MarshMcLennan Agency

Year-end 2023 U.S. Business Insurance Market Trends and Observations

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Executive summary

As reported in our Q3 2023 business insurance market trends and observations update, the dominant topic is the casualty market, with the difficult property market taking a back seat. A healthier but still nuanced reinsurance market emerged following the January 1 treaty reinsurance renewals, ensuring capital deployment for the insurance marketplace. This translates into less insurance rate volatility for organizations across many lines of coverage. However, many headwinds can still restrict this recovery.

While a catastrophe-style upset like we had in the property market isn't expected, there is good reason for insureds to be prepared for mounting pressure on casualty rates. This also applies to coverage terms and conditions, as a generally stable market transitions into a tougher environment.

After six years of insurers adjusting rates to adequately fund for the increased level of natural disasters and inflation, the property market remains on edge should 2024 catastrophe losses exceed expectations. That could easily deteriorate any progress made to our "new normal" milestone.

Denise Perlman, CIC
President, National Business Insurance

The Global Risks Report 2024

Marsh McLennan released [The Global Risks Report 2024] in collaboration with the World Economic Forum. In its 19th edition, the report outlines the major risk issues and trends our clients will face in the coming years. It delivers detailed insights into priorities and strategies to mitigate risks and provides business leaders with actionable steps to build resilience for what's to come.

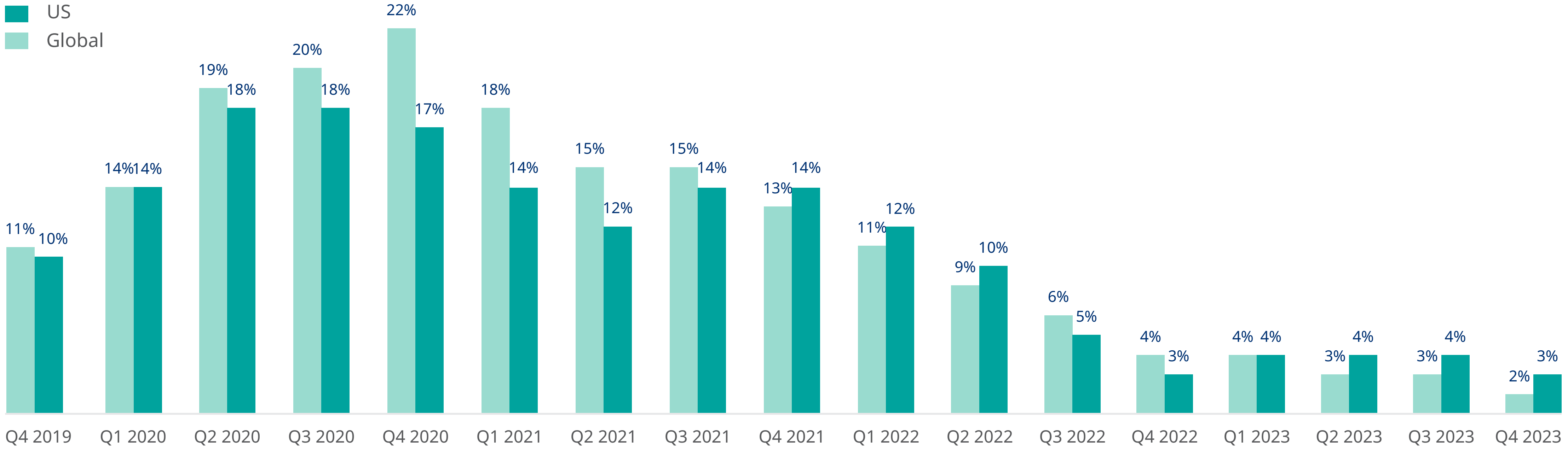
Some of the key risk areas identified in the report include:

01	**Misinformation and disinformation**
02	**Extreme weather events**
03	**Societal polarization**
04	**Cyber insecurity**
05	**Interstate armed conflicts**

Your future is limitless. Marsh McLennan Agency (MMA) remains steadfast in our commitment to support our clients through the challenges ahead. We'll work with you on strategies to achieve the best outcomes.

Global commercial insurance prices rose **2%** in the fourth quarter of 2023—the twenty-fifth consecutive quarter of price increases tracked in the Marsh Global Insurance Market Index. Increases peaked three years ago in Q4 2020 at **22%**. **However, the pace of rate increase slowed from the prior quarter**. This was largely driven by lower rate increases for the cyber, executive, and professional liability lines of coverage.

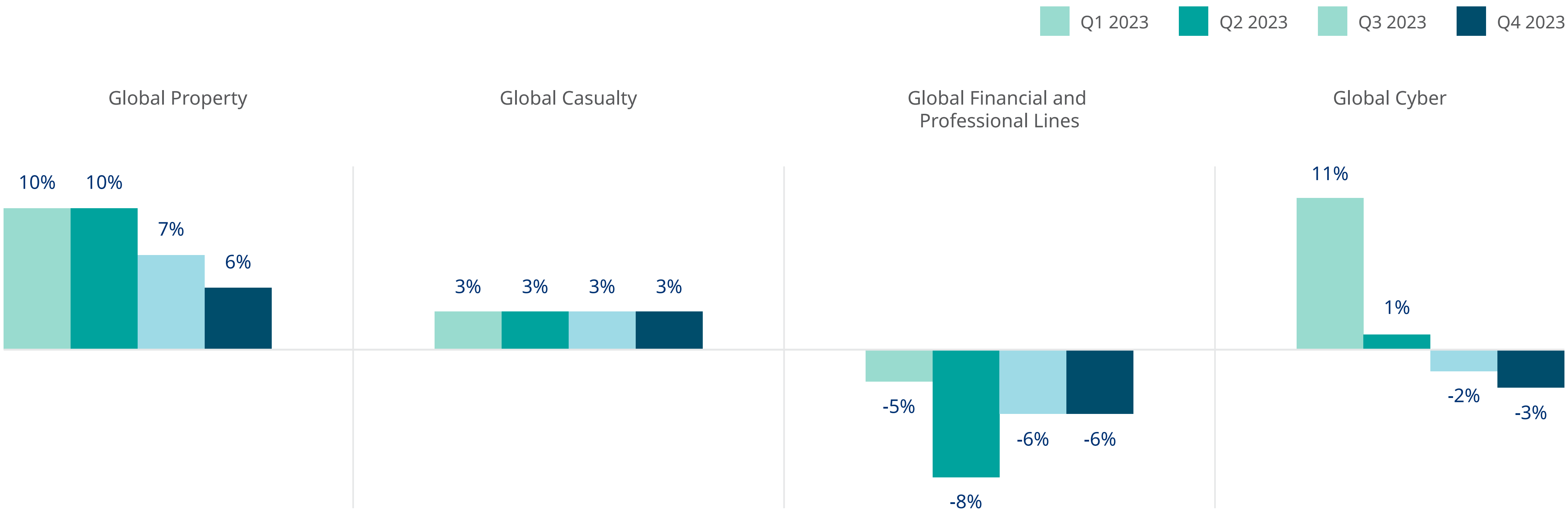
U.S. composite insurance pricing change



Source: Marsh Specialty and Global Placement

Global property insurance pricing decreased to **6%** in Q4, down from **7%** in the previous quarter, while casualty remained steady at **3%**. Unlike the other lines, financial and professional lines saw a **6%** decrease in pricing in the U.S. in Q4. Cyber also decreased by **3%**.

