RT ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

Market Update

2023

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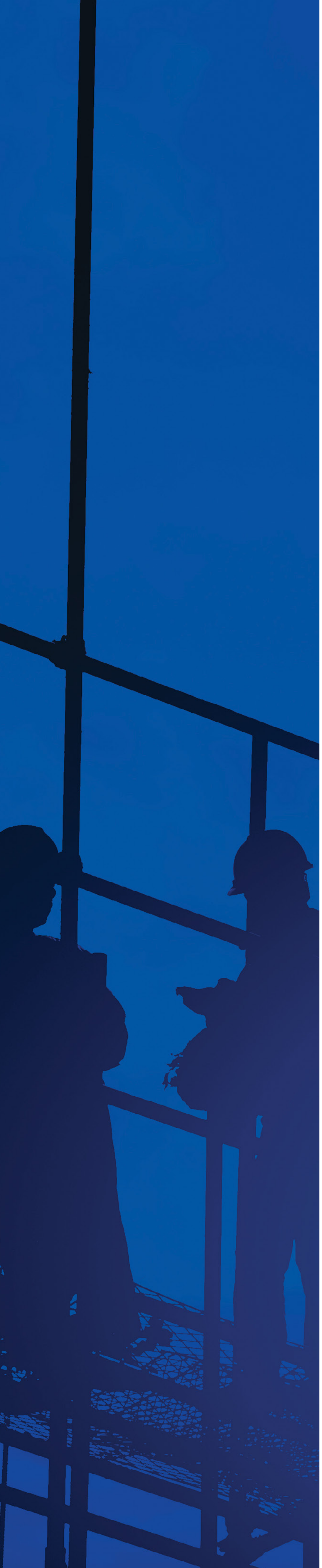

2023 MARKET UPDATE

RT ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

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2023 MARKET UPDATE

INTRODUCTION

RT Specialty's Environmental and Construction Professional (RT ECP) team has dedicated the past 17 years to helping agents, brokers and their clients identify effective risk management solutions available within today's complex commercial insurance marketplace.

Our 2023 Market Update represents RT ECP's view of the environmental and construction-related professional liability insurance trends currently confronting this specialty niche. It also contains the collective knowledge of our RT ECP specialists, who were surveyed along with the representatives of many of the nation's leading carriers to provide what we believe is an insightful look into the "state-of the-marketplace" and the conditions we feel are likely to impact this highly specialized field. Our goal throughout this annual recap is to provide information we hope will help the marketplace. The 2023 Market Update reviews strategies designed to overcome industry challenges and strategically protect against the risks that can potentially impair a business' bottom line.

Overall, RT ECP anticipates a continued increase in claims activity during 2023 across all of our coverage platforms due to the sustained increase in social inflation combined with continued restrictions in terms and conditions for environmental coverage in the standard market policy forms. RT ECP also expects continued erosion of limit capacity related to project specific professional liability. As a result, we continue to closely monitor the marketplace and the potential availability of new coverage forms; changes to policy terms, conditions, and exclusions; and the increased scrutiny placed on specific claims areas by carriers.

As an example, here are some of the insights and trends highlighted within the 2023 Market Update:

- **Contractor's Pollution Liability (CPL)** – Capacity in the CPL market remained strong in 2022 with several carriers providing limits up to $50 million per claim / aggregate. Rates appeared to stabilize in 2022 compared to recent history. In 2023 we expect new entrants to the CPL market, with continued stabilization of rates for insureds with flat exposures and clean loss reports.

- **Pollution Legal Liability (PLL)** – Demand for PLL remained strong during the first half of 2022, but a rise in interest rates to address inflation during the second half impacted sectors that typically purchase PLL. We expect the demand for transactional PLL to remain soft during the first part of 2023 due to inflation. In addition, we expect environmental insurance requirements to take off in 2023 as a result of the $1T Infrastructure Bill passed by Congress last year.

- **General Liability / Pollution Legal Liability (GL / PLL)** – GL / PLL saw significant rate increases over the past two years that have started to stabilize. Despite the continued wave of catastrophic events (i.e., wildfires, pandemic, etc.), GL / PLL carriers have been successful and grew significantly as a result of underwriting discipline. In 2023, we expect the impacts of emerging contaminants and the push back by markets on site coverages to continue.

- **General Liability / Contractor's Pollution Liability / Professional Liability (GL / CPL / PL)** - GL / CPL / PL has seen double digit rate increases over the past few years for environmental contractors with heavier fleets. Pricing adequacy has improved and with that comes stability. We expect 2023 to bring more flexibility among carriers with regards to environmental contractors and foresee rate increases of 5% or less for better performing contractors.

