Management Professional Solutions

2021 Market Update

Through the first six months of this year, the D&O market has continued to tighten across three measurable sectors—premium, capacity and self-insured retention levels.

Thankfully, increases in premium are not as severe as experienced in the same period in 2020. Our public company clients experienced premium dollar increase of 13%, on average, through the first six months of the year, down significantly from the same period in the prior year. We note that two-thirds of our renewals through the first half had an alternate primary indication, which is a radical departure from 2020 when the pandemic's impact on the economy was yet to be determined. The average increase for clients buying a tower of D&O insurance (i.e. buying excess insurance policies in addition to the primary) was ~10%. This is largely attributable to several new facilities entering the D&O marketplace, offering fresh excess capacity at relatively aggressive pricing.

While the year-over-year increases imposed by insurers are going down, many insureds have elected to take on higher self-insured retentions as an option to keep more cash on hand as opposed to trading dollars for insurance. The increase in retentions across the board for public companies has subsided a bit in the Q2 D&O insurance marketplace as insurers look to recover from the froth of securities claims filed from 2016 through 2019.

One interesting factor to watch in the coming months and into 2022 and beyond is the somewhat surprisingly low number of securities class action claims (SCAs) filed in the first half of 2021. After years of historically high filings, the first half of this year saw only 108 SCAs filed compared to 182 in 2020 for the same period (source: Stanford Law School Securities Class Action Clearinghouse & Cornerstone Research). Within that number, observers are keenly interested in the disposition of claims against companies that became publicly traded following an initial business combination with a Special Purpose Acquisition Company, or SPAC. Private companies electing to enter the public markets via a SPAC transaction have self-insured retentions that can reach $20 million before insurance kicks in. How and when insurance begins to absorb losses will be interesting to observe in the coming months and years as these claims begin to mature. One potential trend impacting the reduced levels of SCA filings thus far in 2021, is the positive stock market performance overall. Should the stock market performance respond negatively in the coming months, it will be important to monitor that influence on the potential number of SCA filings in the second half of the calendar year.

Cyber Liability

Cyber Liability insurance has taken the title of "Hardest to Place" line of business in the broader suite of management & professional liability products. The highly publicized—and very expensive—ransomware incidents across the globe have caused insurers to completely reassess their approach to underwriting this line of cover. While the paid ransom is painful for all, there are also the costs to investigate, remediate restore and repair networks, business interruption costs, which in many cases exceed the actual ransomware payment. Insurers are now mandating certain controls be in place (e.g. multifactor authentication protocols, protection and segmentation of backups) before offering terms for any company—existing Insured or new applicants. The process to underwrite and broker deals is being strained as additional eyes are on every risk being brought to market. Many insureds with controls that were previously thought to be of quality are now being asked to bolster defenses further. On the opposite end of the spectrum, those that refuse, or are slow, to implement high-quality network security protocols and implement employee training, are either forced to take stripped down versions of cyber liability insurance, or go without. Ensuring these controls are in in place can be differentiators amid a challenged market where many systems are not adequately prepared for black hat attacks and other bad actors, or just a simple mistake by an employee that can lead to significant losses.

All of this has impacted limit deployment, retentions and pricing models deployed by the insurance market. On average, our clients' cyber premiums increased in excess of 80% through the first half of 2021. In addition to premium increases, insurers are uniformly raising the waiting period before electronic business interruption cover can kick in, in addition to raising the self-insured retentions for all insuring agreements. Sixteen percent (16%) of our clients had limits cut back by carriers, requiring new participation to fill voids left in programs, all of which added to the increase in both hard and frictional cost to every placement.

The back half of 2021 is expected to be equally difficult for cyber liability if not more so. Many London facilities have already hit their stamping quota for the calendar year, which will force many insureds to scramble for capacity. Certain domestic facilities have already pulled back from the table, so to speak, as they seek now to only manage their books and hope to avoid large losses. Specifically, we anticipate renewals in the fourth quarter of 2021 to be particularly challenging due to the aforementioned factors. Carriers will be less likely to take on any new risk, leaving insureds with fewer options to choose from in a more static, insurer-friendly marketplace.

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A continuing and frustrating part of every placement has been the overall time it takes to secure options for clients. This is, to a degree, understandable. Carriers have restricted authority above certain levels to only a handful of senior-level employees, which causes delays in receiving quotes for limits of $5 million or higher. The implementation of tighter underwriting guidelines also plays a part. Above all, though, there appears to be a dearth of seasoned professionals at underwriting facilities, particularly those that write primary, first or second-excess policies.

Employment Practices Liability

Employment Practices Liability Insurance remains rather steady, despite some fear that COVID-related claims would flood the marketplace. To be clear, that fear has not subsided. However, the market continues to be in a "death-by-a-thousand-cuts" status. Large employers are being asked to take on larger retentions in many cases for both class actions but also for high-salary employees and for claims emanating in specific jurisdictions, with California continuing to lead the country in claim volume.

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Fiduciary Liability

Fiduciary Liability has taken on greater import in the market's eyes due to the continued rise in "excessive fee" claims against plan fiduciaries. The plaintiffs' bar has continued its assault on large employers across the country that may not have done recent—or adequate—diligence on services rendered or investment variety for its employees and 401(k) plan participants. Given the historically low premiums for Fiduciary Liability over the past 15 years, carriers' books have quickly taken on water and significant underwriting adjustments have been made to counteract this claim trend. Many insureds are seeing 30% increases or higher on premiums (depending on how low the premium was to begin with) and significant retentions being applied to renewals for excessive fee cases. These retentions are class action retentions under a different name, but no less burdensome to the buyer. This stance by the market and these trends have brought light to the fact that many insureds need to engage in a 401(k) administrator Request for Proposal (RFP) process, just as they do for other professional services.

Employee Fidelity

Employee Fidelity markets have tightened their guidelines for offering social engineering cover, as phishing scams ticked up during the pandemic. Employee training and overall vigilance has taken on greater import as more people worked remotely for the past 16 months. As phishing scams are often the first step to a larger cyber liability incident, the theft of funds through impersonation fraud is often just the beginning. The cover remains valuable, though, for companies that handle items of significant value (e.g. contractors, hospitals, manufacturing facilities). It also is still relatively reasonable, price-wise, compared to the balance of the management liability suite of products.