Global composite insurance pricing change by major coverage line



Source: Marsh Specialty and Global Placement

01

Property coverages

Property

Fortunately, property market conditions are beginning to improve. These subtle changes started to appear in early Q4 2023 with insurers beginning to change their risk selection criteria. This results in more competition in the marketplace on good risks and more urgency from insurers to quote new business. Insurers have had six years to adjust rates to better cover claim costs and return to a modest profitability position. Insureds will still be held to addressing valuation concerns, but even this area is tempered somewhat by inflation improvements.

Although we are not seeing any new capacity rush into the market, many insurers have aggressive growth targets for 2024—one of the drivers of the improving competitive landscape. Of course, the market is still challenged for frame habitational, multi-family, recycling, builder's risk, loss-driven accounts, and large coastal portfolios. But from a macro perspective, there is a welcomed positive shift.

Additionally, treaty reinsurance rate increases have slowed, with most well-performing accounts maintaining existing retentions and only experiencing modest single-digit rate increases.

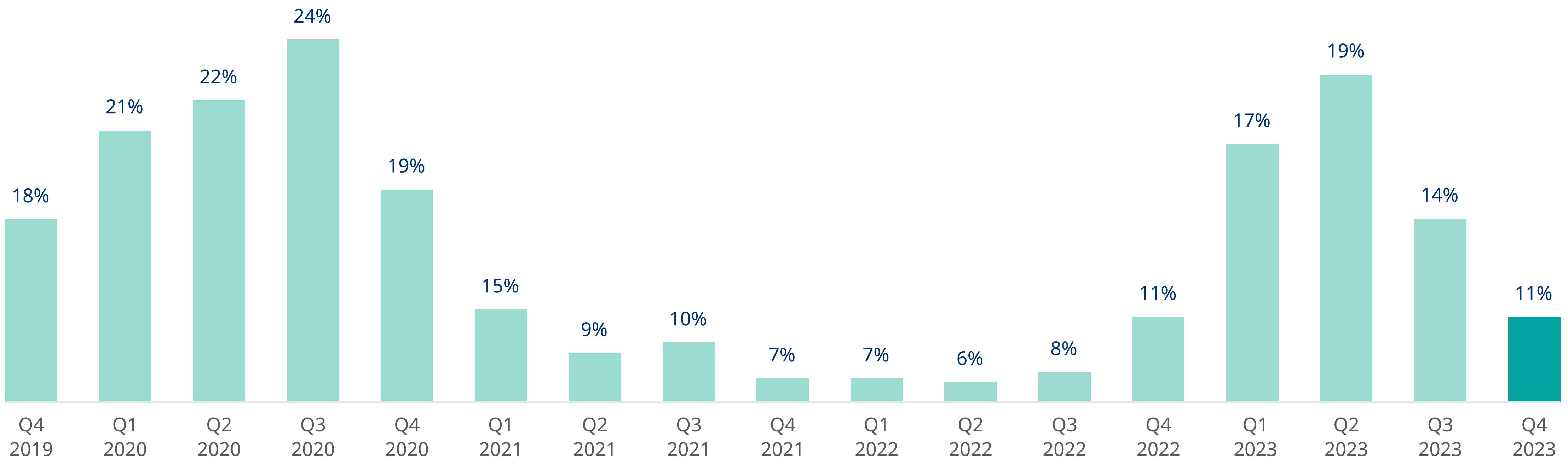
The reinsurance view from Guy Carpenter

In a press release on December 28, 2023, Guy Carpenter shared that reinsurance renewals reflect a motivated market with increasing capital. "A more consistent trading rhythm returned to the property market, with capacity deployment outside of frequency-exposed layers and more heavily loss-impacted segments showing meaningful bounce-back, including on new business where reinsurer activity increased measurably. Loss patterns in 2023 were driven by smaller to mid-sized events, meaning insurers were more heavily impacted than reinsurers. Non-peak peril events comprised 83% ($78.6 billion) of total large losses. Of these, 79% ($61.9 billion) occurred in the U.S. Markets remain sensitive to pricing, attachment point and overall structure adequacy, but with terms and conditions that were borne out of the demonstrable corrections made throughout 2023."

Given the positive improvements in the property market, we felt compelled to provide a deeper explanation of this nuanced recovery. We welcome readers to learn more in our separate commercial property insurance trends report.

Rate increases averaged **11%** in Q4 2023 for larger risks and more for accounts with loss history challenges, and/or much higher for catastrophic exposed properties.

U.S. composite insurance pricing change: property



Source: Marsh Specialty and Global Placement

Conditions and observations

Wildfires difficult to cover for insureds in states such as California.

Organizations must prioritize and address key loss control recommendations from their insurers.

Insureds have increased their appetite to retain more of their own risk through increased deductibles, assumption of capacity within their insurance program, or by adopting alternative risk transfer methods such as captives, parametric insurance, or structured solutions.

Cargo/inland marine

The cargo stock throughput (STP) market is softening, offering stable renewals and little to no rate increases except when entertaining distressed risks. This is seen in the general availability of capacity and robust policy terms and conditions.

Classes that remain challenged include:

- Any organizations that has a combination of first-party product in storage/transit combined with high-hazard catastrophe exposure
- Automotive manufacturing
- Food and beverage
- Food processing
- Pharmaceuticals
- Temperature-sensitive goods

Rate trends

- The relatively benign treaty reinsurance renewals on January 1, combined with many new entrants into the cargo market, are keeping rates **flat** and driving increased competition.

Conditions and observations

- STP policies offer extremely broad global transit coverage. They also offer the opportunity to carve out inventory exposures from property risks with higher deductible pressures and heavy catastrophe footprints.
- In addition to the Russia, Ukraine, and Belarus exclusions being universally imposed on cargo STP policies, insurers are also heavily scrutinizing exposures in Israel, Gaza, and Palestine. Certain location-specific exclusions are now also mandated by some writers of cargo STP risk.

02

Casualty coverages

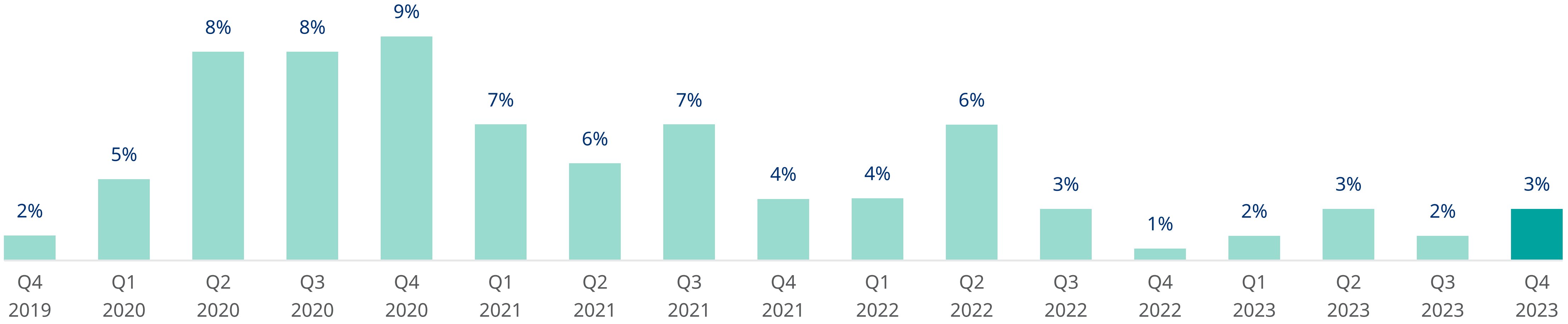
Social and economic inflation, litigation financing, and emerging risks such as per- and polyfluoroalkyl (PFAS) substances are all contributing to the declining health of the casualty market and putting these coverage lines at the top of the agenda for insurers and reinsurers.