- **Architects and Engineer's Professional Liability (A&E PL)** - The past few years have shown a moderate hardening, with carriers striving to balance their desire for rate increases with the need to maintain premium volume. We expect the market in 2023 to remain stable with wide availability of both admitted and non-admitted carriers.

- **Contractor's Professional Liability (CPrL)** - 2022 saw the CPrL market remain somewhat steady in offerings and carrier desire to compete on common construction-related risks. Two to five percent rate increases have been seen but we expect inflation could push that higher into 2023.

- **Owner's Protective Professional Indemnity (OPPI)** - One market withdrew from the OPPI space in 2022 but we expect two to three new markets to enter in the next six to twelve months. Pricing variations between markets is increasing with some being more conservative and others more aggressive. We expect this product to remain a key component for owners / developers considering risk transfer alternatives.

- **Real Estate Developers (RED) Professional Liability** - This coverage continues to grow. Four carriers now offer RED coverage. We expect 2022 to grow slowly, but steadily in accordance with the national construction marketplace.

CONTRACTOR'S POLLUTION LIABILITY (CPL)

OVERVIEW

Contractor's Pollution Liability (CPL) is designed to cover pollution conditions resulting from the covered contracting operations performed by or on behalf of the named insured. Coverage is typically available for all contractors at all tiers, usually on an occurrence basis.

The construction industry proved to have another strong year in 2022, bolstering the need and desire for the CPL product. Although the market remained largely competitive, certain contractor disciplines and project types were impacted due to claims, changes to federal and state regulations, and additional information obtained from the COVID pandemic.

Due to mold claims historically associated with wood-frame projects, carriers tightened their appetite by either applying an increased rate and / or retention, decreasing the amount of exposure (related to the contractor's percentage of work), or by declining to offer terms entirely. Carriers also closely monitored changes to federal and state regulations associated with per- and polyfluoroalkyl substances (commonly known as PFAS) after these compounds were found to have contaminated soil and groundwater at thousands of locations across the United States; as a result, a few carriers began to exclude coverage for these chemicals entirely. Conversely, after having time to review additional information and data, markets loosened restrictions related to communicable disease exposures.

Consistent with prior years, insurance specifications, asset protection, and the awareness of pollution claims remain the strongest buying motivators for this coverage.

Capacity in the CPL marketplace remained strong in 2022 with several individual carriers providing up to $50 million per claim / aggregate limits. Likewise, procurement of excess coverage is generally, in our experience, not a concern. Rates appeared to stabilize in 2022 when compared to recent history simply considering volume of wood frame construction.

The trend of either consolidating or bolstering the insurance portfolio by attaching Professional Liability coverage to existing CPL remains competitive and a trend across the market. When retaining monoline CPL, markets continue to offer two- and three-year policy options, equating to notable premium savings.

Project-specific programs continue to be a popular alternative solution, especially for large projects that require substantial limit of liability or a prolonged completed operations time period. Such programs can be structured to include an owner-controlled insurance program (OCIP) or contractor-controlled insurance program (CCIP) endorsement, which typically provides expanded coverage to all contractors at all tiers. Such project policy durations can span 15 to 17 years once the project term and completed operation time period is included.

Occurrence CPL coverage continued to be readily available, with restrictions on mold / bacteria coverage for some classes of risk.

2023 OUTLOOK

We expect 2023 to include:

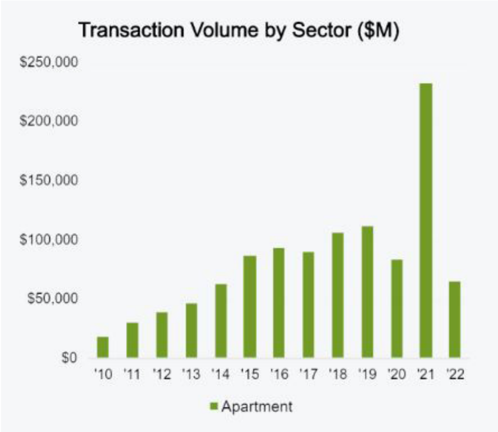
- Expanded capacities with new CPL carriers entering the market and some major carriers providing new and improved policy forms
- Stable rates for insureds with flat exposures and clean loss reports.
- The greater proliferation of insurance specifications that include broader pollution requirements, increased per occurrence / aggregate project limits, and completed operations. We expect this to be magnified as capital becomes more available as a result of the $1T Infrastructure Bill with those projects likely to commence in 2023 and beyond.
- The continued coverage form's steady progression from a monoline CPL insurance program to combined CPL / Professional programs.
- Carrier introduction of a solution for infrastructure projects vs. standalone CPL and Pollution Legal Liability coverages for contractors / owners / developers or other stakeholders with equity interest.
- Heightened carrier sensitivity and possible additional underwriting scrutiny around construction-related pollution liability exposure to PFAS - otherwise known as "forever chemicals" - particularly for contractors using associated products or working at jobsites known or expected to contain such chemical exposures.

