EPIC
Law Firm Group

State of the Insurance Market

2024 LAWYERS' PROFESSIONAL LIABILITY REPORT

Prepared by the EPIC Law Firm Group

State of the Lawyers' Professional Liability Market

The Lawyers' Professional Liability (LPL) market began to evolve in 2023 and will continue to do so through 2024. The drive for double digit rate increases of 2021 and 2022 have eased in the face of competition for business by emerging markets. Abundant capacity seeking market share pressured established insurers to moderate rate increases. However, competition for business at rates lower than expiring was tempered by the common underwriting objective of rate adequacy. The frequency of severe losses, particularly among large firms, remained a prime motivator of underwriting discipline in 2023 and that discipline will counterbalance any run-on softer market conditions in 2024.

From an LPL buyer's perspective, these developments offer distinct advantages. The increased competition will continue to result in improved pricing and broad coverage will remain available through 2024. Law firms seeking professional liability insurance will benefit from a wider range of choices in insurers and more cost-effective professional liability insurance programs, provided they are prepared to change insurers. Changing insurers will require diligent examination of competing insurers to ensure financial strength, insurer's experience in Lawyers' Professional Liability, including claims handling philosophy and reputation. The following is our year-end 2023 review of the LPL marketplace and forecast for 2024, based on feedback received from our annual survey of some of the key LPL Underwriters in the segment.

Market Share & Rate Adequacy

In 2022, insurers demonstrated a willingness to walk away from Lawyers Professional Liability (LPL) business that the underwriting community perceived to be underpriced. Additionally, between 2020 and 2022, several insurers made the strategic decision to leave the LPL segment due to poor financial performance. During that period insurers electing to remain in the LPL segment engaged in a quest for rate adequacy: a balance between the historic severe loss experience and achievable rates.

Participants in our survey acknowledged that by 2023, rate adequacy had improved but had not been fully achieved in the overall market. They also acknowledged that in 2023, emerging markets began to compete more aggressively for the business of the insurers remaining in the LPL segment. Although rate adequacy had not been fully achieved, rates had improved to a point where insurers were no longer willing to walk away from business before reducing rate ambitions to compete in the current market and maintain business.

In 2023 incumbent insurers generally contend they were able to secure a moderate rate increase of 2-5%. Very few insurers were able to achieve rate increases of more than 5%, unless a firm's practice risk was considered high or if there was a history of frequency or severity of claims activity. Additionally, broad coverage terms remained available through 2023 and most of the markets polled stated they did not lose business due to coverage, only due to aggressive pricing.

Underwriters agreed that the stiffest competition for new business in 2023 was in the small to middle market sector. Attraction to the small law firm sector was driven by more efficient distribution cost management and easier management of exposure to large losses. Primary layers of insurance for mid-sized law firms also experienced strong competition. Insurers claim to have achieved about 3% rate increase for mid-size firms in 2023, roughly 2%, less than the desired 5% rate increase for these firms. Interviews with Insurers suggest that aggressive pricing for small and midsize firms will persist, with decreasing emphasis on rate discipline for smaller firms.

Within the large law sector (200 lawyers and above), rate increases in 2023 were less aggressive than the prior year: renewal premiums remained close to flat with only single digit rate increases. In 2024, Insurers operating in this sector will focus on increasing rates for excess layers, which they contend remain underpriced in this era of frequent severe loss. Higher excess rates may be slightly more achievable given strategic underwriting decisions in the European and Bermuda Markets.

The London market continues to focus on insuring hard to place and large law firms. However, the market has seen a decline in syndicates willing to deploy capacity to law firms. Bermuda markets are also offering less capacity to law firms. Limitation of capacity by London and Bermuda markets will affect the overall market dynamic by making it difficult for some large firms to buy the level of insurance they may require, which in turn will prop-up rates, particularly on the excess layers of large insurance towers.

Market Share & Rate Adequacy

Some insurers expressed dissatisfaction with retention levels and anticipate they would continue upward adjustments in 2024. However, the extent of concerns with Self-Insured Retention levels in 2023 was muted due to concerted efforts in 2021 and 2022 to increase long neglected retention levels.