Deteriorating loss trends are becoming more obvious while insurers are still paying the losses of the past. Concerns about future claims are also coming into view. Rate increases are likely not compensating adequately for escalating claim costs, so all eyes are on casualty in 2024.

While a catastrophe-style upset like we had in the property market isn't expected, there is certainly good reason for insureds to be prepared for mounting pressure on rates and changes to coverage terms and conditions.

U.S. composite insurance pricing change: casualty

According to the Marsh Q4 2023 U.S. composite casualty insurance index, pricing increased to **3%**.



Source: Marsh Specialty and Global Placement

As reported in The Insurer in November 2023, "Reinsurers and insurers are making considerably higher investment returns on the float they hold on casualty deals as a result of the elevated interest rate environment. But they also acknowledged that the patterns of reserve deterioration on the underlying business are real, and an increasing concern for insurers, especially in areas like umbrella/excess casualty." This further reinforces that challenges for reinsurers will likely impact rates charged by retail insurers as well.

The reinsurance view from Guy Carpenter

In a press release on December 28, 2023, Guy Carpenter shared that pricing adequacy and program structure remain in focus with continued underwriting rigor. "While property renewals were the focus a year ago, casualty faced more scrutiny this year. Casualty portfolios necessitate data-driven conversations on development trends, reserve practices, and impacts of re-underwriting. Casualty quota shares and excess of loss reinsurance treaties continued to experience rating pressures, with only those portfolios performing better or as expected seeing terms at or closer to expiring. Casualty clash continued to be a challenged area of the casualty market, where even non-loss-impacted programs increased **7.5%** to **15%** in rate on line. There was significant pricing scrutiny, and therefore greater pricing pressure on higher layers, with reinsurers viewing them as increasingly exposed."

Automobile/fleet

Rate trends

Average rate increases are in the **7%–20%** range and higher for business classes with tougher risk profiles and large fleets.

Conditions and observations

- Few businesses still offer single-line coverage.
- Claim costs continue to escalate due to inflationary pressures on liability and physical damage repair costs, ongoing supply chain challenges, uncertainty around technology advancements in vehicles, rising medical costs, and increases in fatalities.
- Robust fleet safety is critical so underwriters can ensure an organization is invested in risk mitigation.
- There is pressure to add liability deductibles and/or increase physical damage deductibles where there is loss frequency.

General liability

Rate trends

Rates increases are still in the **1%–3%** range and higher for certain business classes and when the insurer doesn't also write the workers' compensation coverage.

Conditions and observations

- We are seeing more carriers quoting with multiple deductible options.
- The war in Ukraine continues to put pressure on the market.
- Underwriters continue to apply a higher level of scrutiny on medical devices and aviation-related risks.
- Sexual abuse and molestation coverage continues to be difficult to obtain.
- Risks involving cryptocurrency and/or NFTs remain extremely difficult to place.

Importance of fleet safety

According to the American Trucking Association, the nation's driver shortage is expected to reach a record high of 82,000 in 2024.

To help minimize this shortage, a growing number of businesses have adjusted their driver attraction strategies. These drivers often have fewer years of experience, making them more likely to be involved in accidents. To combat these concerns, the federal government introduced the DRIVE Safe Integrity Act in May 2023, enhancing safety and training standards for new and current drivers. Even with these efforts underway, it's important for businesses to educate new drivers and encourage them to prioritize safety behind the wheel. Our fleet safety team is well positioned to provide the support organizations need to address these challenges.

Umbrella/excess

Rate trends

Rate increases continue in the **5%–10%** range but are up by as much as 100% for habitational risks, automobile liability exposures, and organizations with losses.

Conditions and observations

- Litigation shifts including third-party litigation funding (TPLF) and social inflation issues are large contributing factors to escalating claims costs and the corresponding elevated rate trends.
- The excess marketplace is still limiting its capacity due to the continued momentum of nuclear verdicts, forcing a layered approach with most placements.
- Many insurers are more competitive with excess limits when placing over their own primary limits.
- Per- and polyfluoroalkyl substances (PFAS) continue to worry insurers with long-term consequences.

Third party litigation funding (TPLF)

Such funding refers to instances where a third party provides financing for a lawsuit. In exchange, the third party receives a portion of the settlement.

In the past, the steep cost of attorney fees would often discourage plaintiffs from taking a lawsuit to trial. But, through TPLF, most or all of the costs associated with litigation are covered by a third party, which has increased the volume of cases being pursued. Not only is TPLF becoming more common, but it also increases the cost of litigation, sometimes to seven figures. This is because plaintiffs can take cases further and seek larger settlements. The impacts of this trend are substantial on the insurance industry and the rates organizations ultimately pay to maintain coverage.

Workers' compensation

Rate trends

Rates generally remained flat or in negative territory with decreases of around **-2% to -6%**. However, rates with a loss history and less favorable risks are seeing increases of up to **10%**.

It's important for businesses to note that the National Council on Compensation Insurance (NCCI), which governs the workers' compensation system in 36 states, is altering specific elements of its experience modification factor formula for 2024.

Conditions and observations

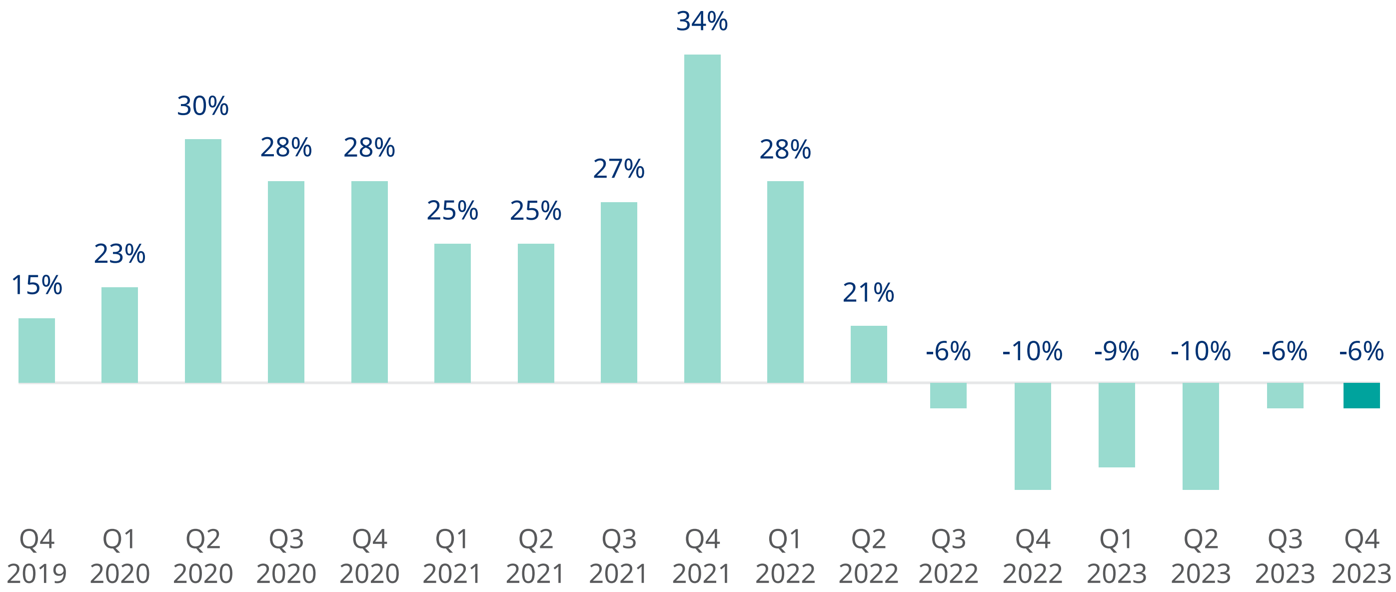
- Market competition is strong and most carriers will entertain monoline workers' compensation coverage.
- Workers' compensation is still being leveraged to temper general and automobile liability rate increases.
- Elevated workers' compensation costs brought on by medical inflation will likely persist in the coming years.
  - These costs—which the National Library of Medicine asserts comprise the largest share (**60%**) of workers' compensation expenses—are typically determined a year in advance based on projections by Medicare and private insurance contracts. According to the NCCI, medical costs in the workers' compensation segment increased by an average of **1.5%** annually between 2012 and 2019, while such costs jumped by **2%** in 2021 and another **3.7%** in 2022. This was more than double the 10-year average. Making matters worse, the Centers for Medicare and Medicaid predict health care spending will increase by **5.4%** each year through 2028, presenting ongoing medical inflation concerns. Yet, the segment is better equipped to handle inflation issues than other commercial lines of coverage due to its past several years of profitability. Many states also have fee schedules for workers' compensation coverage, which are predetermined expenses for medical resources.
- Experience modification factor changes:
  - It's important for businesses to note that the National Council on Compensation Insurance (NCCI), which governs the workers' compensation system in 36 states, is altering specific elements of its experience modification factor formula for 2024. These changes will be rolled out on each applicable state's regular filing date between the end of 2023 and the first half of 2024. The formula itself will remain unaltered. However, there will be adjustments in how certain foundational components of the formula are derived to more accurately account for cost variations among states. Because of these alterations, businesses operating within applicable states should familiarize themselves with the upcoming changes and be prepared for possible premium adjustments.
  - As a reminder, New York dropped out of the NCCI rating program effective October 1, 2022, adopting their own experience modification methodology designed to reward strong risk management and penalize others.