POLLUTION LEGAL LIABILITY

Pollution Legal Liability (PLL) is a risk management tool designed to facilitate contaminated property transactions and buoy the balance sheets of large real estate assets. Typical PLL coverage benefits apply to virtually every industry that owns, leases, acquires or divests real estate. This claims-made coverage, in our experience, consistently manages the on- and off-site clean-up / remediation expenses; third-party bodily injury, property damage; and defense expenses associated with industries including Commercial / Habitational Real Estate; Manufacturing; Healthcare; and Education to name a few.

During the first half of 2022, PLL demand remained strong as the U.S. Economy continued to emerge from the COVID-19 pandemic. However, during the second half of 2022, a rise in interest rates initiated by the Federal Reserve to curb inflation impacted the Commercial Office / Industrial, Habitational and Retail sectors, according to GreenStreet.[1] Total transaction volume for industrial properties priced above $25 million followed a similar pattern in the office sector. In May 2022, transaction volume for institutional-quality industrial assets dropped to approximately $7 billion, compared to $15 billion the previous May, a 50+% decline.

Apartment values declined about 4% in June 2022, but are still up 15% over the past year and 16% relative to pre-COVID-19 levels, according to Green Street. In spite of the pandemic, apartment transactions priced at $25 million and above totaled $10 billion in May 2021 compared to only $9 billion in May 2022.



Source: 1 https://www.greenstreet.com/insights/blog/how-inflation-is-impacting-commercial-real-estate-by-the-numbers

After suffering during the pandemic, the strip center sector staged a strong comeback in the second half of 2021 and first few months of 2022. Unlike other major property sectors, the transaction volume of deals priced above $25 million increased six-fold from May 2021 to May 2022.

Source: 1 https://www.greenstreet.com/insights/blog/how-inflation-is-impacting-commercial-real-estate-by-the-numbers

In May 2021, strip center deal volume stood at $805 million, rising to $4.8 billion in May 2022. Values of strip retail properties, however, declined 7% through September 2022.

Coverage terms have likely been impacted in recent years by the types of risk and a combination of high-profile mold exposures, rising legionella claims, natural disasters, contaminated site development claims and the growing focus on emerging contaminants such as PFAS. The PLL claims on RT ECP's book of roughly 1,200 insureds were analyzed for 2020 and 2021 (COVID-19 Years). This included the type and percentage of claims impacting the Commercial and Habitational Real Estate, Hospitality, Healthcare, Education, and Manufacturing industries, as well real estate transactions. The analysis found that claims with the most frequency are as follows:

- 36% were related to COVID-facility shutdowns
- 31% were related to indoor air quality (mold & legionella)
- 24% resulted in spills / leaks on-site

In our experience, coverage enhancements such as contingent business interruption, defense outside the limits, and first-party diminution of value continue to be readily available for inert real estate portfolios. Several markets can also provide clean-up coverage for known pollution conditions for lenders requiring PLL. Indemnity triggers are also sometimes used to address the known pollution conditions identified in contaminated property transfers. Policy terms up to ten (10) years are available for transactions.

2023 OUTLOOK

RT ECP expects the demand for transactional PLL to remain soft during the first half of 2023 due to inflationary pressures for Insureds relying on third-party capital for asset acquisition. In contrast, we also expect development projects to continue to be strong as the construction industry has a strong project forecast for the upcoming year. We anticipate environmental insurance requirements for infrastructure work as result of the $1T Infrastructure Bill passed in Congress in the fourth quarter of 2021. Although we anticipate that the increased frequency of various pollution losses will continue to plague the marketplace, we expect the competition to remain robust due to the advent of new markets. We expect policy terms to remain consistent throughout 2023 with a maximum term of 10 years. We also anticipate that prospective and ongoing coverage forms will remain in the one to three-year range with the occasional five-year term. We expect a continued increase in underwriting scrutiny for industrial, hospitality, habitational, healthcare, energy sector, and development / redevelopment risks as well as markets with certain exposures / classes of business.

