatives should look beyond retentions and carriers. Investments in new or emerging pre-loss risk control strategies should be evaluated. Ergonomics, employee wellness, mental health initiatives – these programs can both improve workers compensation results and raise employee satisfaction and retention.
- From a post-loss perspective, there are numerous questions to consider: Should you utilize the carrier's claims handling? Should you consider a third-party administrator? Should the claims handling be structured on a per-claim fee basis, a flat fee or LCF multiplier? Claims mismanagement can be costly and will impact workers compensation loss history for years.
- Positive loss trends are mostly attributable to efforts by both insurers and insureds to manage risk, including use of managed care, enforcement of return-to-work programs, nurse triage, fee schedules and telehealth. Construction firms should be considering these options.
- So far, higher rates have not yet attracted new entrants or returning players to the lead umbrella space.
- Contractors may be forced to market their primary casualty program to increase the number of carriers willing to offer a lead umbrella option.
- The majority (65%+) of lead umbrella placements are marketed at renewal, yet 85%+ remain with the incumbent carriers. Even with significant price increases, incumbent carriers are retaining most of their renewals. This is an indication of market-wide underwriting discipline.
- Certain classes of construction, specifically street and road and infrastructure, are experiencing particularly high rate increases.
- Umbrella carriers continue to drive up primary attachment point requirements. Almost without exception, primary general liability limits of \$2 million are now mandatory. Additionally, for contractors with large vehicle fleets (> 250 units), \$5 million may be required. Use of buffer layers to build additional auto limits is becoming more prevalent.
- Terms and conditions once easily obtained, such as excess wrap, have become increasingly challenging and/or expensive to obtain. Furthermore, anti-stacking endorsements, manifestation and communicable disease exclusions have become exceedingly difficult to remove. Primary and excess carriers are also limiting the overall capacity extended to an individual buyer by capping per-project aggregate limits.

Umbrella/excess liability

The umbrella and excess marketplace for construction remains extremely challenging. The pace of rate increases is accelerating. Contractors are also experiencing significant restrictions in coverage. We expect these conditions to continue well into 2021.

- There has been a significant pullback in the number of insurance carriers willing to write unsupported lead umbrellas (i.e., where the same carrier does not write the primary casualty), greatly reducing marketplace options, limiting competition and exacerbating rate increases all the way up the liability tower.

Controlled insurance programs (CIPs)

Pushed by increased reinsurance rates and diminishing capacity, CIP pricing continues to increase. We anticipate rates will continue to escalate in the coming months.

- Carriers are cutting back significantly on their willingness to offer large limits. Only a handful of carriers offer a full \$25 million in the first \$50 million in limit. Quota share program structures are becoming prevalent.
- Reinsurance rates are escalating as the industry has paid out losses due to natural disasters, COVID-19, wildfires, hurricanes and riots.
- Residential capacity continues to tighten, especially for wood frame apartments and for-sale condos.
- Buyers are needing to involve a larger number of carriers to fill out excess towers. This exacerbates pricing increases.
- Certain geographies (New York, Florida and California) are considered tougher states for condominiums, and capacity for those geographies has been reduced. Other states may feel the trickle-down effect from carriers pulling back; meaning fewer players in the states that traditionally haven't faced these pressures.
- Terms and conditions are tightening, as carriers are no longer providing broad terms, i.e., term limits or one-time reinstatements versus annual reinstatements.
- Regarding COVID-19, most carriers now require communicable disease exclusions, which are difficult if not impossible to remove.
- Policy term extensions are becoming increasingly difficult to obtain – often resulting in significant additional cost and reductions in coverage grants.

- Liability rates for CIPs are increasing by 5% to 15% for less complicated projects, with most of the price increase being driven by the cost of umbrella and excess towers. More complicated projects with difficult exposures will experience larger rate increases in both primary coverage and excess.

Builders risk

The builders risk market continues to remain challenging, as carriers rebalance their portfolios in pursuit of underwriting profitability after years of global losses and soft market conditions.

- Competitive terms and conditions are still achievable for most new, ground-up construction projects. However, renewable programs should expect to see healthy rate increases and/or changes to terms and conditions.
 - Carriers are continuing to more heavily scrutinize underwriting information, and underwriters are having to seek more senior management approvals than in the past, causing delays in quote turnaround time.
- While COVID-19 has caused a temporary slowdown on specific projects, its overall impact will not be known until the ultimate delays are determined and the courts have had time to opine on coverage disputes.
- LEG 3, damage to existing property and other miscellaneous coverage extensions are being underwritten more carefully and are hard to obtain on certain projects.
- Extensions for ongoing projects are extremely challenging, further exacerbated by COVID-19, as more and more projects are needing extensions.