03

Management and executive liability coverages

According to the Marsh Q4 2022 U.S. renewal management and executive liability insurance index, pricing **decreases matched the prior quarter at 6%** (excluding cyber).

U.S. composite insurance pricing change: management and executive liability



Source: Marsh Specialty and Global Placement

Encouraging trends:

- Multi-year deals are strategically offered on best-in-class risks, especially in the small business space.
- There is capacity in the marketplace, with marketing efforts driving significant improvements to both rate and coverage terms (including, but not limited to retention reductions, new or increased sub-limits, and an expansion in terms and conditions).
- Carriers are expanding their appetite to new classes of businesses previously outside of underwriting strategy.

Conversely:

- The market could potentially pivot in 2024 given we've had five to six quarters of rate decreases. All renewals should have seen a decrease at this point. With this, we anticipate a more stable market as underwriters become firmer on rate throughout the first quarter.
- Additionally, we are hearing from some insurers that their January 1 reinsurance renewals were more challenging this year, with reinsurers expressing concern over inadequate public D&O rates. This may lead to rate stabilization and potentially even firming in 2024.

Public directors' and officers' (D&O) liability

Rate trends

- Public D&O policies and rates continue to correct themselves from the significant price increases of a few years ago. More insurers are willing to participate in shared and layered coverage towers, leading to increased competition and rate declines.
- Primary layer rates are generally experiencing single to low double-digit reductions. There is also greater market softening on excess layers, primarily due to new insurer entrants to the D&O market.
- Generally, premium decreases are getting smaller following almost two years of decreases.

Go to page 24 to read about public D&O claim trends.

Conditions and observations

- Despite this competitive environment and ongoing rate decreases on average, underwriters remain concerned about a range of macroeconomic issues, including:
  - banking sector challenges
  - growing geopolitical tensions
  - labor shortages
  - supply chain delays
  - the interest rate environment
- The transactional environment remains sluggish, with no material uptick in IPOs or transactions related to special purpose acquisition companies (SPAC) since the start of 2023. This is leading to a slowdown for insurers keen for premium income. A lower interest rate horizon coupled with a resilient economy may lead to an increase in IPO activity in 2024. Legacy insurers continue to take a competitive approach to renewals, outbidding a lot of the newer primary and low excess capacity carriers in primary and low excess positions. While legacy and newer capacity carriers aggressively seek new business, incumbent carriers work hard to avoid being replaced on D&O programs.
  - Second consecutive year of premium reductions are getting smaller for accounts coming off IPO and de-SPAC transactions.
- Carriers are offering higher limits, leading to restructuring programs and displacing existing carrier relationships.
- Side A pricing has also been very competitive, despite the continued significance of shareholder derivative claim settlements and the negative impacts of recent economic factors on some companies' financial health. Lead Side A pricing, however, does not always follow the full decreases obtained in the ABC portion of programs and year-over-year changes are still dependent on the starting rate per million.
- Premium flexibility and coverage terms have been favorable, especially if the risk profile has improved year over year. We have delivered desired results for clients, including those facing liquidity challenges.
- Reduced retentions are available unless the current retention level is viewed as being too thin.
- Entity investigation option is often available from primary layer markets.

Private directors' and officers' (D&O) liability

Rate trends

- Pricing and retentions have remained stable with very few rate increases.
- Capacity is abundant and pricing is generally flat in the marketplace. In some cases, reductions in premium on renewals are common for favorable risks.

Conditions and observations

- Insurers are willing to offer multi-year policies or guaranteed renewal endorsements.
- While the market is highly competitive, underwriters still cautiously underwrite distressed business (e.g., poor financials and loss history or historically challenged classes of business and Employee Stock Ownership Plans (ESOPs), or employee stock ownership plans).
- Many insurers have recently rewritten (or are in the process of rewriting) their policy forms.
- We are seeing underwriter willingness to enhance coverage and raise coverage sub-limits, including but not limited to regulatory and anti-trust coverage. Higher-risk industries may only get the sublimit with higher retention and co-insurance.
- Separate limits for defense costs outside the limit are available for smaller accounts.

Go to page 26 to read about private D&O claim trends.

Employment practices liability (EPL)

Rate trends

- Price and retention increases continue, particularly for class action claims, but at moderate levels.

Conditions and observations

- Some carriers are not comfortable offering limits greater than $5 million. This can limit the number of primary alternatives for clients with large (e.g., $10 million) primary limits.
- Despite soft market conditions, carriers still apply separate and minimum retentions for high hazard exposure states (e.g., California), especially for higher paid individuals in industries such as technology and health care.
- We are seeing one-off exclusions depending on the nature of operations (tenant discrimination for real estate, opioid for health care, sexual abuse and molestation for health care, etc.).
- Biometric privacy exclusions are prevalent and not limited to Illinois-domiciled/ employee risks. For many insurers, this exclusion is non-negotiable, regardless of industry. Demonstrating compliance with biometric laws in states of operation is the best path to success with those insurers willing to underwrite the risk.
- Use of mass class action retentions, while already prevalent on larger risks, are now occasionally used on small and medium-sized risks and should be challenged.
- In addition to California, wage and hour defense coverage is becoming more challenging to secure in Massachusetts.

Go to page 27 to read about EPL claim trends.

Fiduciary

Rate trends

- For small to mid-size organizations, rates have been relatively stable, even during modest exposure increases. However, ESOPs are seeing slight increases.
- For larger companies with more significant 401(k) plan asset values, there continue to be significant challenges in the fiduciary liability market due to the lingering impacts of the uptick in both the frequency and severity of excessive fee litigation in 2020, 2021, and continuing in 2022, over prior years. Premiums continue to increase, often significantly. More notably, carriers are imposing large increases in retentions for excessive fees and/or all mass/class actions.