In 2024, insurers will continue to compete for market share, particularly in the small firm segment. Several insurers outlined strategies for growth that included focus in this segment. In other segments even modest rate increases for firms with favorable risk profiles will be subject to challenge by competing markets willing to offer flat renewals. Large firms may struggle to place limits excess of $700M and there will be upward pressure on excess rates for mid-size and large firms. Broad coverage will remain the norm. In the large and mid-size segments, underwriters will seek rates and retentions commensurate with book performance and the risk profile of individual firms.

Based on our survey results we anticipate insurers will seek the following rate goals for 2024:

- **Small firm sector:** Potential for strong competition. Anticipate flat rate.
- **Mid-size firm sector**: Insurers aim to secure rate increases of 3-5% to counter inflationary pressures causing higher loss demands and increased cost of defense. Realization of rate increases in this sector will be difficult for insurers, particularly for firms willing and able to leverage competing insurers.
- **Large firm sector:** Insurers will seek increases of 2-5% to off-set inflationary impact and maintain rate adequacy. However, realization of flat rate may be possible on primary layers for firms able to generate competition. Firms with challenging claims histories may encounter rate hikes beyond the 2-5% range. Additionally, they may see higher deductibles or lower limits.

In summary, insurers are navigating a dynamic landscape, balancing rate adequacy and competition, firm risk profile and risk management practices along with the insurance requirements of each individual firm.

Claim Sources

The practice areas generating frequent and/or severe claims have remained relatively consistent over the past several years and in 2023 were as follows:

- Trust & Estates
- Mergers & Acquisitions
- Intellectual Property/Patent Prosecution
- Corporate
- Tax
- Commercial Transactions
- Commercial Real Estate

According to Underwriters surveyed, claims in 2023 came from diverse sources. The leading root causes of claims reported in 2023 included:

- Mistakes in preparing documentation: drafting errors, particularly in transactional contracts and documents.
- Missed deadlines: disclosure of experts, simple filings, statute of limitations.
- Claims alleging conflicts of interest persist resulting in difficult and more costly defense.
- Poor communication with clients: poorly defined scope of engagement, poor management of expectation and no memorialization of legal advice provided verbally.
- Increase in Social Engineering claims noticed to professional liability policies.
- Firms continue to 'dabble' in practice areas without sufficient experience or expertise.

Most of the underwriters surveyed agreed that a preponderance of claims reported in 2023 were the result of basic preventable mistakes. The underwriting community attributes many of the claims above to an erosion of disciplined execution of basic risk management practices, which some contend, anecdotally, is related to the remote/hybrid work environment. Underwriters polled noted that many firms are still struggling to bring the Partners back into the office. Consequently, how firms mentor associates and newly barred attorneys, how firms are overseeing work product and how they are executing risk management practices will be subject to underwriter scrutiny in 2024.

Claim Sources

For 2024 renewals, law firms should anticipate deeper underwriting focus on individual firms' risk of practice, risk management policies and procedures to mitigate those risks and loss experience.

Underwriters will also explore law firm training and development plans for associates and younger partners as well as experienced lateral hires. Firms with challenging risk profiles that are unable to demonstrate reasonable measures to manage risk will struggle to avoid more significant rate increases and will likely need to access emerging capacity to leverage more favorable pricing.

The underwriting community is also monitoring lawyers' emerging risks, most notably the impending use of Generative Artificial Intelligence (AI). Law firm leaders should be prepared to discuss uses of AI at their firms, if any, and strategies and procedures they are developing and implementing regarding their use of Generative AI. The common driving concerns among underwriters regarding AI use by lawyers are privacy and confidentiality issues. At this juncture, underwriters expect firms to have a committee in place to evaluate uses and risks of AI and to establish policies and procedures intended to ensure accuracy of information generated, protection of client information and credible sources.