1 https://www.greenstreet.com/insights/blog/how-inflation-is-impacting-commercial-real-estate-by-the-numbers

2023 MARKET UPDATE

GENERAL LIABILITY / POLLUTION LEGAL LIABILITY (GL / PLL)

OVERVIEW

The combined PLL (claims-made) and General Liability (occurrence) policy forms remain a well-suited solution for facility based risks with environmental exposures for insureds' products, sites or processes.

The form blends the General Liability, which is ISO similar, along with PLL and may include coverage for off-site environmental exposures such as contractor's pollution, products pollution, transportation pollution, and non-owned disposal coverage all in a single non-auditable form. Originally intended to provide focused coverage to chemical manufacturers, distributors, waste management facilities, and any other manufacturers of "environmental" products, the marketplace has expanded its parameters on classes considered as new entrants to the marketplace to push the product appetite toward higher hazard General Liability classes. The marketplace continues to avoid accounts with potential for mass tort actions and will not support potable water products and services and construction-related products. In light of the social climate, carriers are revisiting renewable industries such as geothermal, solar (commercial only), bio-fuels and potentially carbon sequestration.

At the same time, the disposition of on site coverages within the GL PLL product has followed the path of monoline PLL. The tightening of coverages is exacerbated by the growing emergence of contaminants, most notable of which is PFAS, which are ubiquitous as either a product component, process, or in fire protection for facilities. While the marketplace does not typically support cleanup, there is potential with underwriting to carveback coverage for bodily injury or property damage depending on the class of business. In addition, without environmental due diligence, even securing gradual new conditions coverage for the PLL coverage part can be a challenge. We anticipate that the approach to robust site coverage will not change in 2023.

GL / PLL followed the traditional casualty market over the past two years and saw significant rate increases that have now started to stabilize. There continues to be concerns over rising litigation of claims, costly effects of natural disasters, COVID impacts, and finally social inflation, which has not abated in its impact on the economy. Auto coverage and its impact overall via nuclear verdicts has not diminished and the continued driver shortage remains as a noteworthy element to aiding insureds in controlling losses. We are seeing insureds, who have taken significant rate increases over the last three years, invest in driver fleet safety to support profitable accounts with moderate increases. However, the marketplace continues to attempt to insulate themselves from auto, and, as a result, the trend continues as many carriers continue to deploy lower limits. Global positions on environmental, social, and governance (ESG) continued to evolve in 2022 and guide the environmental appetites. Finally, because the GL PLL in some cases offers coverage such as products pollution on a worldwide basis, there was increased underwriting scrutiny due to US Sanctions on Russia in the spring of 2022.

Despite the continued and unrelenting wave of catastrophic events such as wildfires, pandemic, ESG and more, carriers who write GL PLL had successful years and most grew significantly as a result of underwriting discipline. We have seen carriers who typically would not offer excess, look for opportunities to support excess towers for GL PLL once they are outside of the working layers for auto. So, the marketplace has actually grown in that sense. Capacity remains strong, however, the marketplace is careful in how it deploys and seeks to save capacity for long term insureds who have maintained coverage through good times and bad.

2023 OUTLOOK

During 2023, RT ECP anticipates that the impacts of emerging contaminants and the general push back by markets on site coverages will continue. But, the marketplace is also looking for ways to grow as new technologies for renewables are center stage. For profitable accounts, we expect to continue to see small increases between 2% to 5%, and much more punitive pricing for accounts with elevated loss ratios. As the economy continues to tighten and inflation becomes a greater concern, many insureds who already may be struggling with material costs and worker shortages, may start seeking out alternative solutions including exploring captive solutions. Or, insureds may look for ways to economize by splitting up their combined environmental program. However, the risks include leaving themselves more exposed to catastrophe and leaving significant swaths of their environmental exposures (i.e., products and waste disposal) uninsured.

2023 MARKET UPDATE

GENERAL LIABILITY / CONTRACTOR'S POLLUTION LIABILITY / PROFESSIONAL LIABILITY (GL / CPL / PL)

OVERVIEW

The combined Environmental Casualty Program (GL / CPL / PL) typically provides GL, CPL, and PL to specific market segments consisting of environmental contractors, waste transporters, environmental consultants, oil / gas / renewable energy contractors, and / or some combination thereof. These policies are written for an annual term and continue to be offered on flat and non-auditable basis. Only two or three environmental casualty markets offer complementary coverage such as Workers' Compensation, Automobile Liability and Excess Liability.

The marketplace has seen several new entrants for smaller or program type business for specific classes in order to expand and gain market share and for internal efficiencies. Additionally, even outside of programs, many markets offer "off the shelf" programs for the smaller, traditional remediation type contractors.