Go to page 28 to read about fiduciary claim trends.

Conditions and observations

- Insurer appetite for ESOPs remains constrained.
- Some insurers are uncomfortable offering limits greater than $5 million, which can limit the number of primary alternatives for clients with large (e.g., $10 million) primary limits.
- We are seeing continued scrutiny of excessive fee exposure for large plans (over $250 million).
- Plan performance due diligence is a key focus of underwriters, along with fee schedules as they look for capped fees.
- New plaintiffs' law firms continue to enter this space bringing fiduciary suits.
- There is continued and frequent use of split retentions when a higher retention is needed for excessive fee exposure.
- Small to medium-sized account renewal terms remain stable.

Crime

Rate trends

- Rates have been relatively stable, even during modest exposure increases.

Conditions and observations

- Social engineering and cyber-related fraud remain a primary source of claims activity. However, we are seeing higher social engineering sub-limits at $500,000 being offered where previously markets were capped at $250,000.
- Accounts with high revenues ($1 billion or more) or that have significant foreign exposure are experiencing greater underwriter scrutiny.
- Companies with meaningful foreign exposures experience greater underwriter scrutiny and a somewhat higher cost structure.

Errors and omissions (E&O)

Rate trends

- Pricing remains steady and dependent upon an organization's risk profile, exposure basis (e.g., professional service revenue and scope of professional service offerings) and claim trends.
- Miscellaneous professional liability average total program rate increases are generally in the low to mid-single digits.
- Media E&O average total program rate increases are in the low to mid-single digits.
- Architects and Engineer's E&O average total program rates are stable, generally flat, or near flat.
- There is ample capacity in the market, including expanding appetite from traditional markets.

Conditions and observations

- The health care professional liability market remains fragmented with some carriers pushing for rate increases on more difficult placements.
- Real estate and property management sectors continue to be challenging classes of business to place.
- Additionally, cryptocurrency and NFT risks continue to have few options.
- Technology E&O
  - Continued product and service delivery technologies are pushing the edges of technology E&O into other coverages, including general liability, cyber, and different types of professional liability. Insurers closely underwrite the addition of any new professional services, sometimes requiring a separate policy depending on scope of services.
  - Insurers are adjusting rates to better reflect long-term loss trends. With this, primary and excess layers are increasing due to recent large losses that have penetrated multiple excess layers. We anticipate further adjustments throughout the year.

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04

Management and executive liability claim trends

Claims Trends

Public Company D&O

Federal securities class action litigation remains at or above average with 213 federal court filings in 2023. According to the Stanford Class Action Clearing House, this is compared to 197 in 2022, 212 in 2021, 317 in 2020, and 402 in 2019.

The increase in last year's filings was driven by, in part, by:

- Catastrophic events
- Environmental, social, and governance strategies and backlash
- Cryptocurrency litigation
- Qualified labor shortages
- Cybersecurity failures
- Supply chain disruptions
- Data breaches
- The series of bank failures

Notably, SPAC and COVID-related filings have decreased.

[1] Stanford Class Action Clearing House. [2] https://www.sec.gov/news/press-release/2023-234. [3] Id.

Securities and Exchange Commission (SEC) enforcement actions, [increased to 784 fillings in fiscal year 2023], resulting in nearly $5 billion in financial remedies, the second highest amount in SEC history. Nearly two-thirds of the SEC's cases focused on individual accountability, including "gatekeepers" (e.g., directors and officers). The SEC obtained orders barring 133 individuals from serving as offers and directors of public companies—the highest number in a decade.

The SEC's enforcement action also focused on corporate executives whose responsibilities did not include preparing financial statements or SEC filings but others who may be responsible for internal controls or disclosures related to cybersecurity, climate, and ESG issues. The enforcement activity is expected to increase with the SEC's approval of cybersecurity disclosure rules in July 2023, the anticipated finalization of the climate disclosure rule, and other ESG related disclosure rules. These include the enhanced disclosures by certain investment advisors and investment companies, the human capital management disclosure rule, and the corporate board diversity disclosure rule.

In addition, 2023 was a record-breaking year for the SEC's whistleblower program, with the SEC issuing whistleblower awards of nearly $600 million. The SEC received 40,000 whistleblower tips, complaints, and referrals, a 13% increase over 2022. In addition, the SEC action protects whistleblower's rights to report violations to the SEC.

Derivative lawsuits, have become increasingly expensive to defend and settle. Historically, derivative cases settled with the board's agreement to adopt proposed corrective action(s) plus the payment of plaintiff's attorneys' fees. The current trend has included a significant cash component. For example, in 2023, The Tesla Board agreed to a settlement valued at $735 million to resolve an excessive compensation derivative action. In another case, Paramount Global (formally ViacomCBS) agreed to a $167.5 million settlement in the derivative lawsuit filed by CBS shareholders in connection with the acquisition of Viacom.

Claims Trends

Private Company D&O

Shareholder suits against private companies and their boards remain prevalent and often fueled by merger and acquisition activity when the shareholders of the target company demand additional consideration for the deal or an assertion that the company's management failed to properly perform due diligence when acquiring another company. In addition, disgruntled shareholders often allege misstatements about the company's financial strength and revenue sources as well as board mismanagement.

Regulatory investigations and enforcement actions have increased under the current administration. Agencies such as the Federal Trade Commission, Department of Justice, SEC, and Department of Labor have increased their focus on private companies and their board members in a variety of cases.

Overall, the claim trends experienced by private companies are similar to the emerging trends facing public companies, including:

- Cyber security issues
- Labor shortages
- ESG-related issues
- Supply chain issues
- High inflation
- The turbulent economy

Agencies such as the Federal Trade Commission, Department of Justice, SEC, and Department of Labor have increased their focus on private companies and their board members in a variety of cases.

Claims Trends

Employment practice liability

Employers were faced with several important issues throughout 2023. These included:

- Claims stemming from economic instability and downsizing within the workforce
- COVID-19 related claims as companies continued to navigate bringing fully remote workers back into the office on a hybrid basis
- Shortage of qualified labor throughout several industries, prompting employees to demand pay transparency and giving rise to an increase in pay equity cases

Within the regulatory landscape, the Equal Employment Opportunity Commission (EEOC) filed more than 143 new employment related discrimination lawsuits in fiscal year 2023, which was more than **50%** over the previous year. The cases represent a vast array of issues, including:

- Advancing equal pay
- Barriers in recruitment and hiring
- Combatting illegal harassment
- Protecting vulnerable workers in underserved communities
- Qualification standards and inflexible policies that discriminate against individuals with disabilities
- The long-term effects of the COVID-19 pandemic

The cases filed by the EEOC include 25 systematic lawsuits, almost double the number in each of the past three years. These cases focus on a "pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company, or geographic location."

Looking ahead, we may see an increase in claims by the EEOC, private advocacy groups, or individuals. These claims could challenge diversity, equity, and inclusion (DE&I) programs in the workplace following the June 2023 Supreme Court decision rejecting affirmative action in college admissions. Additionally, it is anticipated that there may be an increase in claims based on the use of artificial intelligence (AI) systems to assist with recruiting, assessment of candidates, and hiring. This is because there is a potential that the AI systems may generate discriminatory employment-related decisions if the algorithms are biased against certain groups.

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[4] EEOC Year-End Litigation Round-Up for Fiscal Year 2023. [5] Id. [6] Systemic task Force Report to the Chair of the Chari of the EEOC.