- All extensions are difficult, even for buyers with no losses. Projects that have suffered prior losses, have had heavy cat exposures, have had changes from original scope, seeking lengthy extensions, have quota share structures or significant facultative reinsurance support are seeing the worst of the extension terms.
- Carriers are pushing significant rate and deductible changes, removing or reducing certain coverages, and in some cases simply walking away from projects.
 - Buyers must plan ahead of any known extension need and have as much up-to-date and accurate information about the reason(s) for the extension. It's never too early to begin the dialogue with carriers.
- Several large fires in 2020 have put further pressure on an already challenged wood frame market.
- Rates continue to increase, and we expect a steady upward trajectory into 2021.
- Reductions in overall market capacity are fueling the rate hikes, as several carriers have either reduced their appetite or exited the space entirely.
- Many of the recent fires were man-made (i.e., arson), and carriers are continuing to require robust project site security, including electronic monitoring, to offer capacity.

Professional liability

The U.S. construction professional indemnity/liability market remains relatively competitive, although carriers are evaluating capacity deployment and retention levels and applying added underwriting scrutiny to certain coverage enhancements.

- The market is continuing to show signs of hardening in some select areas, creating some challenges for contractors. For 2021, we expect rates will remain flat to +5%, with increases of 10% or more for contractors with adverse loss experience.
- Adequate capacity and continued competition are keeping rate increases manageable compared to other P&C insurance lines. However, we are starting to see growing pressure on rates and retentions, especially for project-specific capacity.
 - Total U.S. capacity continues to be in excess of \$300M, with additional capacity available through London, Bermuda and other international markets.
 - While there is still significant capacity in the market, carriers are generally restricting appetite for any one risk.
 - Protective indemnity and rectification coverages are now included in standard forms offered by key carriers, but terms and limits can vary considerably, and we are seeing added underwriting scrutiny for these coverage enhancements.
 - Some underwriting authority is being removed from the field, leading to a longer underwriting process.
- Some carriers are beginning to add COVID-19/communicable disease exclusions, more commonly for programs with combined contractors' professional and pollution liability forms. Wording varies greatly from market to market, with some limiting the exclusion specifically to COVID-19, some including broad viral exclusions and some limiting the exclusion to pollution coverage only.
- Project-specific placement solutions vary based on the party (contractor/engineer/owner) procuring the placement; regardless, we are seeing increased underwriting scrutiny, as well as a desire to find innovative solutions for evolving contract structures.
 - Market capacity for architects and engineers (AE) project-specific solutions has contracted, with at least one major market reducing their capacity by 50%.
 - Large design/build infrastructure projects continue to produce adverse loss experience for the AE market, creating risk allocation challenges for the contractor market.
 - Many contractor professional liability carriers are reserving project-specific capacity for existing client relationships.
 - Buyers can expect added underwriting scrutiny of coverage enhancements, such as rectification/mitigation, and contract review related to insurance requirements, limitations of liability and contractor assumption of design responsibilities.
- Challenging market conditions continue in London, Australia and the rest of the world. Restricted capacity and price increases are expected to continue into 2021.
 - Capacity is being restricted across the board and subscription placements are increasingly necessary, even for smaller clients. Capacity reductions by individual carriers on individual programs of between 30% and 50% are not unusual.
 - We are seeing increased scrutiny by underwriters on excess/SIR levels – insurers expect clients to have more skin in the game.
 - We continue to monitor the impact on U.S. buyers as global carriers continue to recoup losses from outside the U.S.
- There is continued interest in owner-procured professional indemnity policies for further protection on project risk.
 - Increasing project values creates a corresponding rise in professional liability risk, yet many contractors and design professionals do not carry limits that adequately address these now larger exposures.
 - Traditional project-specific professional liability policies covering all design risk on a job can still be obtained, but typically buyers prefer the cost efficiency that protective products provide.
 - Owners' protective project coverages, typically written by current contractor professional markets, may have a negative impact on carrier loss experience as the market matures and projects reach completion.
 - Protective coverage procured in rolling programs for project owners continues to attract interest.