Some casualty markets are looking for ways to capitalize on the newer and evolving technologies and broadening their appetite classes (i.e., solar contractors who perform commercial work only).

Environmental contractors remain a target for private equity acquisitions for both large and small contractors who are dealing with the same issues as the traditional construction markets (i.e., suffering a shortage of labor and skilled drivers and are looking to partner in order to grow). The workload in this part of the construction market remains strong as there are often environmental contractors hired to deal with the devastation of wildfires, emergency response incidents, hurricane cleanup, etc. Most environmental contractors have not seen diminished revenues and are often struggling to keep up with projects.

The past few years saw, in many cases, double digit rate increases for environmental contractors with heavier fleets, who as a result of nuclear verdicts and the limited driver pool, struggled with losses. Pricing adequacy has improved as a result of the increase, and with pricing adequacy comes stability. However, a few of these environmental markets continue to charge for every single transaction on the policy (i.e., adding named insureds, etc.) and are less willing to make changes or broaden coverage. The marketplace is also reluctant to deploy limits in excess of $5M for this class.

We have seen markets continue to re-underwrite New York based risks with several carriers exiting the marketplace entirely due to the severity of action-over claims. In addition, we have noticed many carriers adopting a conservative underwriting approach with several mature markets looking to refine their appetites and protect loss ratios. We expect the typical coverage forms to remain conservative with many carriers carefully deploying limits and rewriting policy language. We expect this will include a greater scrutiny on the underwriting of professional liability lines covering non-environmental exposures.

Fire / Water Restoration

GL / CPL / PL generally provides GL and Excess Liability for fire / water restoration contractors. Distribution of GL / CPL / PL for this class of business continues to shrink. Narrow this handful of carriers down to only a select few that can offer complementary coverage such as Workers' Compensation and Automobile Liability. Bailees Customer's Coverage is also available as a supplementary coverage part attached to the environmental casualty program from markets who target fire / water restoration. This is worth noting as these customers tend to take customer's property into their possession when remediating water, fire or mold losses.

Direct repair networks or third-party administrators fill fire / water restoration contractors' pipelines by assigning jobs to these contractors across the country. These networks work for multiple insurance companies promising their clients that every contractor has minimum insurance, certifications and other items.

RT ECP anticipates that carriers in 2023 are likely to pay more attention to the insured's professional liability exposures, limiting or designating professional services. We base this prediction on the more disciplined approach of carriers, who are now, in our experience, consciously working to stay within their appetites, while choosing not to broaden the standard professional liability coverage grants afforded under these policies.

2023 OUTLOOK

In 2023, we anticipate that carriers will be more flexible concerning professional exposures associated with larger environmental contractors (i.e., excess of $100M) who have broadened their services as they grow via a robust project funnel and through acquisition. We also expect carriers to continue to protect their loss ratios by limiting high limits and tolerance for the frequency of claims or large losses. We expect carriers to continue to scrutinize auto, while narrowly underwriting and focusing on the insured's potential for large losses and the professional liability of construction products, which includes long-tail, completed-operation exposures. We continue to expect small increases of around 5% or less for better performing contractors and continued rate push (>10 percent) on poor performers.

2023 MARKET UPDATE

ARCHITECTS & ENGINEERS PROFESSIONAL LIABILITY (A&E PL)

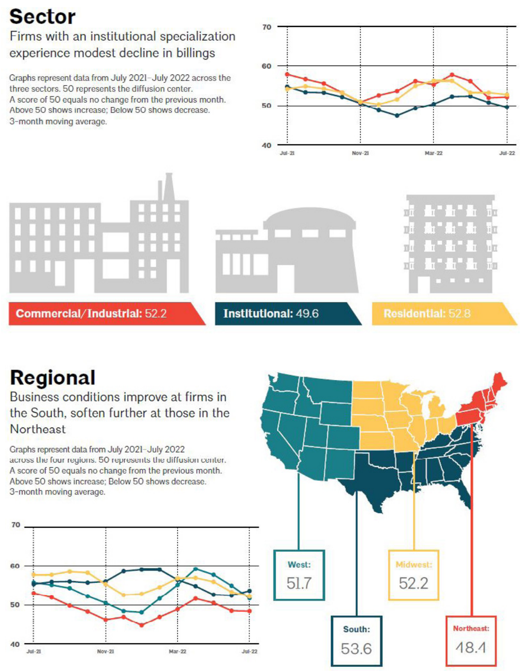
OVERVIEW

Architects and Engineers Professional Liability (A&E PL) is designed to insure design professionals against damages resulting from the acts, errors and omissions committed while rendering professional services. This includes the damages resulting from design mistakes and project delays. Both admitted and non-admitted carriers offer coverage for pollution incidents arising from the professional services defined within the base policy form. Some of the industry segments facing A&E PL exposures include architectural design firms, engineers, construction management agencies, interior designers, space planners and surveyors.