Claims Trends

Fiduciary

Excessive fee cases continue to dominate the ERISA fiduciary litigation. These cases declined in 2023, with only 48 cases filed compared to 89 in 2022. Most of the 2023 filings targeted large plans over $500 million in assets, and two-thirds of the cases were against jumbo plans with $1 billion or more in assets. The overwhelming trend was to target jumbo plans with a higher potential for damages or to leverage a settlement.

Generally, the plaintiffs allege that the plan fiduciaries breached their duties by subjecting participants to excessive fees paid to the plan service providers such as record-keepers, investment advisors, and managers. These cases are typically brought as class actions, are very expensive to defend, and many result in settlement. In 2023, 42 cases settled, which was an all-time high with a record $353 million in total settlement values. The average settlement in 2023 was $8.4 million, ranging from $200,000 to $124.6 million (an outlier from the Ruane Cuniff & Goldfarb case, and if removed, the average settlement was $5.6 million).

$500 million

Most of the 2023 filings targeted large plans over $500 million in assets.

$353 million in total

In 2023, 42 cases settled, which was an all-time high with a record $353 million in total settlement values.

$8.4 million

The average settlement in 2023 was $8.4 million.

[7] Euclid Fiduciary, Summary of 2023 Excess Fee & Performance Litigation by Daniel Aronowitz, Jan. 8 2024 [8] Id. [9] Id. [10] Id.

05

Cyber security and data privacy

Rate trends

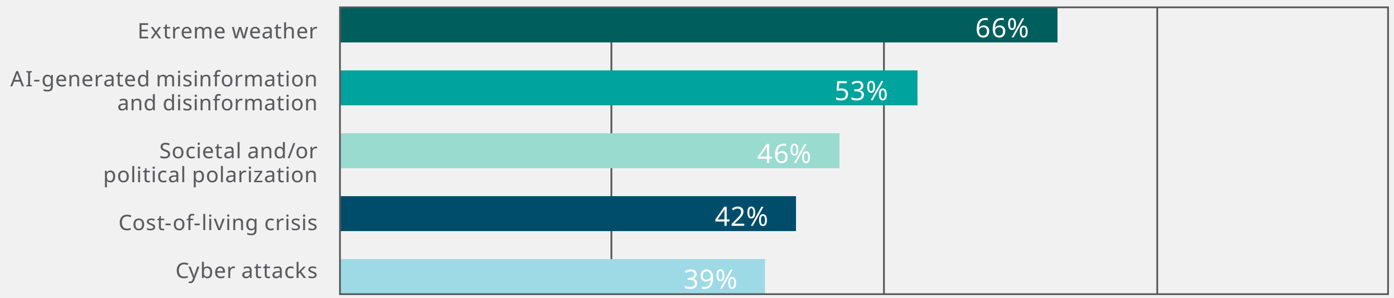
Rates decreased an average of **-4%** in Q4 2023, and even more for risks with year-over-year security control improvements. While the cyber market will likely continue to soften, the pace of rate declines in 2024 will probably be slower than 2023.

This segment sees frequent changes and reacts to such developments faster than other lines of coverage. There remains ongoing speculation if the market will abruptly change due to ransomware severity increasing in 2023, thinning pricing, and the constant concern of a catastrophic event. There is increased capacity in the marketplace and a concerted effort in establishing baseline cybersecurity control requirements. Because of this, one would not anticipate as rapid of a shift as experienced in the past hard market in 2020–2021.

The 2024 edition of the annual [Global Risks Report] outlines the major risk issues leaders face. Cybersecurity and data privacy concerns continue to rank in the top five.

Current risk landscape

"Please select up to five that you believe are most likely to present a material crisis on a global scale in 2024."



Mirroring the previous year's survey results, cyberattacks (39%) remain a major concern in the outlook overall and appear as a top-three concern for government and private-sector respondents, respectively.

There remains ongoing speculation if the market will abruptly change due to ransomware severity increasing in 2023, thinning pricing, and the constant concern of a catastrophic event.

Conditions and observations

- Cyber insurance is still a material risk transfer method. Reinvesting savings from this current rate environment into considering higher limits and broader coverage grants/sub-limits is recommended. Opportunities to improve current program structures and/or lower self-insured retentions are also in play.
- Incumbent insurers are generally willing to be more flexible to retain business.
- Policy wording continues to evolve, with some carriers imposing updated exclusions related to war, privacy regulations, systemic risk (e.g., dependent business interruption), and data collection and use.
- Underwriting continues to evolve by relying on third-party telemetry to supplement the traditional underwriting application process. Although not all carriers are adopting, we see this as a trend to monitor as we continue to support transparency and awareness for our clients in the underwriting process.
- Coverage for newer privacy regulations may be restricted pending controls and specific insurer appetite, with focus on Biometric Information Privacy Act (BIPA) and website tracking technologies.
- Generative AI insurance gap analyses is currently underway by insurers and a new area that may impact coverage. However, omnibus technology E&O policy forms can handle the breadth of AI as a technology. It will be important to monitor emerging litigation for unauthorized use of data sets to train language models that could hinder underwriting appetite. Organizations have been updating contracts to better define how data may be used to maintain transparency, accountability, and privacy standards.
- Geopolitical tensions are also driving market uncertainty.
- Aggregation exposure and supply chain risk continue to be top of mind for insurers.
- Ransomware losses are moderated due to increased controls. However, sophistication continues to impact loss severity. Business income loss and breach response expenses have especially increased, adding to the loss severity concerns.
- Privacy claims are increasing due to emerging privacy regulations and data exfiltration.
- We encourage increased awareness of cyber incident preparedness, particularly with the recent SEC ruling that public companies are required to disclose material cybersecurity incidents. In addition, testing one's incident response plan with a supply chain disruption is recommended to check your resiliency and that of your trusted vendor(s).

Cyber security and data privacy claim trends

Navigating website tracking technology risks

Companies utilizing website tracking technologies (e.g., session replay, chatbots, and pixels) to observe user activity have faced significant class-action lawsuit risks. They arise from allegations of unauthorized recording and sharing of website user information, including invasion of privacy claims, wiretapping, state unfair competition statutes, breach of contract, negligence, and unjust enrichment. In a pixel litigation matter last year, a health care system agreed to pay $18 million to settle a class-action for using cookies, website analytics tools, and associated technologies on its websites without first obtaining consent from website visitors.

Steps that companies can take to mitigate legal risks while using website tracking tools can include:

1. **Obtain proper consent** from consumers for data collection and activities related to web tracking such as disclosing the purpose of the activity and opt-out options.

2. **Review privacy policies** so that clear and accurate disclosures about data collection practices are made for state-specific compliance such as the California Privacy Rights Act (CPRA).

3. **Address data ownership and security concerns** with third-party services to improve website and user experience along with commercializing collected data ownership, privacy, and security concerns.

Legal requirements may vary depending on specific circumstances and jurisdiction. Consulting with legal professionals specializing in privacy and data protection can provide unique and tailored guidance. We can help facilitate introductions to law firms that can help.

06

Additional trends and observations

Aviation

The aviation insurance market will likely face challenges in rates, coverages, and limits availability in 2024.

Rate trends

- January 1 reinsurance rates continue to rise, impacting rates in the marketplace.
- Renewal pricing in the middle market turbine class is experiencing a mixed bag. Generally, we are still seeing rating increases while best-in-class risks can get closer to a stable/flat renewal, or at least very modest rate decreases.