Claim severity continues to drive underwriting strategy and pricing. Root causes of claims in 2023 were simple errors in a diverse range of activities perceived to be preventable by the insurers. Exceptionally large losses have impacted the excess placements such that a safe attachment point is more difficult for insurers to identify. Consequently, cost of excess capacity will increase modestly. Insurers will continue to manage capacity by restricting limits to $5,000,000, and perhaps less, for any one layer, thereby reducing their overall exposure to any one risk.

Cyber

The number of reported cyber claims against law firms continues to increase with Ransomware and Business Email Compromise (BEC) claims being the largest driver. Law firms continue to be one of the top-impacted sectors for Business Email Compromise (BEC) claims. There has been a rise in Cyber Crime such as Invoice Manipulation, Wire Transfer Fraud and Social Engineering. Cyber criminals are using Artificial Intelligence and Deep Fake videos and audio techniques to enhance their attacks to exploit the vulnerability of human error. As a result, LPL Underwriters are continuing to routinely inquire about cyber-related risk controls that law firms maintain within the scope of their LPL underwriting review. In addition to identifying risk controls, more and more Underwriters seek to confirm that firms are purchasing a standalone cyber policy. Insurers affirmatively exclude first-party cyber coverage from LPL policies and reduce their exposure to cyber related claims by narrowing coverage to specific cyber related coverages with minimal sub-limits of coverage.

As firms prepare for their cyber renewals in 2024, they should be aware that Underwriters continue to review each application to ensure the applicant has adequate cyber controls in place. It is recommended that firm's start the process early with their insurance broker in order to discuss emergent issues the Insurer may have for the upcoming renewal as well as any changes and/or updates to the firm's cyber security.

With the continued increase in regulatory actions and third-party litigation connected to breach events and other violations of broad privacy regulations, firms should be aware of the following legal and regulatory developments:

- Currently, thirteen (13) states have passed comprehensive data privacy laws: California, Virginia, Colorado, Connecticut, Utah, Iowa, Indiana, Tennessee, Texas, Florida, Montana, Oregon, and Delaware. Of those thirteen, California, Colorado, Connecticut, and Virginia's laws are currently in force.
- Regarding biometric specific privacy regulations, Illinois, Texas, New York, Vermont, and Washington have laws regulating the collection, storage, and disclosure of biometric identifiers, such as face scans, fingerprints, or voiceprints.

There continues to be capacity in the marketplace to place cyber coverage for law firms however, premiums have been increasing since last year and ransomware coverage is being more scrutinized with sub-limits or co-insurance being applied. We are also seeing a decrease in the sublimit being offered for cyber-crime coverage.

Conclusion

Our market forecast for lawyers' professional liability is optimistic. Although incumbent insurers will likely seek modest rate increases of 2% to 5%, depending on the size of firm, properly utilized emerging market competition for business will be sufficient to keep incumbent rate aspiration at bay. Law firms prepared to move their business to more competitive insurers may achieve modest rate reductions. However, not all professional liability insurers are created equally. Before making a move, law firms must thoroughly understand their own risk profile and insurance requirements and diligently examine competing insurers to ensure their financial strength, experience in lawyers' professional liability, claims handling philosophy and reputation, and the coverage offered.

We expect underwriters to compete hard this year for law firms able to demonstrate basic risk management policies and procedures that are commensurate with the size of firm and risk of practice. Firms that take the time to outline how their risk management procedures are implemented and how compliance is monitored will enjoy favorable treatment at renewal in 2024.

Developing and implementing a strategy to leverage the market for competitive pricing, broader coverage or additional limits of liability takes time. Providing insurers with firm information that will compel them to compete for your business requires thought and preparation. So does reviewing financial strength and experience of competitors, the quality of their claims handling, the offers they have made and the coverage they might provide. For a fruitful renewal in 2024, we recommend establishing achievable renewal objectives and starting the renewal process early.

In preparation of this report, we surveyed key LPL insurers regarding their portfolios, claims experience, rate initiatives and their views of emerging trends. We would like to thank the following insurers for their time, insights, and contributions: Applied Financial, ArgoPro, Aspen Specialty, AXA XL, CNA, Ironshore, Certain Underwriters at Lloyd's via Paragon Brokers, Sompo, Swiss Re, Vantage and Westfield.

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