Each year, the American Institute of Architects (AIA) releases a report detailing architectural billings for the past 12 months. This data is known as the Architectural Billings Index (ABI), which is a leading economic indicator for construction activity broken down by Regional and Market-Sector Categories.

1. Across the US, the Southern, Western and Midwestern regions experienced a positive ABI, suggesting modest growth. The Northeast, however, experienced a slightly negative ABI, suggesting the opposite.

2. The Commercial and Residential sectors experienced a positive ABI, indicating that, on average, architectural billings have been on an upward trend. Institutional projects experienced a slightly negative ABI, suggesting no change, or perhaps a minor decrease, in billings.



Courtesy of the American Institute of Architects

For the past few years, the A&E PL market has gestured toward a moderate hardening, with carriers striving to balance their desire for rate increases on targeted class with the need to maintain premium volume in a competitive marketplace. In our experience, the overall marketplace remains well populated with a variety of carriers helping to keep rate increases to a minimum and coverage terms broad for the average buyer. However, we did witness tightening in several areas:

1. Options for true Project Specific Professional Liability policies (where the entire design team is covered under a single policy form) remain few and far between, as carriers exit the space and assess higher premiums, rates and self insured retention (SIR) requirements. As a result, project owners seeking greater degrees of coverage have turned to Owners Protective Professional Indemnity (OPPI) products.

2. Carriers continue to remove elements of "built in" cyber coverage. Instead, cyber exposures are pushed towards dedicated policy forms.

3. Specializations in geotechnical, structural and / or civil engineering continue to draw actuarial attention, with many carriers continuing to apply higher rates for these classes due to the potential for claim severity.

4. Specialization in residential projects, including condominiums, townhomes and apartments, remain limited for both annually renewable policies and project specific policies. A&E PL appetite for photovoltaic (solar) energy generation has also seen some contraction due to claims activity.

A&E firms without significant specialization in the above categories can generally expect a smooth renewal process with minimal disruption and flat rating.

In addition to the above fluctuation in appetites and pricing, we have found built-in Rectification Expense coverage increasing in availability among A&E PL carriers. Rectification Expense is a first-party professional liability insuring agreement designed to allow the insured to collect against their professional liability limits on a first party basis for certain expenses that are needed to correct an error in professional services that would otherwise have led to a typical third party claim against the insured. While common in the Contractor's Professional Liability (CPrL) marketplace, this remains a relatively new A&E PL product. Carriers thus far have taken a cautious approach, often applying sub limits and / or seeking modest surcharges to add this coverage.

2023 OUTLOOK

RT ECP's outlook for the A&E PL marketplace remains stable. While carriers will ultimately seek rates on their renewal books for selected classes, the wide availability of both admitted and non-admitted carriers will keep market conditions steady. Admitted carriers will continue to dominate the sector, with non-admitted carriers making incremental gains in terms of market share. Lastly, options for Project-Specific Professional Liability coverage will largely remain difficult to find for the foreseeable future.

2023 MARKET UPDATE

CONTRACTOR'S PROFESSIONAL LIABILITY (CPRL)

OVERVIEW

CPrL is designed to provide coverage for the covered damages arising from professional service acts, errors, and omissions performed by or on behalf of any construction firm.

Future construction outlook predictions vary with some outlets pointing to strength in 2022 construction as a positive. Others approach 2023 with caution with the possibility of a recession. For the 12 months ending August 2022, total construction starts were 15% above the 12 months ending August 2021. Nonresidential starts were 33% higher, residential starts gained 4%, and nonbuilding starts were up 15%.[1] Notably, there is some optimism that 2023 will see stability in the cost of construction materials even as inflation continues to be an area of concern.[2] Some predictions include the belief that construction revenues are expected to rise by 10% to 12%, supported by the industry finishing 2022 strong with bond premiums projected at $7 billion, "the most in history since that number has been tracked."[3] The below table shows optimism from the AIA Consensus Construction Forecast Panel supporting the view of growth. While the evolution of the pandemic has impacted all facets of

- Consensus
- Dodge Construction Network
- S&P Global, Market Intelligence
- Moody's Analytics
- FMI
- ConstructConnect
- Associated Builders and Contractors
- Wells Fargo Securities
- Markstein Advisors