Conditions and observations

- Pilots, mechanics, and air traffic controllers are continuing to experience a painful staffing shortage.
- The typically required 12-month recurrent training for turbine aircraft has a scheduling crunch, but insureds can manage by scheduling far in advance.
- The pre-owned aircraft market has moderated but is still very active.
- Non-owned aircraft liability underwriters are tightening their underwriting practices and adding passenger sub-limits, reducing coverage. Insurers help insureds overcome this by providing quota-share options.
- New endorsements from many insurers are amending territory wording to exclude Crimea, Ukraine, Russia, Belarus, Sudan, and other geographies grappling with escalating conflicts.
- Claims are proving very costly due to the ever-increasing complexity of aircraft and logistics related to repair challenges and delays.
- Underwriters are being persuaded to write more new business, but only in a modest way.
- Some new capacity has entered the markets, generally at lower hull and liability limit offerings.

Environmental

The environmental market remains favorable with most carriers working to find solutions for coverage if provided with adequate underwriting information. Many environmental carriers advised they saw a significant increase in submissions in 2023 resulting from pressure felt by businesses following environmental regulatory changes and media attention. Most insurers said they are planning for and staffing to an expected record-breaking year for environmental business.

Rate trends

Average rate increases were in the **0%–5%** range. Classes of business with heavy or historical losses, along with policies coming out of a multi-year term, could see increases upwards of **15%–20%** depending on that organization's overall risk profile.

Conditions and observations

- The end of 2023 saw a reduction in carriers willing to offer pre-existing conditions, onsite cleanup, or higher limits without adequate data, requiring Phase 1's followed by Phase 2's or subsurface testing data where historical contamination was anticipated.
- Mold, legionella, per-and polyfluoroalkyl substances (PFAS), and other specific contaminants are also expected to be challenging for the foreseeable future across many classes of business. However, coverage may be available with restrictions, sub-limits, or higher retentions.
- Where carriers may have been flexible about binding with outstanding subjectivities, many carriers declined to bind until all outstanding information had been provided and reviewed. In 2024, it is recommended that all information requested by insurers be provided early in the quoting process to avoid delays or adjustments in terms at binding.

International

Rate trends

- Renewal pricing to date has been steady on many international placements.
- Defense Base Act rates continue to fall along with minimum premium charges.
- Professional line coverage pricing, in general, appears to be easing.

Conditions and observations

- Coverage territories on various insurer policy forms are decreasing as wars and strife pick up in Eastern Europe, Africa, and parts of Latin America.
- Umbrella limits offered per insurer are shrinking at renewals for general liability and professional liability lines of coverage.
- Many European Union markets are expanding regulations on liability lines of business, particularly requiring minimum limits and employer's liability coverage to attach to the general liability policy at renewal.

Small commercial market insights

As with all businesses, rates for small commercial risks are increasing for buyers of business owner's policies (BOPs).

Rate trends

- Overall pricing for small businesses is in the **5%-10%** increase range for BOPs.
- IVANS Index is reporting BOP increases of **9.72%** (up 2.16% from the previous quarter).
- For standalone coverage lines, premium renewal rate change trends for automobile liability, general liability, and umbrella are trending upward from the previous quarter. Below are baseline trends from IVANS with double-digit increases becoming more common for risks with poor loss experience, and for tougher classes of business.

9.19% — **Automobile liability** (**1.79%** increase over prior quarter)

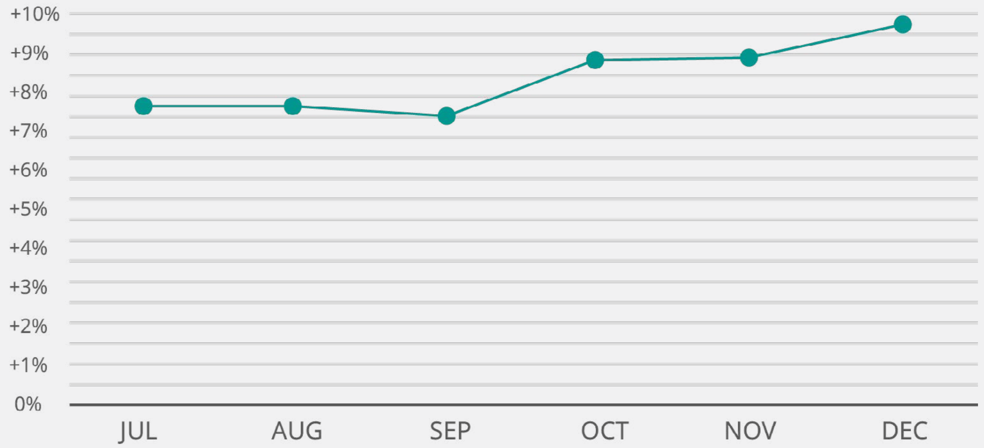
6.62% — **Umbrella** 6.62% (**1.42%** increase over prior quarter)

5.65% — **General liability** (**.33%** increase over prior quarter)

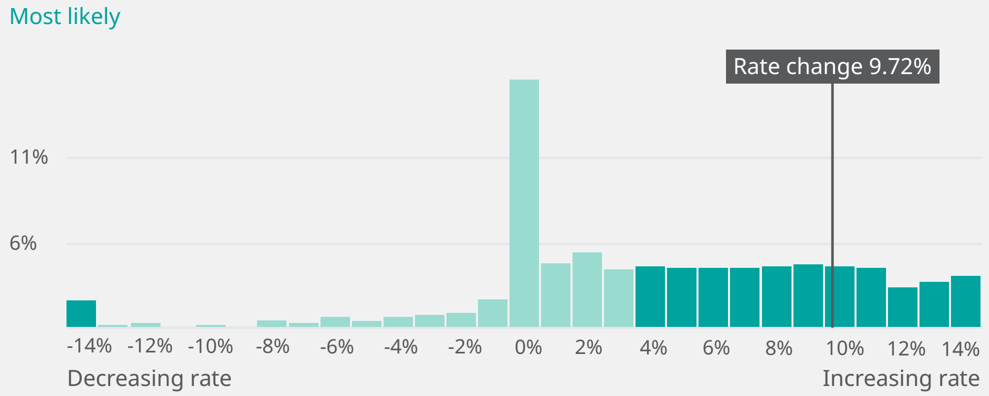
-1.26% — **Workers' compensation** (**.11%** decrease over prior quarter)

9.93% — **Property** (**.01%** decrease over prior quarter)

IVANS Index Premium Renewal Rate Change Trend - Last 6 months



IVANS Index Premium Renewal Rate Change Distribution - December



Conditions and observations

Property:

- We are still seeing the most impact on this line of coverage, especially for older buildings that have fewer updates. Overall pricing increases are still between **15%** to **30%** at renewal, and even higher in catastrophe prone states.
- More and more non-renewals are being issued by insurers as they continue to de-risk their entire property portfolios. Insurers are also making sure that the buildings are insured to value.
- Lessor's risk only is also becoming more challenging.
- In worst-case scenarios, we still have to turn to the excess and surplus line market which results in less coverage for more premium.

General liability:

- Longer timelines to obtain quotes from insurers are directly linked to the increase in underwriting information being required in supplemental applications. Because of this, it’s important for insureds to provide additional underwriting details to avoid delays with their renewals.

Automobile liability:

- The market is still especially difficult for automobile liability, with very few monoline automobile markets willing to write this single line of coverage. Double-digit rate increases are not uncommon.
- We are seeing an even greater impact on hired/non-owned exposures with many insurers eliminating coverage extensions.