Contractors pollution liability **With construction activities looking to make a rebound from projects delayed and suspended by the COVID-19 pandemic, the utilization of contractors pollution liability (CPL) will likely be at an all-time high in 2021. Fortunately, the CPL market (comprised of more than 40 carriers) will be ready to meet this demand.**

- Despite a crowded marketplace, rates in 2021 are expected to tick upward due to an overall increase in loss experience. We are seeing increased potential for the discovery or exacerbation of preexisting pollution conditions during redevelopment and significant claims activity in the habitational, hotel, hospitality and hospital sectors.
- For larger construction projects, clients are addressing economic risks associated with discovery of unknown preexisting conditions during construction, as well construction-related exposures, through the purchase of both site pollution and contractors pollution wrap-up products on a project-specific basis.
- Generally, we see the following exposures fueling the need for CPL coverage:
 - Pollution exposures during work and after completion
 - Indoor air quality issues, such as Legionella, mold and water-related issues
 - Application of chemicals
 - Installation of building products
 - Excessive siltation
 - Emergency remediation expenses
 - Contractor-owned locations and beyond-the-boundaries scenarios
 - Transportation and disposal of construction debris

- COVID-19 and communicable disease exclusions will begin to be more commonplace on CPL forms, although coverage for mold and Legionella remains available. Each carrier's form needs to be evaluated for potential coverage.
- Requests to extend or modify project-specific policies for resuming construction activities are being met with resistance by carriers concerned with potential exposure to COVID-19 claims.
- As buildings and jobsites begin to re-open during the COVID-19 pandemic, expect to see an increase in the number of claims involving indoor environmental quality issues, such as mold and legionella bacteria.
- Claim activity related to redevelopment of brownfield properties continues, although carriers try to limit exposure by adding exclusions associated with historic fill, dewatering and voluntary site investigations.

New York general liability **The market remains difficult for trade contractors due mainly to New York labor law. The general market hardening has added further distress. Standard markets remain selective on new opportunities, seeking best-in-class risks, although new capacity continues to enter the excess and surplus lines space for contractors.**

- Due to recent carrier restrictions, general contractors are feeling pressure to create New York-only liability programs.
- Market activity and submission flow are up heavily as contractors exhaust all potential options.

- New carriers will aim to capitalize on premium increases ranging upward from 50% premium-to-limit ratios. Depending on trade classification, certain carriers are requiring 100% premium-to-limit on primary general liability.
- Rate increases can be significant for contractors forced to restructure their primary and excess programs as incumbent appetites change.
- While new capacity enters the New York marketplace for primary, excess carriers are reluctant to attach above newer players with little or no experience in New York, driving excess pricing further upward.
- Historically, London markets have provided solutions when domestic carriers pull back. Due to poor overall results, however, London has reduced its available capacity and now demands higher rates and attachment points.

New York CIPs **CIPs remain a common solution to effect coverage certainty and unified terms and conditions on larger New York projects. The minimum construction value to implement a CIP continues to rise due to high retention levels and minimum premiums on liability.**

- The minimum general liability retentions in New York remain in the \$2 million - \$5 million range, depending on project size and scope.
- Bifurcated workers compensation and general liability programs continue to be a viable approach to reduce collateral, but standard markets have been competitive on dual line program offerings.
- Creative solutions feature pay-as-you-go options for both collateral and premium payments.

- Lead excess pricing (up to \$10 million per occurrence) continues to be a challenge, with carriers seeking up to 100% premium-to-limit, depending on the project exposures.
- Due to restrictions in excess capacity, we are seeing reduced limits and more quota share arrangements throughout the tower.
- Project extensions have been challenging, as underwriters are looking to reprice risk.
- On mid-sized projects (\$50 million - \$300 million), combined owner-general contractor liability programs remain cost competitive for both commercial and residential projects.

Subcontractor default insurance (SDI)

Work delays and uncertainty resulting from the pandemic are likely to impact subcontractor risk and default into 2021. This trend has created increasing interest in SDI coverage, resulting in additional carrier capacity entering the market.

- SDI carriers have remained keenly aware of the risks in today's market and have responded by requesting additional information regarding COVID-19 response plans and by addressing policy terms and conditions to ensure consistency in coverage.

- The subcontractor default insurance (SDI) market now has seven carriers with active programs, with five that we consider to be actively engaged and invested in the product line. Four of those five are now capable of offering single limits of \$50 million or greater per loss.
- With the introduction of new capacity, buyers may wish to review current policy terms, conditions and pricing.

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