	Actual $	Forecast % Change	
	2021	2022	2023
Nonresidential Total	–	9.1	6.0
Commercial Total	–	6.7	4.5
Office	–	2.6	3.5
Retail & Other Commercial	–	11.5	3.2
Hotel	–	-5.4	13.8
Industrial Total	–	31.0	9.9
Institutional Total	–	2.6	5.5
Health	–	5.0	5.7
Education	–	2.0	5.2
Religious	–	-8.7	-1.1
Public Safety	–	-10.0	5.5
Amusement & Recreation	–	7.5	5.8

SCREENSHOT FROM THE CONSENSUS CONSTRUCTION FORECAST, JULY 2022. CLICK THE LINK BELOW TO VIEW INDIVIDUAL FORECAST DETAILS.

life, the CPrL market has remained somewhat steady overall in offerings and carrier desire to compete for the most common construction-related risks (i.e., commercial general contractors, trade contractors). Two to five percent rate increases continue to be seen, which is a change from the prior decade leading into 2022, though inflation could push that higher. Tightening of the market can readily be seen in heavy civil construction design / build projects, which have seen lower / curbed offerings with respect to mitigation / rectification as had been foreshadowed in recent years.

This past year saw the entry of multiple new carriers into the CPrL marketplace, with expectations that those entities will increase their capacity and offerings in the coming year. Even with one carrier exiting the CPrL space, we still see approximately 30 carriers in the marketplace. $10M / $10M capacity is commonly available with some markets increasing their ability to offer higher limits with the insured's size, services and project-types expectedly being the factors under consideration when increased limits are sought.

Additional notes as to marketplace evolution include:

- Overall residential work seeing additional underwriting scrutiny; for-sale units seeing higher rate or being entirely outside many carrier appetites.
- Rectification claims are at the forefront of carrier's minds as claims under this insuring agreement seem to be increasing.
- Faulty workmanship coverage remains available from three to four carriers but an evolving appetite is worth noting. As claims data is compiled, this newer coverage offering sees an unpredictable carrier appetite.
- Carrier desire for more detail as to the nature of services provided by design / build contractors (i.e. additional underwriting) as to nature of design work, staff performing such work, experience level.

2023 OUTLOOK

As we look toward 2023, inflation is a word frequently mentioned in discussions with carriers. Economic uncertainty leads to inconsistent outlooks in the marketplace. Premiums will likely increase, as will scrutiny of insured's services, project delivery methods and project types, similar to that which has been more common in recent years. With multiple markets introducing new policy forms in 2022 and 2023, attention to all details in product offerings will only increase in importance. Carriers continuing to offer terms for certain types of contractors but restricting professional services definitions, subliminting certain insuring agreements, or applying higher retentions / deductibles are things to keep a close eye on. The project-specific landscape has been impacted by newsworthy events such as the Surfside Condominium collapse in Florida. While appetite across the marketplace has not changed in any drastic manner, certain projects are indeed seeing higher premiums indicated and carriers digging deeper than usual on contractual requirements for subcontractors, project participant loss history and more.

[1] https://www.construction.com/news/August-2022-Starts
[2] https://news.conexpoconagg.com/news/researchers-concur-2023-will-bring-construction-cost-relief/8990.article
[3] https://www.nasbp.org/blogs/kathryn-doran1/2022/08/15/construction-financial-accounting-expert-on-2023#:~:text=According%20to%20Feuerman's%20construction%20industry,that%20number%20has%20been%20tracked.%E2%80%9D

2023 MARKET UPDATE

OWNER'S PROTECTIVE PROFESSIONAL INDEMNITY (OPPI)

OVERVIEW

When entering into contracts with design and construction professionals, project owners / developers decide what amount of financial protection is sufficient should damages arise from the professional services provided. There are many factors to consider, and the perceived exposure must be weighed against the professional liability insurance available from the design and construction team. When additional protection is considered, Owner's Protective Professional Indemnity (OPPI) is often a competitive alternative. Learn more about professional liability insurance alternatives for owners here.

OPPI is designed to provide the owner / developer a broad layer of excess professional liability coverage over the annual practice policies of contracted design and construction professionals. It also typically provides a primary defense against third party claims made directly against the owner.

OPPI can be placed for a single project or written to cover multiple projects that start at different times over the course of a multi-year policy period. A typical policy provides a retroactive date back to the start of design, a policy period that matches the construction schedule and includes an Extended Reporting Period (ERP) aligning with the applicable state statute. The retroactive date to the end of the ERP is often more than ten years in total. OPPI can bring certainty to the quality and cost of coverage.