Umbrella/excess liability:

- We are seeing more insurers reduce limit capacity for higher risk casualty exposures, especially for umbrella and excess liability coverages.

Workers’ compensation:

- We’re still seeing restrictions based on class of business but overall pricing is holding steady with increases of less than **5%** unless the insured is projecting payroll increases.
- We’re also seeing restrictions with start-ups where many carriers want to see three to five years of credible loss history to offer a quote.

Management and executive liability:

- While the market for cyber, D&O, and professional liability is improving, many insureds are still seeing rate increases. They are required to provide more underwriting information than they have had to do in the past.
- Cyber markets continue to require certain security protocols, such as multi-factor authentication.

Overall pricing increases are still between 15% to 30% at renewal, and even higher in catastrophe prone states.

Trade credit insurance (TCI)

The demand for TCI continued due to the normalizing of insolvencies. The increased need for TCI is met with favorable coverage and stable rates. The emergence of new carriers and appetites allows for continued competition.

Rate trends

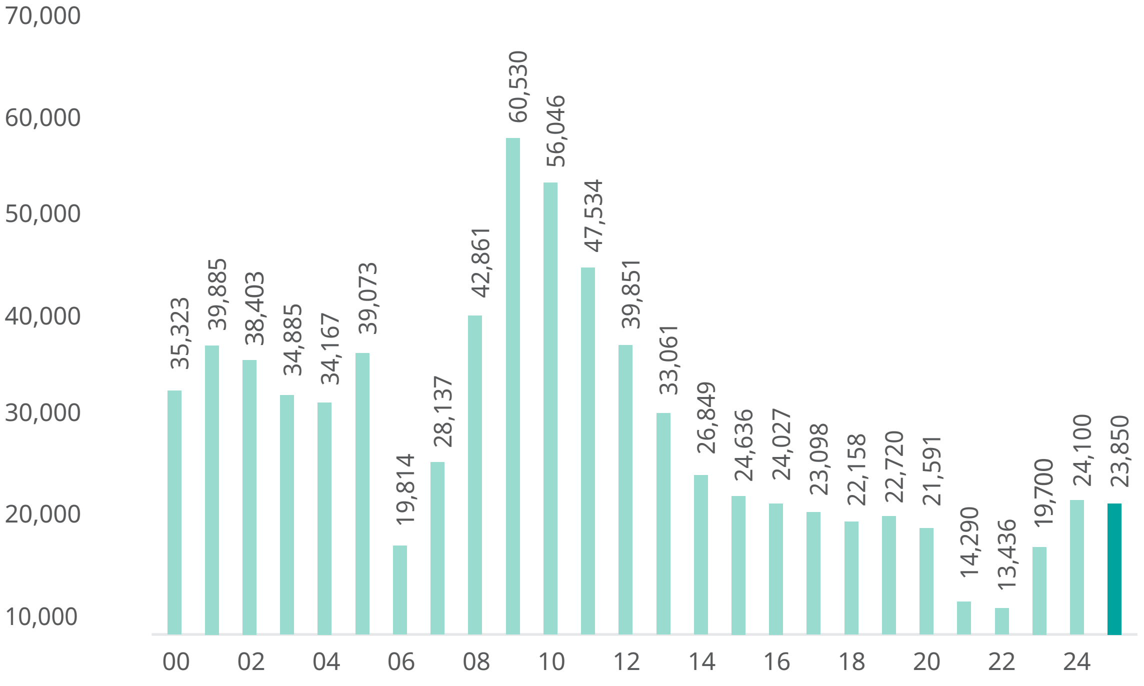
- Despite the negative claims outlook, neither private nor public insurers have altered their risk appetites through the end of the year.
- Rates have remained in line partially due to increased applications in 2023.
- TCI rates increased in 2023 due to the cost of reinsurance but have now softened into 2024.

Conditions and observation

Impacts of 2023 increase of bankruptcy filings and days sales outstanding:

- Commercial Chapter 11 business reorganization filings shot up 72% in 2023 to 6,569 from 3,819 in 2022.
- Tighter banking credit conditions and the sharp economic slowdown in 2023 forecasts another significant increase in small to medium sized business bankruptcies in 2024 (by +22% year over year, compared to +47% in 2023.)
- The global days sales outstanding are currently above 60 days for 47% of firms.
- Current level of emerging claims rose slightly in Q4 2023 across all insurers. These levels are slightly higher than pre-pandemic levels.

2023–2025 expected number of insolvencies, selected advanced economies



Source: National Sources, Allianz Research

Trade credit insurance (TCI)

The reinsurance view from Guy Carpenter

The global risk environment faces many challenges, but insurers navigate them successfully while maintaining a robust growth appetite.

Despite some losses starting to impact the market, overall profitability remained strong, with reinsurers continuing to benefit from a combination of generally lower-than-expected loss activity and favorable reinsurance pricing.

As a result, there was softer pricing as reinsurers recognized and rewarded good performance. On average, commissions increased, and excess loss rates were reduced on a like-for-like basis. However, there were stable to potentially harder renewal terms for loss-affected programs.

In both premium and exposure terms, capacity remained in demand due to the growth in the underlying business. Where significant additional capacity was sought from reinsurers, insurers needed to balance this with their pricing aspirations. This balance may continue to favor smaller reinsurers with growth aspirations, whereas the major reinsurers may still be more constrained.

Resilience based on understanding cost drivers and effective capital management are key in this complex market.

Mirroring other areas of the economy, the insurance sector has encountered many challenges. There are many obstacles still on the horizon in 2024. However, there are elements every business should work to control, with emphasis on understanding cost drivers and implementing effective capital management strategies. Reflecting back on the December 28, 2023 Guy Carpenter press release, it noted in the preceding property and casualty sections of this report: “The likelihood of recession has receded, and economic risks, while remaining high or elevated, appear to be more stable and manageable than a year ago.” However, global volatility headwinds are still present, including tight monetary policies and rising geopolitical uncertainty.

“The (re)insurance market enters 2024 in a stronger position than 12 months ago based on 2023 results and improved capital deployment appetite. The January 1 market reflected an equilibrium of disciplined underwriting approach, sophisticated data analytics and portfolio analysis, and a holistic approach to reinsurance relationships. Yet, against the backdrop of threats posed by climate change, cyberattacks and social inflation, there is no place for complacency. Improving resilience and mitigating risks, as well as balancing the demands of stakeholders in the prevailing higher return environment, will be key to success in 2024.”

**Note: Many of the rate trend graphics in this report are from Marsh McLennan and may not include small to middle-market data. Because of this, some of the rate trends within the text may not always match up squarely with the visuals.*

Special thanks to our MMA Business Insurance market trends contributors:

Makeleta Berry, Nick Bertke, Steve Christenson, William Cilente, Kelly Ciprian, Michael Cullen, Mike Dower, Bill Durand, Kerry Evensen, Tim Gallagher, Ashley Gavins, Julianne Graves, Joe Halleran, Gretchen Haney, Ed Heine, Michael Henning, Hannah Hoeflinger, Ryan Hurtado, Phebe Jenkins, Leonid Kanopka, Adam Kibble, Rachel King, Amy Klitzke, Angela Lee, Dawn Little, Tarra Moxley, Aaron Newton, Mario Paez, David Parker, Karen Parker, Aldo Pasquariello, Kim Peabody, Denise Perlman, Cindy Rains, Jenny Raveling, Manuel Ribot, Beth Romanowski, Matthew Ross, Lisa Setzer, Dawn Simmons, Kathy Vanderslice, Cory Watson, Kyle White, Joe Williams, Matthew Wright, and Lydia Zaharia.

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