As the product continues to gain traction and its benefits are better understood, contract language and lender agreements are more commonly requiring OPPI policies. Architects & engineers not looking to increase their professional liability program limits to satisfy a project owner have started to purchase OPPI. This signals a shift in OPPI to a core risk management tool for buyers.

There are roughly seven markets offering first layer OPPI, with a few only writing secondary layers. One market withdrew from the OPPI space in 2022 but there are likely two to three markets entering in the next six to twelve months.

Pricing variations between markets is increasing. A few markets are more conservative than in the past while others remain aggressive. Submission requirements are more stringent as underwriters want to see applications completed up front along with project schedules, budget, environmental reports and prime contracts. As limitations of liability become more common, they must be identified and vetted to ensure adequate underlying coverage is available. There is also an increased focus on detailed underwriting and project selection. Underwriters are taking deeper looks into submission documents to understand potential project difficulties. This is also a benefit as projects that appear very complicated at first may be well designed and planned, allowing for more competitive pricing.

OPPI can be a fit for almost any type of project with a few potential exceptions. In many instances, single family residential remains difficult along with emerging technology and projects employing unproven designs. Large, complicated projects may require more underlying insurance. Also, recent weather events have impacted the availability of OPPI in coastal regions.

2023 OUTLOOK

Aside from economic pressure, the OPPI outlook for 2023 remains positive. As professional liability rates for architects & engineers continue to rise and the availability of project specific professional liability coverage dwindles, OPPI will remain a key component for owners / developers considering risk transfer alternatives.

2023 MARKET UPDATE

REAL ESTATE DEVELOPERS (RED) PROFESSIONAL LIABILITY

OVERVIEW

Real Estate Developers (RED) Professional Liability is designed to protect against the covered losses arising from negligent acts, errors and omissions committed during the performance of real estate development professional services. RED policies generally combine the features of professional liability insurance for design professionals, contractors, real estate professionals and owners into a broader solution that can be customized for the real estate industry. This includes those with ownership, firms providing services to third-party investors, or sophisticated real estate developers and owners looking for comprehensive risk management programs. The coverage can be structured on a corporate-wide or project-specific basis.

The popularity of RED Professional Liability continues to grow. Since its introduction in 2009, the RED market has, to our knowledge, expanded to six insurers offering standalone products as well as numerous other construction and miscellaneous professional liability carriers providing coverage on an ad hoc basis through a variety of professional liability product vehicles.

Primary players, in our experience, report an average limit capacity of $5M with ease of structuring follow-form excess layers offered via other carriers. In our experience, many of these carriers are:

- Expanding the first-party coverage features commonly found within the contractor's professional liability arena including protective indemnity and rectification terms and conditions with each carrier having their own slightly different take on the coverages.
- Offering more expansive contractors pollution liability coverage for those developers with in-house construction and general contracting operations.
- Customizing their nuanced professional services to accommodate the individual needs of clients.
- Following the lead of construction professional liability insurers by becoming more selective about the residential projects and project delivery methods they cover.

2023 OUTLOOK

Like much of the real estate industry, the RED Professional Liability insurance market is in flux. We are seeing RED markets pulling back on project-specific placements and being more conservative on project types like residential and renewable energy. On the other hand, we are also seeing movement of underwriting talent among new carriers with plans of bringing more capacity to the market in 2023. We expect increased demand in the RED marketplace, as more and more investors and lenders require this coverage to mitigate risk against the onset of greater economic headwinds.

Going forward, we expect developers to continue to consider the cost / benefit of a more conservative "pay as you go" approach that utilizes project-specific RED and OPPI placements for new projects compared to one that favors a more consistent practice wide placement for development, property management, and leasing. As such, we anticipate that long-term risk managers will continue to invest in more expansive, practice-wide RED programs rather than protecting themselves against risks on a project basis solely with OPPI policies or specific property management E&O coverage forms. We expect this trend to continue well into 2023.

Education on key issues (exposures, claims, coverage, program structure, transition from more limited coverage offerings, etc.) will continue to play an important role in the development of this insurance line. With ongoing volatility within the RED insurance market, it may be advisable for attention to be given to the sophistication of the carriers' claims response.

We anticipate the need for diligent policy review and coverage assessments to remain important in the coming year given the marked coverage disparities that exist among the various standalone RED and miscellaneous professional liability carriers.

We anticipate claims trends will continue to be severity driven, yet generally favorable across the industry. Given that we have seen historical product performance continually meet the internal expectations of insurers, we expect a number of new RED carriers and MGAs to enter the marketplace as underwriting talent finds willing capital and a growing number of traditional construction professional liability carriers stretch their focus into the RED professional liability marketplace.

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